

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JAMES FRANCIS JOHNSTON,

Case No. 6:16-cv-01894-JR

Plaintiff,

ORDER

v.

DR. SCOTT HOWARD JOHNSON,

Defendants.

MCSHANE, Judge:

Magistrate Judge Jolie A. Russo filed a Findings and Recommendation, ECF No. 7, recommending dismissal of this action for failure to state a claim. The matter is now before me. *See* 28 U.S.C. § 636(b)(1)(B); Fed.R.Civ.P. 72(b). Johnston, proceeding *pro se*, filed objections to the Findings and Recommendation. Accordingly, I have reviewed this case *de novo*. *See* 28 U.S.C. § 636(b)(1)(c); *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). I find no error and adopt the Findings and Recommendations.

I find no allegations sufficient to raise a federal question. This appears to be a claim for medical malpractice. In his objections, Johnston included descriptions of his contacts with the Eugene Police Department and his landlords. None of those individuals are parties to this case. As noted in the Findings and Recommendation, simply because Johnston's visits with Dr. Johnson were covered in part by Medicare does not make Dr. Johnson a government actor under section 1983.

Along with his objections, Johnston moved for appointment of counsel. ECF No. 14. There is no general right to counsel in civil cases. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). In "exceptional circumstances," the court may appoint counsel to represent an indigent party in a civil action. 28 U.S.C. § 1915(e)(1); *Palmer*, 560 F.3d at 970 (internal citations omitted). In considering whether to appoint counsel, the court considers "the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved." *Id.* (internal citations omitted). Johnston is able to articulate his claims. Those claims, however, involve no federal questions and are barred by the statute of limitations. Johnston's motion for appointment of counsel is DENIED.

Magistrate Judge Russo's Findings and Recommendation, ECF No. 7, is ADOPTED in full. This matter is dismissed with prejudice.

IT IS SO ORDERED.

DATED this 18th day of January, 2017.

/s/ Michael McShane
Michael McShane
United States District Judge