

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5085
Conference Calendar

DANNY RAY CLINE,

Plaintiff-Appellant,

versus

JAMES COLLINS, Director,
ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 92-CV-426
- - - - -
(March 25, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

Danny Ray Cline argues that the district court erred by not appointing counsel to represent him, by denying him a jury trial, and by allowing the magistrate judge to conduct his trial. Because his arguments are not persuasive, the decision of the district court is affirmed.

A trial court is not obligated to appoint counsel in a 42 U.S.C. § 1983 suit unless the case presents "exceptional circumstances." Ulmer v. Chancellor, 691 F.2d 209, 212-13 (5th

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Cir. 1982). The factors to be considered when deciding whether to appoint counsel include: (1) the type and complexity of the case, (2) whether the plaintiff was capable of adequately presenting his case, (3) whether the plaintiff could adequately investigate the case, and (4) whether the evidence consisted of conflicting testimony that required skill in the presentation of evidence and in cross-examination. Jackson v. Cain, 864 F.2d 1235, 1242 (5th Cir. 1989). "A district court has the discretion to appoint counsel if doing so would advance the proper administration of justice." Id. The denial of appointment of counsel is reviewed for abuse of discretion. Id. Cline's complaint consisted of allegations that prison employees denied him meals as punishment without the due process of law and gave him improper job assignments. The magistrate judge denied the appointment of counsel, stating only that Cline did "not allege sufficient facts" for the district court to determine that the appointment of counsel was necessary. Generally, a cursory finding that a case lacked the complexity to require the appointment of counsel will require remand. Robbins v. Maggio, 750 F.2d 405, 413 (5th Cir. 1985). Nevertheless, when the clarity of the record negates the necessity for specific findings, remand is not required. Jackson v. Dallas Police Dept., 811 F.2d 260, 262 (5th Cir. 1986). It is clear from the record that the facts of Cline's case were not complex, that the legal theories were not novel, and that Cline did not show how an attorney could have aided him significantly in proving the amount

of his damages; therefore, the district court did not abuse its discretion in denying Cline the appointment of counsel.

Cline also argues that his demand for a jury trial should have been granted. Cline did not demand a jury trial in any of his original or amended pleadings. During the Spears** hearing, Cline stated that he would take his claims to a jury if they were not otherwise resolved. FED. R. CIV. P. 38(b) requires that a party demand a trial by jury "by serving upon the parties a demand therefor in writing . . . not later than ten days after service of the last pleading directed to such issue." "A complaint raises an issue only once within Rule 38(b)'s meaning-- when it introduces it for the first time." Fredieu v. Rowan Cos., 738 F.2d 651, 653 (5th Cir. 1984) (internal quotations omitted). "[A]n amended or supplemental pleading that merely restates issues previously raised does not revive the right to demand a jury trial when one had not earlier been demanded." Id. Cline's last pleading was filed on February 12, 1993; however, his last eligible pleading was filed on October 14, 1992. Cline did not file a demand for a jury trial until March 29, 1993. Cline waived his right to demand a jury trial by failing to comply with Rule 38(b).

Cline also argues that the magistrate judge lacked the authority to decide his case. Under 28 U.S.C. § 636(b)(1)(B), the magistrate judge had the authority to conduct the evidentiary hearing and make a recommendation. After a *de novo* review by the

** Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

district court that included Cline's objections to the magistrate judge's report, the district court, not the magistrate judge, awarded damages in favor of Cline.

AFFIRMED.