

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK MAHAFFEY,

Plaintiff,

v.

Case No. 13-14646

District Judge John Avern Cohn

Magistrate Judge Anthony P. Patti

JOSHUA BUSKIRK, *et al.*,

Defendants.

**ORDER DENYING WITHOUT PREJUDICE PLAINTIFF'S AUGUST 13,
2014 MOTION TO APPOINT COUNSEL (DE 56)**

A. Procedural Background

This matter is before the Court for consideration of Plaintiff's Motion for Appointment of Counsel. (DE 56.) Plaintiff, Mark Mahaffey, is a state prisoner who is proceeding without the assistance of counsel. He filed his Complaint on November 8, 2013 asserting violations of the Eighth Amendment to the United States Constitution. During the times relevant to his Complaint, he was incarcerated at the Michigan Department of Corrections Robert G. Cotton Correctional facility and the Saginaw Correctional Facility. According to the docket, he is no longer incarcerated and living in Florida. (DE 69.)

On July 21, 2014 Plaintiff filed the subject Motion. He contends that he is unable to afford private counsel, that his imprisonment limits his ability to litigate, and that the complexity of the case, both before and during trial, requires a greater knowledge of the law.

Defendants Joshua Buskirk and Harriet Squier oppose Plaintiff's Motion. (DE 60.) They assert that Plaintiff has no constitutional or statutory right to the appointment of counsel in this civil case. Defendants also dispute Plaintiff's limited ability to conduct legal research, and point to several of his pleadings in which he cites to various federal court decisions. Finally, Defendants contend that Plaintiff has not demonstrated that his claims are sufficiently complex or meritorious to warrant the appointment of counsel.

B. Pending Motions

In addition to the instant Motion, the following are currently pending before the Court: Defendant Laughunn's Motion to Dismiss (DE 36); Defendant Pandaya's Second Motion for Summary Judgment (DE 46); and Defendants Buskirk and Squier's Motion for Summary Judgment. (DE 63.) Additionally, Plaintiff has been unable to effect service over Defendants F. Hinsley, Sharp, and Jacob.

C. Discussion

For the following reasons, Plaintiff's Motion for Appointment of Counsel will be denied. (DE 56.) First, dispositive motion practice is still active in this case. As noted above, three dispositive motions remain pending before the Court. In addition, three Defendants have not been served to date and motion practice could continue for some time.

Second, on several occasions, Plaintiff has illustrated his ability to adequately communicate his requests to this Court. For example, Plaintiff filed a motion for extension of time, which was granted by the Court on April 23, 2014. (DE 26.) He has also filed responses to Defendants' motions for summary judgment (DE 57, 58) and objections to the Magistrate Judge's Report and Recommendation. (DE 42.)

Finally, as Defendants point out, Plaintiff's motion practice before the Court demonstrates that he has access to legal research. He cites to federal cases that are directly on point in his responses to Defendants' motions. Moreover, Plaintiff's assertion that his incarceration hinders his ability to conduct legal research is moot because he is no longer incarcerated. On January 26, 2015, he filed a notice of change of address. The new address is not a prison or other institution of incarceration.

D. Order

Upon consideration, Plaintiff's Motion for Appointment of Counsel (DE 56) is **DENIED WITHOUT PREJUDICE**. Plaintiff may renew his request for the appointment of counsel if this case survives dispositive motion practice, proceeds to trial and/or if other circumstances warranting the appointment of counsel arise.

IT IS SO ORDERED.

Dated: February 5, 2015

s/Anthony P. Patti _____
Anthony P. Patti
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent to parties of record on February 5, 2015, electronically and/or by U.S. Mail.

s/Michael Williams _____
Case Manager for the
Honorable Anthony P. Patti
(313) 234-5200