

United States District Court
Southern District of Texas

ENTERED

August 10, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOSEPH F. WEAVER,

Plaintiff,

VS.

ERICK ECHEVARRY, *et al*,

Defendants.

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CIVIL ACTION NO. 2:17-CV-388

**OPINION AND ORDER DENYING PLAINTIFF’S
MOTION FOR APPOINTMENT OF COUNSEL**

Plaintiff Joseph F. Weaver, a prisoner proceeding *pro se* and *in forma pauperis*, filed this civil rights complaint pursuant to 42 U.S.C. § 1983, alleging that his rights under the Eighth Amendment were violated by defendants Erick Echevarry, Susanna Corbett, and Irene Cussins when they deliberately failed to provide him with proper medical care. On July 19, 2017, a Memorandum and Recommendation (M&R) was entered, recommending that the District Court: (1) deny a motion to dismiss filed by Defendants Cussins and Corbett; and (2) grant a motion to dismiss filed by Defendant Echevarry. (D.E. 20). Plaintiff has filed objections to the M&R (D.E. 24), which are currently pending before the District Judge.

Plaintiff seeks the appointment of counsel to assist him in the prosecution of this case. (D.E. 23). In *Bounds v. Smith*, the Supreme Court held that a prisoner's constitutional right of access to the courts requires that the access be meaningful; that is, prison officials must provide pro se litigants with writing materials, access to the law library, or other forms of legal assistance. *Bounds v. Smith*, 430 U.S. 817, 829 (1977).

There is, however, no constitutional right to appointment of counsel in civil rights cases. *Akasike v. Fitzpatrick*, 26 F.3d 510, 512 (5th Cir. 1994); *Branch v. Cole*, 686 F.2d 264, 266 (5th Cir. 1982). Further, *Bounds* did not create a “free-standing right to a law library or legal assistance.” *Lewis v. Casey*, 518 U.S. 343, 351 (1996). It is within the court's discretion to appoint counsel, unless the case presents “exceptional circumstances,” thus requiring the appointment. 28 U.S.C. § 1915(e)(1); *Cupit v. Jones*, 835 F.2d 82, 86 (5th Cir. 1987).

A number of factors should be examined when determining whether to appoint counsel. *Jackson v. Dallas Police Dep't*, 811 F.2d 260, 261-62 (5th Cir. 1986) (citing *Ulmer v. Chancellor*, 691 F.2d 209 (5th Cir. 1982)). The first is the type and complexity of the case. *Id.* Plaintiff's deliberate indifference claims do not involve complex issues.

The second and third factors are whether the plaintiff is in a position to adequately investigate and present his case. *Id.* Plaintiff's pleadings and arguments presented in responding to Defendants' motions to dismiss and filing objections to the M&R reveal that he understands his claims and is in a position to investigate and present his case.

The fourth factor which should be examined is whether the evidence will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and in cross-examination. *Id.* Examination of this factor is premature because the case has not yet been set for trial.

Plaintiff has not shown that exceptional circumstances require the appointment of counsel at this time. In addition, there is no indication that appointed counsel would aid in the efficient and equitable disposition of the case. The Court has the authority to

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award attorneys' fees to a prevailing plaintiff. 42 U.S.C. § 1988. Plaintiff is not prohibited from hiring an attorney on a contingent-fee arrangement. Plaintiff's motion for appointment of counsel (D.E. 23) is DENIED without prejudice at this time. This order will be *sua sponte* reexamined as the case proceeds.

ORDERED this 10th day of August, 2018.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE