

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-1529  
Conference Calendar

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CURTIS LYNN MOORE,

Plaintiff-Appellant,

versus

HOOD COUNTY, TEXAS,  
ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:92-CV-888 Y  
- - - - -  
(March 25, 1994)

Before KING, DAVIS and DeMOSS, Circuit Judges.

PER CURIAM:\*

Curtis Lynn Moore filed a timely notice of appeal from the denial of his motion for appointment of counsel. The district court issued an order striking the notice of appeal because it had not been served as required by Fed. R. Civ. P. 5(c).

The Federal Rules of Appellate Procedure, not the Federal Rules of Civil Procedure, govern procedure in appeals to this Court. See Fed. R. App. P. 1(a). "Failure of an appellant to take any step other than the timely filing of a notice of appeal

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

does not affect the validity of the appeal . . ." Fed. R. App. P. 3(a). Rule 3(d) states that "the district court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant. . . . Failure of the clerk to serve notice shall not affect the validity of the appeal."

The district court's order striking and unfileing the document was improper. The notice of appeal is effective to confer appellate jurisdiction.

Moore argues that the district court erred in refusing to appoint counsel. He asserts that his claim involves a complex conspiracy and he will need an experienced trial lawyer to assist him.

The unconditional denial of counsel is a directly appealable interlocutory order. Robbins v. Maggio, 750 F.2d 405, 413 (5th Cir. 1985). There is no automatic right to the appointment of counsel in a 42 U.S.C. § 1983 case. A district court is not required to appoint counsel in the absence of "exceptional circumstances," which are dependent on the type and complexity of the case and the abilities of the individual pursuing that case. Absent a clear abuse of discretion, this Court will not overturn a decision of the district court on the appointment of counsel. Cupit v. Jones, 835 F.2d 82, 86 (5th Cir. 1987) (citations omitted). When appointment of counsel is denied, the district court should make specific findings as to why appointment was denied. Robbins, 750 F.2d at 413.

The district court gave the following reasons for declining

to appoint counsel: "there are no complex issues of law involved in this case and trial will be a relatively simple matter of putting on evidence to support each party's version of the incident made the basis of this suit." Moreover, the district court instructed Moore that he could obtain discovery through interrogatories or requests for the production of documents, and he could call witnesses by submitting a list of names and addresses to the court. There was no abuse of discretion in the district court's denial of Moore's motion for appointment of counsel.

AFFIRMED.