IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-2221
Conference Calendar

DANIEL K. JOHNSON,

Plaintiff-Appellant,

versus

W.M. ESTELLE, JR., ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-83-2539

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(December 15, 1993)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Daniel Johnson argues that the district court abused its discretion in denying him replacement counsel, following the withdrawal of his court-appointed attorney. 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

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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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

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).

Among the factors a district court should consider when faced with a request for counsel are:

> (1) the type and complexity of the case; (2) whether the indigent is capable of adequately presenting his case; (3) whether the indigent is in a position to investigate adequately the case; and (4) whether the evidence will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and in cross examination.

Ulmer v. Chancellor, 691 F.2d 209, 213 (5th Cir. 1982) (internal 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. This Court will not remand a case for the entry of specific factual findings if the record makes clear that the district court did not abuse its discretion by denying appointment of counsel. Jackson v. Dallas Police Dept., 811 F.2d 260, 262 (5th Cir. 1986).

The record is not clear as to whether the district court abused its discretion in denying Johnson's motion for appointment of alternate counsel. The district court denied the motion without any explanation, after previously appointing counsel for Johnson. Nothing in the record indicates that the district court considered the factors outlined in Ulmer, or that the posture of the case changed to no longer warrant appointing counsel for

Johnson. The district court's order denying appointment of replacement counsel is VACATED and the case is REMANDED to the district court to allow the court either to appoint counsel for Johnson or explain with specificity its findings as to why Johnson should be denied assistance of counsel.

Johnson also argues that the district court abused its discretion in not allowing him to amend his complaint to allow him to add another defendant. This Court must consider its jurisdiction to entertain this issue. See General Electric Credit Corp. v. Guillory & Son, 822 F.2d 544, 545 (5th Cir. 1987).

Johnson argues that the order is immediately appealable under the "collateral order" doctrine. See Cohen v. Beneficial Industrial Loan Corporation, 337 U.S. 541, 546, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949). This Court has jurisdiction under the "collateral order" doctrine only if, inter alia, the order is "effectively unreviewable on appeal from a final judgment." Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271, 276, 108 S.Ct. 1133, 99 L.Ed.2d 296 (1988) (internal quotation marks and citation omitted). Johnson has not shown that the district court's denial of his motion to amend his complaint satisfies this test.

Johnson also contends that the order is appealable under 28 U.S.C. § 1292(b). Because the district court has not entered a certification for immediate appeal under § 1292(b), the order granting and denying in part the motion to amend is not appealable on that basis. See Austracan (U.S.A.) Inc. v. M/V

Lemoncore, 500 F.2d 237, 239-40 (5th Cir. 1974). This Court lacks jurisdiction to consider this issue.