

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
BRUNSWICK DIVISION**

ERIC MITCHELL BLANTON,

Plaintiff,

v.

SHERIFF BENNY DELOACH; DEPUTY  
KEITH MACK; DEPUTY STACY  
WILKERSON; DEPUTY LEON MCKENNY;  
DEPUTY CLINT BASS; ALVIE KIGHT; and  
JOHN LEE,

Defendants.

CIVIL ACTION NO.: 2:15-cv-40

**ORDER**

Plaintiff has filed a Motion for Appointment of Counsel (doc. 10) to assist him with this case. In this civil case, Plaintiff has no constitutional right to the appointment of counsel. Wright v. Langford, 562 F. App'x 769, 777 (11th Cir.2014) (citing Bass v. Perrin, 170 F.3d 1312, 1320 (11th Cir.1999)). “Although a court may, pursuant to 28 U.S.C. § 1915(e)(1), appoint counsel for an indigent plaintiff, it has broad discretion in making this decision, and should appoint counsel only in exceptional circumstances.” Wright, 562 F. App'x at 777 (citing Bass, 170 F.3d at 1320). Appointment of counsel in a civil case is a “privilege that is justified only by exceptional circumstances, such as where the facts and legal issues are so novel or complex as to require the assistance of a trained practitioner.” Fowler v. Jones, 899 F.2d 1088, 1096 (11th Cir.1990) (citing Poole v. Lambert, 819 F.2d 1025, 1028 (11th Cir.1987) and Wahl v. McIver, 773 F.2d 1169, 1174 (11th Cir.1985)). The Eleventh Circuit has explained that “the key” to assessing whether counsel should be appointed “is whether the pro se litigant needs help in presenting the

essential merits of his or her position to the court. Where the facts and issues are simple, he or she usually will not need such help.” McDaniels v. Lee, 405 F. App’x 456, 457 (11th Cir.2010) (quoting Kilgo v. Ricks, 983 F.2d 189, 193 (11th Cir.1993)).

The Court has reviewed the record and pleadings in this case and finds no “exceptional circumstances” warranting the appointment of counsel. While the Court understands that Plaintiff is incarcerated, this Court has repeatedly found that “prisoners do not receive special consideration notwithstanding the challenges of litigating a case while incarcerated.” Hampton v. Peebles, No. CV 614-104, 2015 WL 4112435, at \*2 (S.D. Ga. July 7, 2015). “Indeed, the Eleventh Circuit has consistently upheld district courts’ decisions to refuse appointment of counsel in 42 U.S.C. § 1983 actions similar to this case for want of exceptional circumstances.” Id. (citing Smith v. Warden, Hardee Corr. Inst., 597 F. App’x 1027, 1030 (11th Cir.2015); Wright, 562 F. App’x at 777; Faulkner v. Monroe Cty. Sheriff’s Dep’t, 523 F. App’x 696, 702 (11th Cir.2013); McDaniels v. Lee, 405 F. App’x 456, 457 (11th Cir.2010); Sims v. Nguyen, 403 F. App’x 410, 414 (11th Cir.2010); Fowler, 899 F.2d at 1091, 1096; Wahl, 773 F.2d at 1174). This case is not so complex legally or factually to prevent Plaintiff from presenting “the essential merits of his position” to the Court.

For these reasons, Plaintiff’s Motion for Appointment of Counsel is **DENIED**.

Additionally, the Court notes that Defendants Kight, Bass, Deloach, Mack, McKenny and Wilkerson filed Motions to Dismiss on August 17, 2015. (Docs. 12, 13.) A motion to dismiss is dispositive in nature, meaning that the granting of a motion to dismiss results in the dismissal of individual claims or an entire action. Consequently, the Court is reluctant to rule on the Motions to Dismiss without receiving a response from the Plaintiff or ensuring that Plaintiff is advised of the potential ramifications caused by his failure to respond. Once a motion to dismiss is filed, the

opponent should be afforded a reasonable opportunity to respond to or oppose such a motion. This Court must consider that the Plaintiff in this case is a *pro se* litigant. Haines v. Kerner, 404 U. S. 519, 520 (1972). Additionally, when a defendant or defendants file a motion to dismiss, the court must construe the complaint liberally in favor of plaintiff, taking all facts alleged by the plaintiff as true, even if doubtful in fact. Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 555 (2007).

The granting of a motion to dismiss without affording the plaintiff either notice or any opportunity to be heard is disfavored. Tazoe v. Airbus S.A.S., 631 F.3d 1321, 1336-37 (11th Cir. 2011). A local rule, such as Local Rule 7.5 of this court,<sup>1</sup> should not in any way serve as a basis for dismissing a *pro se* complaint where, as here, there is nothing to indicate plaintiff ever was made aware of it prior to dismissal. Pierce v. City of Miami, 176 F. App'x 12, 14 (11th Cir. 2006).

Accordingly, Plaintiff is hereby **ORDERED** to file any response in opposition to the Defendants' motions for dismissal or to inform the court of his decision not to oppose Defendants' motions **within twenty-one (21) days** of the date of this Order. Tazoe, 631 F.3d at 1336 (advising that a court can not dismiss an action without employing a fair procedure). Should Plaintiff not timely respond to Defendants' motion, the Court will determine that Plaintiff does not oppose the motion. See Local Rule 7.5.

To assure that Plaintiff's response is made with fair notice of the requirements of the Federal Rules of Civil Procedure regarding motions to dismiss, generally, and motions to dismiss

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<sup>1</sup> Local Rule 7.5 states, Unless . . . the assigned judge prescribes otherwise, each party opposing a motion shall serve and file a response within fourteen (14) days of service of the motion, except that in cases of motions for summary judgment the time shall be twenty-one (21) days after service of the motion. Failure to respond shall indicate that there is no opposition to a motion.

(emphasis added).

for failure to state a claim upon which relief may be granted, the Clerk of Court is hereby DIRECTED to attach a copy Federal Rules of Civil Procedure 41 and 12 to the copy of this Order that is served on the Plaintiff.

**SO ORDERED**, this 19th day of August, 2015.

A handwritten signature in blue ink, appearing to read "R. Stan Baker". The signature is stylized and cursive.

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R. STAN BAKER  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF GEORGIA