



CAMPOVERDE v. LANIGAN et al

2018 | Cited 0 times | D. New Jersey | August 15, 2018

Diego Campoverde SBI#867802C East Jersey State Prison Lock Bar R 1100 Woodbridge Avenue Rahway, New Jersey 07065 Pro se Plaintiff Kai Wendell Marshall-Otto Office of the Attorney General R.J. Hughes Justice Complex 25 Market Street P.O. Box 112 Trenton, New Jersey 08625 Counsel for Defendant

LETTER OPINION FILED WITH THE CLERK OF THE COURT Re: Campoverde v. Lanigan, et al. Civil Action No. 16-3305 (SDW) (LDW) Litigants:

Before this Court is pro se Plaintiff appeal from July 2, 2018 Letter Order, which denied Motion for the Appointment of Pro Bono Counsel. This Court, having considered the submissions and having reached its decision without oral argument pursuant to Federal Rule of Civil Procedure 78, and for the reasons discussed below, AFFIRMS the July 2, 2018 Letter Order.

I. BACKGROUND AND PROCEDURAL HISTORY

history in this matter and thus will summarize only those facts relevant to the instant motion. NOT FOR PUBLICATION UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY CHAMBERS OF SUSAN D. WIGENTON UNITED STATES DISTRICT JUDGE

August 15, 2018

MARTIN LUTHER KING COURTHOUSE

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On June 7, 2016, Plaintiff filed his Complaint along with an application to proceed in forma pauperis prejudice because it was incomplete. (ECF No. 2.) Specifically, Plaintiff failed to submit a certified account statement as required under 28 U.S.C. § 1915(a)(2). (Id. at 2-3.) This Court administratively terminated the case and informed Plaintiff that should he wish to reopen the suit, in forma pauperis application, including a certified six-month prison account statement, or (2) the \$400 fee including the \$350 filing fee plus the \$50 administrative fee[.] Id. at 3.) In July 2016, Plaintiff paid the \$400 fee



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and the case was reopened. (See ECF No. 3.)

On December 11, 2017, Plaintiff filed his first Motion for the Appointment of Pro Bono Counsel, which Judge Mannion denied on December 20, 2017. (ECF Nos. 28-29.) Plaintiff did not move to reconsider or appeal. On June 4, 2018, Plaintiff filed his second Motion for the Appointment of Pro Bono Counsel. (ECF No. 47.) Judge Mannion issued a Letter Order on July motion, which Plaintiff now moves to appeal. (ECF Nos. 52, 55-56.)

II. STANDARD OF REVIEW

Magistrate judges may hear non-dispositive motions under 28 U.S.C. § 636(b)(1)(A) and Federal Rule of Civil Procedure 72(a). A district court may reverse a Magistrate J determination of a non-dispositive motion only where it is 28 U.S.C. § 636(b)(1)(A); *Haines v. Liggett Grp. Inc.*, 975 F.2d 81, 83 (3d Cir. 1992). A ruling is

evidence is left with the definite and firm conviction *Dome rs Mut. Liab. Ins. Co. of Wis.*, 131 F.R.D. 63, 65 (D.N.J. 1990) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 *Andrews v. Goodyear Tire & Rubber Co., Inc.*, 191

F.R.D. 59, 68 (D.N.J. 2000). *A Doe v. Hartford Life & Accident Ins. Co.*, 237 F.R.D. 545, 548 (D.N.J. 2006). This Court conducts a de novo review of legal conclusions. *Cooper Hosp./Univ. Med. Ctr. v. Sullivan*, 183 F.R.D. 119, 127 (D.N.J. 1998) (citations omitted).

III. DISCUSSION

explains that a litigant may be appointed counsel if he has been permitted to proceed in forma pauperis such status had been denied. (July 2, 2018 Letter Order at 2.) Plaintiff appeals from that Letter Order on the basis that the magistrate judge may have overlooked application to proceed in forma pauperis, which was submitted with his Motion for the Appointment of Pro Bono Counsel. (ECF No. 56 at 1, 6.)

In civil matters, litigants do not have a Constitutional or statutory right to appointed counsel. See *Parham v. Johnson*, 126 F.3d 454, 456-57 (3d Cir. 1997). District courts, however, have broad discretion to determine whether appointment of counsel is appropriate under 28 U.S.C. § 1915(e). See *Montgomery v. Pinchak*, 294 F.3d 492, 498 (3d Cir. 2002); see also *Tabron v.*

Grace, 6 F.3d 147, 153 (3d Cir. 1993). In exercising that discretion, a court first assesses whether the presented claims have merit; where a plaintiff presents meritorious claims and has shown his indigence, the court must weigh the relevant factors to determine whether counsel should be appointed. *Tabron*, 6 F.3d at 155-57. Those factors include the litigant's ability to present his case, the complexity of the legal issues involved, the degree to which factual investigation will be



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necessary and the plaintiff's ability to conduct such an investigation, the litigant's ability to retain counsel on his own behalf, the extent to which the case turns on credibility, and whether expert testimony will be required to resolve the case. Cuevas v. United States, 422 F. App x 142, 144-45 (3d Cir. 2011); Tabron, 6 F.3d at 155-57. These factors are not exhaustive of all those a court may consider, and courts are free to consider any other relevant factors in making its determination. Montgomery, 294 F.3d at 499.

Upon consideration of the relevant factors, this Court finds that appointment of counsel is not warranted at this time. The issues in this case are not overly complex in so much as Plaintiff is alleging that a correctional officer failed to protect him from being assaulted by another inmate. (Fourth Am. Compl., ECF No. 13; see also Screening Order, ECF No. 14.) Plaintiff clearly understands the nature of the claims he wishes to present, and it appears that he will be capable of representing himself going forward. Notwithstanding the credibility issues that will likely arise, Plaintiff states that he has obtained declarations from other inmates who were present at the time he was assaulted. (ECF No. 56-1 at 7.) Though Plaintiff has expressed a desire to retain an expert witness to review his medical and mental health records to determine damages, (Id.), the need for expert testimony is not apparent at this time. See Lasko v. Watts 2010) (clarifying that the appointment of counsel in every case in which expert testimony may be warranted . Based on the foregoing, the fact that Plaintiff included an application to proceed in forma pauperis with his Motion for the Appointment of Pro Bono Counsel does not affect the ultimate outcome of said motion. As such, Judge contrary to law.

IV. CONCLUSION

For the reasons set forth above, AFFIRMED. An appropriate Order follows.

/s/ Susan D. Wigenton SUSAN D. WIGENTON, U.S.D.J Orig: Clerk cc: Parties Steven C. Mannion, U.S.M.J.

