

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

JOSEPH A. DANIELS,

Plaintiff,

v.

Civil Action No. 3:11CV461

PAUL E. CALDWELL,

Defendant.

MEMORANDUM OPINION

Joseph A. Daniels, a Virginia prisoner proceeding pro se and in forma pauperis, filed this 42 U.S.C. § 1983¹ complaint. By Memorandum Opinion and Order entered on December 18, 2013, the Court granted Defendant Caldwell's Motion for Summary Judgment and dismissed the action as frivolous. See Daniels v. Caldwell, 3:11CV461, 2013 WL 6713129, at *4 (E.D. Va. Dec. 18, 2013). On December 31, 2013, Caldwell filed a Motion for Costs. (ECF No. 70.) On January 13, 2014, Daniels filed a Motion for Reconsideration under Federal Rule of Civil Procedure 59(e). (ECF No. 75.)

¹ That statute provides, in pertinent part:

Every person who, under color of any statute . . . of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law

The United States Court of Appeals for the Fourth Circuit recognizes three grounds for relief under Rule 59(e): "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993) (citing Weyerhaeuser Corp. v. Koppers Co., 771 F. Supp. 1406, 1419 (D. Md. 1991); Atkins v. Marathon LeTourneau Co., 130 F.R.D. 625, 626 (S.D. Miss. 1990)). Daniels asserts that the Court committed a clear error of law by failing to give him notice of its intent to rule on the Motion for Summary Judgment and by failing to appoint counsel to assist him. Daniels had ample notice of the Court's intent to rule on the Motion for Summary Judgment. By Memorandum Order entered on April 26, 2013, the Court informed Daniels that the Court deemed Caldwell's Motion for Summary Judgment timely filed. Furthermore, Caldwell's Motion for Summary Judgment contained the appropriate Roseboro² notice to Daniels.

Moreover, the circumstances of Daniels's case failed to warrant the appointment of counsel. See Fowler v. Lee, 18 F. App'x 164, 166 (4th Cir. 2001) (citation omitted). Because

² Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975).

Daniels's fails to demonstrate the Court committed a clear error of law or any other basis for granting relief under Rule 59(e), the Motion for Reconsideration (ECF No. 75) will be denied.

The Clerk is directed to send a copy of the Memorandum Opinion to Daniels and counsel of record.

/s/ REX

Robert E. Payne
Senior United States District Judge

Date: *April 10, 2014*
Richmond, Virginia