

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MARQUIS CARLOCK,)	
)	2: 17cv00028
Plaintiff,)	Electronic Filing
)	
v.)	Judge David Stewart Cercone
)	
JOHN WETZEL, Secretary of DOC;)	
MARK CAPOZZA, Superintendent of)	
SCI Pittsburgh; and SGT. HOYE, C/O,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Before the Court is an appeal ([ECF No. 18](#))¹ filed by Plaintiff Marquis Carlock (“Carlock” or “Plaintiff”) requesting review of the magistrate judge’s Order dated June 15, 2017 ([ECF No. 15](#)) (the “Order”), which denied without prejudice Plaintiff’s motion for appointment of counsel.

Upon review of the matters raised by Carlock, the Court concludes that the Order appealed from is neither clearly erroneous nor an abuse of discretion. Therefore, Carlock’s appeal will be dismissed.

Standard of Review

The Federal Magistrates Act, [28 U.S.C. §§ 631–639](#), provides two separate standards for judicial review of a magistrate judge’s decision: (i) “de novo” for magistrate resolution of dispositive matters, [28 U.S.C. § 636\(b\)\(1\)\(B\)-\(C\)](#), and (ii) “clearly erroneous or contrary to law”

¹ The Court has construed Plaintiff’s filing, which is entitled “Objections to Magistrate Judge’s Determination,” as an appeal to the district court.

for magistrate resolution of nondispositive matters. 28 U.S.C. § 636(b)(1)(A). *Accord* FED. R. Civ. P. 72(a), (b); Local Civil Rule 72.1(C)(2); *see Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1113 (3d Cir. 1986).

The Order of June 15, 2017, was for a non-dispositive matter under 28 U.S.C. § 636(b)(1)(A) and, thus, will not be disturbed unless it is found to be clearly erroneous or contrary to law. A finding is clearly erroneous “when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573 (1985) (citing *United States v. United States Gypsum Co.*, 333 U.S. 364 (1948)).

Discussion

Upon review of the record in this matter, the Court finds that the decision of the magistrate judge to deny without prejudice Plaintiff’s request for appointment of counsel was neither clearly erroneous nor contrary to law.

As the magistrate judge explained, the Court has authority “to request an attorney to represent any person unable to afford counsel.” 28 U.S.C. § 1915(e)(1) (emphasis added). In *Tabron v. Grace*, the United States Court of Appeals for the Third Circuit announced the factors that are to be considered by a district court in deciding whether to exercise its discretion and seek counsel for an indigent litigant in a civil case. 6 F.3d 147, 153 (3d Cir. 1993), *cert. denied*, 510 U.S. 1196 (1994). Following *Tabron*, the first consideration by a district court should be whether the plaintiff’s claim has “some merit in fact and law.” *Parham v. Johnson*, 126 F.3d 454, 457 (3d Cir.1997) (citing *Tabron*, 6 F.3d at 157).

The Court notes that this case is in its early stage, as Defendants only recently have filed a responsive pleading. Given the early stage of the litigation, the Court agrees with the magistrate judge that, while the case may ultimately present complex credibility determinations, at the present stage it is too early to make any assessment regarding the same.

As a pro se litigant, Plaintiff will have the benefit of *Haines v. Kerner*, 404 U.S. 519 (1972) and its progeny, which provides that courts must liberally construe pro se pleadings. Considering the severe shortage of attorneys with experience and knowledge in this area of the law, who are also willing to take these cases pro bono, it does not appear at this point in the litigation that this case merits a request by this Court for counsel to represent him pursuant to 28 U.S.C. § 1915(e). Additionally, Plaintiff has made no showing that he has made any attempt to retain counsel himself. Furthermore, this Court notes that Local Civil Rule 10.C indicates that “[a]bsent special circumstances, no motions for the appointment of counsel will be granted until after dispositive motions have been resolved.” Should the case survive any dispositive motions and advance to the point where it is ready to proceed to trial, the Court will reconsider this request.

For all these reasons, the Court finds that Plaintiff has not shown that the magistrate

judge's ruling was clearly erroneous or contrary to law. Accordingly, Plaintiff's appeal is

DENIED.

It is so **ORDERED** on this 17th day of July, 2017.

s/David Stewart Cercone
David Stewart Cercone
United States District Judge

cc: MARQUIS CARLOCK
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