

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20662
Summary Calendar

JAMES DENNIS STEPHENS,

Plaintiff-Appellant,

versus

ELIZABETH WATSON, Et Al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 91 1527)

(July 28, 1995)

Before JOHNSON, BENAVIDES, and DUHE Circuit Judges.

JOHNSON, Circuit Judge:¹

This case is an appeal of the district court's denial of a motion for appointment of counsel in a prisoner's civil rights suit under 42 U.S.C. § 1983. Because we do not believe that the district court abused its discretion in denying the prisoner's motion for appointment of counsel, we affirm. Additionally, the prisoner-appellant has presented this Court with a motion for a

¹Local 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 Pursuant to this Rule, the Court has determined that this opinion should not be published.

protective order. Because we find the prisoner's FED. R. CIV. P. 26(c)(5) motion for a protective order to be completely groundless, we deny the motion.

I. Facts and Procedural History

James Dennis Stephens ("Stephens"), proceeding pro se and in forma pauperis, filed this suit under 42 U.S.C. § 1983 alleging that the police officers who arrested him used excessive force in violation of his civil rights. Stephens then moved the district court to appoint counsel for him in this action that he had filed. The district court denied the motion without prejudice because: 1) the case was not particularly complex; 2) Stephens had demonstrated that he was capable of handling the case; and 3) the district court did not find that the appointment of counsel would shorten trial or aid in the determination of a just result. Stephens now appeals the denial.

II. Discussion

A. Denial of Motion to Appoint Counsel

An interlocutory order denying the appointment of counsel in a civil rights action may be immediately appealed. *Robbins v. Maggio*, 750 F.2d 405, 413 (5th Cir. 1985). A district court's denial of a motion for appointment of counsel is reviewed under an abuse of discretion standard. *Ulmer v. Chancellor*, 691 F.2d 209, 213 (5th Cir. 1982). The district court is not required to appoint counsel for an indigent plaintiff asserting a claim under section 1983 unless there are exceptional circumstances. *Id.* at 212.

A district court has the discretion to appoint counsel for a

plaintiff proceeding pro se if doing so would advance the proper administration of justice. *Id.* at 213. Among the factors used to determine whether exceptional circumstances warrant the appointment of counsel in a civil rights case, the Court must consider: 1) the type and complexity of the case; 2) whether the indigent is capable of adequately presenting the case; 3) whether the indigent is in a position to investigate the case adequately; and 4) whether the evidence consists in large part of conflicting testimony which will require skill for the presentation of evidence and cross-examination. *Id.* However, neither legal skills nor training are necessary to adequately inform the Court of a civil rights plaintiff's allegations. See *Feist v. Jefferson County Commissioner's Court*, 778 F.2d 250, 253 (5th Cir. 1985).

The district court did not abuse its discretion in the case at bar when it denied Stephens' motion to appoint counsel. The record indicates that Stephens' complaint is straightforward, and Stephens' pleadings demonstrate that he is literate and capable of presenting coherent arguments to the Court. There is absolutely nothing in the record to indicate that the circumstances of the present case are so exceptional that the district court abused its discretion in failing to appoint counsel.

B. Stephens' Motion for Protective Order

Stephens has also requested that this Court enter a protective order pursuant to FED. R. CIV. P. 26(c)(5) on the ground that the Stephens' statement of facts in his appellate brief are privileged. Rule 26(c)(5) pertains to protective orders relevant to the

discovery process in the district court. There is nothing within Rule 26(c)(5) which could afford Stephens with any protection of the nature that he requests. Additionally, given that Stephens has already served his appellate brief (containing his statement of facts) upon opposing counsel, Stephens own actions have mooted his motion. Thus, the motion for a protective order is denied.

III. Conclusion

Because the district court did not abuse its discretion in denying Stephens' motion for appointment of counsel, the denial is affirmed. Additionally, because Stephens' motion for protective order is both ungrounded and moot, the motion is denied.

APPEAL AFFIRMED.

MOTION DENIED.