



(PC) Gann v. Ugwueze et al

2024 | Cited 0 times | E.D. California | June 3, 2024

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

NATHANIEL MARCUS GANN,

Plaintiff, v. UGWUEZE, et al.,

Defendants.

Case No. 1:19-cv-01350-JLT-CDB (PC) ORDER MOTION FOR THE APPOINTMENT OF COUNSEL ORDER DENYING MOTION FOR SETTLEMENT CONFERENCE (Doc. 71)

I. INTRODUCTION On May 16, 2024, Plaintiff 1

filed a Motion for Appointment of Counsel, Motion In Re Settlement Conference. (Doc. 71.) At the direction of the Court, Defendants filed a response to Plaintiff's motion concerning a settlement conference. (Doc. 73.) appointment of counsel to be unnecessary.

II. DISCUSSION for the Appointment of Counsel Plaintiff 1 A search of the California Incarcerated Records and Information Search (CIRIS) tool reveals Plaintiff has changed her name to Aerith Natalia Asora. (<https://apps.cdcr.ca.gov/ciris/results?lastName=asora>, as of May 31, 2024.) Id.) Plaintiff further states she has undergone the first of

three surgeries. (Id unavailable to her, and that the documentation was stored in a facility that sustained water

Id.) She does not know where her Id.) Plaintiff plaintiff cannot Id

legal argument fixated on medical issues requires an attorney and a medical witness that plaintiff Id.) She asserts the only way to obtain a truly fair outcome Id.)

Analysis As Plaintiff has previously been advised (see Doc. 38), Plaintiffs do not have a constitutional right to appointed counsel in section 1983 actions. *Rand v. Rowland*, 113 F.3d Nor can the Court require an attorney to represent a party under 28 U.S.C. § 1915(e)(1). See



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Mallard v. U.S. Dist. Court, 490 U.S. 296, 304-05 (19 1915(e)(1). Rand, 113 F.3d at 1525.

Given that the Court has no reasonable method of securing and compensating counsel, the Court will seek volunteer counsel only in extraordinary cases. In determining whether the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the

Rand, 113 F.3d at 1525 (internal quotation marks & citations omitted).

er claims. complaint survived screening and Defendants filed an answer to the complaint, screening tested Nor were dispositive motions filed by either party that may have provided insight in this regard. Here, a merits determination will be made at trial of the action. See Venable v. Patel, No. 1:17-cv-01519-BAM (PC), 2021 WL 5882937, at *3 (E.D. Cal. urthermore, at this stage in the proceedings, the Court cannot make a determination that Plaintiff is likely to succeed on the merits. Although Plaintiff's case is proceeding to trial, this does not alone indicate a likelihood of success on the merits .

The Court er claims pro se in light of the complexity of the legal issues involved. In this case, the Court notes that Plaintiff's filings reflect Plaintiff is logical and articulate. (See, e.g., Docs. 1, 11, 14, 37, 55 [sealed], 70.) See LaMere v. Risley, 827 F.2d 622, 626 (9th Cir. 1987) (affirming district court's denial of request

of the issues and the ability to . Moreover, judges in this district have held that deliberate indifference to serious medical needs claims are not complex. See Maldonado v. Merritt, No. 1:23-cv-00482-JLT-SKO PC, 2023 WL 6751114, at *3 (E Lane v. Beach, No. 1:20-cv-00147-JLT-GSA-PC, 2023 WL different Ireland v. Solano County Jail, No. CV- 08-2707-LRS, 2010 WL 367776, at *1 (E.D. Cal. Jan. 26, 2010) (same). In short, the Court finds Plaintiff able to articulate her claims in light of their complexity.

Next, Plaintiff is advised that neither incarceration nor indigency are exceptional circumstances warranting the appointment of counsel. See Tri v. Gutierrez, No. 1:22-cv-00836- ADA-SKO (PC), 2023 WL 6930783, at *4 (E.D. Cal. Oct. 18, 2023); Davis v. Portillo, 2023 WL 4979965, at *2; Dijkstra v. Campos, No. 1:21-cv-01223-HBK, 2022 WL 222518, at *1 (E.D. Cal.

Gipbsin v. Kernan, No. 2:12-cv-0556 KJM DB P, 2021 WL 242570, Callender v. Ramm, No. 2:16-cv-0694 JAM AC P, 2018 WL 6448536, at *3 (E.D. Cal. Dec. 10, 2018); Montano v. Solomon, No. 2:07-cv-0800 KJN P, 2010 WL 2403389, at *2 (E.D. Cal. June 11, 2010). See also Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (finding that plaintiff failed limited his ability to prepare for trial, and prison officials had denied him access to his legal

documents, thereby limiting his ability to prepare fo



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Plaintiff is further advised that the fact an attorney would be better prepared to litigate and try this action, does not amount to an exceptional circumstance warranting the appointment of counsel. See *Rand*, 113 F.3d at 1525 (finding no abuse of discretion under 28 U.S.C. § 1915(e) have fared better-particularly in the realm of discovery and the securing of expert t *Courtney v. Kandel*, No. 2:18-CV-2052-KJM-DMC-P, 2020 WL 1432991, at *1 (E.D. Cal. Mar.

24, 2020) (declining to appoint counsel where plaintiff argued ; *Thornton v. Schwarzenegger*, No.

10CV01583 BTM RBB, 2011 WL 90320, at *7 (S.D. Cal. Jan. 11, 2011) (explaining that -examination of witnesses do not indicate the presence of complex legal issues

and would be better served with the assistance of counsel. *Wilborn v. Escalderon*, 789 F.2d 1328,

1331 (9th Cir. 1986). For this reason, in the absence of counsel, federal courts employ procedures which are highly protective of a pro se litigant's rights. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

To the extent Plaintiff infers her case requires a medical expert, this too is not an exceptional circumstance warranting the appointment of counsel. See *Brooks v. Smith*, No. 2:22- CV-0062-DMC- circumstances such as the lack of knowledge, legal rules and procedure, or the potential necessity *Honeycutt v. Snider*, No. 3:11-cv-00393-RJC (WGC), 2011 WL 6301429, at *1 (D. Nev. Dec. 16,

ment of experts in deliberate indifference cases is rare, and such requests should be granted sparingly, particularly given the large volume of cases in which indigent prisoners allege claims under the Eighth Amendment related to medical care, and the substantial Furthermore, Rule 706 of the Federal Rules of Evidence is not a means to avoid the in forma

pauperis statute and its prohibition against using public funds to pay for the expenses of witnesses. *Manriquez v. Huchins*, No. 1:09-cv-00456-LJO-BAM PC, 2012 WL 5880431, at *12 (E.D. Cal. Nov. 21, 2012). Nor does Rule 706 contemplate court appointment and compensation of an expert witness as an advocate for Plaintiff. *Faletogo v. Moya*, No. 12cv631 GPC (WMc), 2013 WL 524037, at *2 (S.D. Cal. Feb. 23, 2013). The appointment of an expert witness under Rule 706 is intended to benefit the trier of fact, not a particular litigant. *Faletogo*, 2013 WL 524037, at *2. *Accord Bontemps v. Lee*, No. 2:12-cv-0771 KJN P, 2013 WL 417790, at *3-4 (E.D. Cal. Jan. 31, 2013); *Honeycutt*, 2011 WL 6301429, at *1.

In sum, the Court finds no exceptional circumstances warranting the appointment of counsel in this matter. *Rand*, 113 F.3d at 1525.

Plaintiff s Motion for a Settlement Conference before trial. (Doc. 71 at 2-3.) Plaintiff states that the joint status report of June 1, 2023, reflects



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ntiff and counsel for defendants stated they would be willing to engage in a settlement Id. at 2.) Plaintiff -faith attempt to settle a settlement can be reached between Id. at 3.) /// Analysis On March 4, 2021, Defendants did not believe an early settlement conference would be productive and opted not to participate. (See Doc.34.) On March 25, 2022, the then-assigned magistrate judge issued an Order Directing Parties to Participate in a Settlement Conference. (Doc. 45.) Ultimately, the undersigned conducted a settlement conference in this matter on May 1, 2023. (See Doc. 66.) The matt to convene for a follow- Id.) In their joint status report dated June 1, 2023, the parties represented there were then willing to attempt another settlement conference however each party is unclear whether another settlement conference will minute order entered May 17, 2024, directing Defendants to respond to Plaintiff s pending request to reconvene for settlement conference (see Doc. 72), Defendants indicated as follows:

Defendants will participate in another settlement conference if the Court believes the parties could resolve their differences. believe another conference will be productive, stems from their belief that the parties were simply too far apart at the last settlement conference to bridge the difference. Defendants[] believe the settlement value of the case remains unchanged since the last settlement conference, and do not know whether Plaintiff has altered her view regarding the value of her claims. (Doc. 74 at 1-2.) Given the prior settlement conference proceedings held before the undersigned and to participate in a further settlement conference, the Court will not order the parties to do so.

further settlement conference, they may contact the Court.

Remainder of This Page Intentionally Left Blank III. CONCLUSION AND ORDER Based on the above, IT IS HEREBY ORDERED that counsel and motion for a settlement conference (Doc. 71) are DENIED. IT IS SO ORDERED. Dated: May 31, 2024 _____ UNITED STATES
MAGISTRATE JUDGE

