



Erickson Productions Inc et al v. Kraig R Kast

2019 | Cited 0 times | N.D. California | July 18, 2019

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

ERICKSON PRODUCTIONS INC, et al.,

Plaintiffs, v. KRAIG RUDINGER KAST, et al.,

Defendants.

Case No. 13-cv-05472-DMR

ORDER DENYING DEFENDANT'S MOTION FOR APPOINTMENT OF COUNSEL Re: Dkt. No. 360 On July 3, 2019, the court held a case management conference at which Defendant Kraig Kast made a request for appointment of pro bono counsel. The court ordered Kast to file an administrative motion for appointment of counsel by July 8, 2019, with any opposition by Plaintiffs Erickson Productions Inc. and Jim Erickson due by July 12, 2019. [Docket No. 358.] Kast timely filed his motion, which Plaintiffs oppose. [Docket Nos. 360, 364.] 1

Kast is not an indigent litigant who may lose his physical liberty if he does not prevail in this lawsuit. Therefore he does not have a right to counsel. See *Lassiter v. Dept of Soc. Servs*, 452 U.S. 18, 25 (1981). Kast moves for appointment of counsel pursuant to General Order No. 25, which sets forth four criteria which a pro se litigant must satisfy in order to be found eligible for appointment of pro bono counsel through the Federal Pro Bono Project:

1. The unrepresented litigant must be in propria persona; 2. The unrepresented litigant must not have the financial resources to retain counsel; 3. The unrepresented litigant must have used reasonable efforts to

1 The court notes that Kast [Docket Nos. 366, 368.] The court declines to consider the reply. Local Rule 7-11, which governs - 11(c). It does not authorize the filing of a reply brief.

retain private counsel such as through a California State Bar-approved lawyer referral service or have demonstrated that such efforts would be futile; and 4. The referring judge must determine the case merits pro bono representation (this does not mean determining that the litigant is cognizable and the factual and legal issues warrant proper presentation to the Court with the assistance of an attorney). Gen. Order 25(I)(A).



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Kast asserts that he satisfies all four criteria for appointment of pro bono counsel under General Order 25. He also notes that the Ninth Circuit appointed pro bono counsel to represent him in the prior appeal issues before this Court, are

Plaintiffs oppose the motion. In particular, they vigorously dispute whether Kast has the financial resources to retain counsel and argue that Kast has not made a sufficient showing that he made reasonable efforts to obtain counsel on his own.

The court or his efforts to obtain counsel, because it finds that the case does not merit pro bono representation under the fourth criterion. The court determines that the factual and legal issues presented on remand are straightforward, and Kast can present them properly without appointment of pro bono counsel.

Kast points to the fact that the Ninth Circuit appointed pro bono counsel to represent him on appeal. However, the Court of Appeals issued its appointment order because it determined that specific legal issues: (1) Whether the avoidance of licensing fees constitutes a direct financial benefit for purposes of imposing 17 U.S.C. § 504(c). Case No. 15-16801, Docket No. 54 (9th Cir. May 7, 2018). The Ninth Circuit

decided both of those legal issues in its April 16, 2019 opinion. See *Erickson Prods., Inc. v. Kast*, 921 F.3d 822 (9th Cir. 2019). The reason for appointment of counsel before the appellate court no longer exists.

On remand the only issues before this court are (1) whether the current evidentiary record supports a finding of willful infringement under the legal standard announced by the Ninth Circuit; and (2) the amount of statutory damages to be awarded if the evidence does not support such a finding. See *id.* at 833-34. These issues are not particularly complex. Moreover, filings in this case demonstrate that he is fully capable of articulating his positions without the assistance of an attorney. denied. The briefing schedule set by the court at the initial case management conference remains

unchanged. [See Docket No. 358.]

IT IS SO ORDERED. Dated: July 18, 2019 _____ Donna M. Ryu
United States Magistrate Judge

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

IT IS SO ORDERED

Judge Donna M. Ryu

