

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3477
Conference Calendar

ISAAC I. OMOIKE,

Plaintiff-Appellant,

versus

LOUISIANA STATE UNIVERSITY,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. CA-91-653-B-M1
- - - - -
(November 1, 1993)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:*

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

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

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). 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 district court did not abuse its discretion when it denied Omoike's motion for appointment of counsel. First, Omoike's claim is not of the complexity which requires appointment of counsel. Omoike's complaint is based on his contentions that LSU improperly discriminated against him on the basis of color, race, religion, national origin, sex, marital status, and age when it denied him a master's degree in food science after he allegedly completed the requirements for such a degree. The facts surrounding Omoike's claim are not complicated. Whether Omoike successfully completed the requirements for his degree is a relatively easy question.

Second, Omoike is capable of adequately presenting his case of discrimination. His pleadings in the present case indicate that he is reasonably articulate and able to present legal arguments. Moreover, Omoike is an experienced pro se litigator in the federal courts.

Third, Omoike appears well informed of the facts behind his complaint and is therefore able to investigate his claim. Further, the case does not appear to be one that would require the assistance of expert witnesses.

Fourth, Omoike's factual allegations are relatively uncomplicated; the versions of events of any possible fact witnesses are likely to be uncomplicated as well.

Omoike's action does not contain "exceptional circumstances" which would necessitate the appointment of counsel. It does not appear that Omoike was prejudiced by the 18-month delay in the district court's affirmance of the magistrate judge's denial of appointment of counsel. Omoike's appeal is DISMISSED as frivolous. See 5th Cir. R. 42.2.