IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-5379
Summary Calendar

TERRY WAYNE HUNTSBERRY,

Plaintiff-Appellant,

VERSUS

JOHN GALINDO,
Supervisory Captain,
Texas Department of Criminal Justice))Coffield Unit, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(6:91-CV-28)

(March 1, 1994)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

Terry Huntsberry appeals the denial of his motion for appointment of trial counsel in his prisoner's civil rights suit brought pursuant to 42 U.S.C. § 1983. Finding no error, we dismiss the appeal as frivolous.

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* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Huntsberry, a Texas state prisoner proceeding pro se and in forma pauperis ("IFP"), filed a civil rights action alleging, inter alia, the excessive use of force by prison officials. The matter was referred to a magistrate judge, who recommended that some claims be dismissed with prejudice but that other claims proceed to trial. The district court adopted the magistrate judge's recommendation, and partial final judgment was entered accordingly.

Huntsberry then filed two motions for appointment of counsel. The district court denied both motions, although it noted that in "the event that a pre-trial conference is conducted . . ., Huntsberry may renew his request for appointment of counsel at that time." Huntsberry took an interlocutory appeal, and we affirmed.

Huntsberry then filed his third motion for appointment of counsel, stating that the motion was resubmitted because a pretrial conference was necessary. The record does not indicate that a pretrial conference ever was actually conducted. The district court denied the third motion for appointment of counsel.

Huntsberry filed a motion for reconsideration of that denial. The district court denied reconsideration and warned Huntsberry about possible sanctions for "filings of motions known to be without merit." Huntsberry took an interlocutory appeal from the district court's order denying his motion to reconsider.

II.

Huntsberry alleges that the district court abused its

discretion in denying his third motion for appointment of counsel and asserts that exceptional circumstances warrant such an appointment. He is mistaken.

The denial of a motion seeking appointment of counsel in a § 1983 case is immediately appealable. Robbins v. Maggio, 750 F.2d 405, 412 (5th Cir. 1985). A trial court is not required to appoint counsel for an indigent plaintiff asserting a claim under § 1983 unless there are exceptional circumstances. Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982). The district court has the discretion to appoint counsel for a plaintiff proceeding pro se if doing so would advance the proper administration of justice. 28 U.S.C. § 1915(d). Among the factors used to determine whether exceptional circumstances warrant appointment of counsel in a § 1983 suit, the district court should consider: (1) the type and complexity of the case; (2) whether the indigent was capable of adequately presenting the case; (3) whether the indigent was in the position to investigate the case adequately; and (4) whether the evidence would consist in large part of conflicting testimony requiring skill in the presentation of evidence and in cross-examination. Ulmer, 691 F.2d 213. The standard of review for the denial of a motion to appoint counsel is whether the district court abused its discretion. Id.

The facts and legal issues involved in this case are not complex. Huntsberry's district court pleadings demonstrate that he is amply capable of providing himself with adequate representation. Huntsberry has not shown that the district court has abused its

discretion by denying his motion.

This appeal is frivolous; accordingly, it is DISMISSED pursuant to 5TH CIR. R. 42.2. Huntsberry is warned that the filing of any additional frivolous papers can, and in all probability will, result in the imposition of sanctions. See Coghlan v. Starkey, 852 F.2d 806 (5th Cir. 1988) (per curiam).