

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10757
Conference Calendar

THOMAS GIL STEWART,
Plaintiff-Appellant,
versus
MESQUITE POLICE DEP'T ET AL.,
Defendants,
CITY OF MESQUITE, TX. ET AL.
Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:94-CV-877-T

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(January 25, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,
Circuit Judges.

PER CURIAM:*

Thomas Gil Stewart filed a civil rights complaint, 42 U.S.C. § 1983, alleging that he was denied medical care at the time of his arrest for a pre-existing injury in retaliation for exercising his Fifth Amendment right against self-incrimination and that he was physically abused by several jailers at the Mesquite city jail. His motions for appointment of counsel were denied.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

The denial of a motion for appointment of counsel in a § 1983 case is immediately appealable. Robbins v. Maggio, 750 F.2d 405, 412 (5th Cir. 1985). There is no automatic right to appointment of counsel in a civil rights case. Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982). The district court has the discretion to appoint counsel if doing so would advance the proper administration of justice. 28 U.S.C. § 1915(d). To determine whether appointment of counsel is proper the district court should consider the type and complexity of the case; whether the indigent was capable of adequately presenting the case; whether the indigent was in the position to investigate the case adequately; and 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 at 213. This Court reviews the order denying appointment of counsel for an abuse of discretion. Robbins, 750 F.2d at 413.

The issues in this case are not complex, and Stewart's pleadings demonstrate his ability to present his case adequately. Stewart's complaint contains detailed factual allegations, and he has survived a motion to dismiss. Stewart has not demonstrated that his case is so exceptional as to require the appointment of counsel, and the district court did not abuse its discretion by denying Stewart's motions. See Ulmer, 691 F.2d at 212-13.

AFFIRMED; motions to recuse Judge Maloney and for change of venue DENIED.