

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5044
Conference Calendar

THOMAS NEON MANUEL,

Plaintiff-Appellant,

versus

CARL WHITE, Warden,
ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:91CV510
- - - - -
(March 22, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

If necessary, this Court must examine the basis of its jurisdiction on its own motion. Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). Courts of Appeals "have jurisdiction of appeals from all final decisions of the district courts of the United States[.]" 28 U.S.C. § 1291. "[A]ny order . . . which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties[.]" Fed. R. Civ. P.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

54(b). Where there has been no certification for immediate appeal by the district court, a disposition of fewer than all the claims or parties will not confer jurisdiction on this Court under § 1291. See Thompson v. Betts, 754 F.2d 1243, 1245 (5th Cir. 1985).

The magistrate judge's partial dismissal order, entered on June 9, 1993, did not dismiss Manuel's 42 U.S.C. § 1983 claim regarding his placement in administrative segregation. Nor does the record indicate that the magistrate judge certified his order as a final judgment under Rule 54(b). Thus, Manuel's appeal from the magistrate judge's dismissal of his § 1983 claims is not properly before this Court.

Although the magistrate judge's partial dismissal order is not appealable pending final judgment, his order denying appointment of counsel is an appealable interlocutory order. See Robbins v. Maggio, 750 F.2d 405, 409-13 (5th Cir. 1985). The denial of a request for appointment of counsel is reviewed for an abuse of discretion. Id. at 413.

"A civil rights complainant has no right to the automatic appointment of counsel." Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982). The district court is not required to appoint counsel for such a complainant unless the case presents exceptional circumstances. Id. The following factors should be considered when ruling on a request for appointment of counsel: 1) the type and complexity of the case; 2) the ability of the indigent to adequately present his case; 3) the ability of the indigent to adequately investigate his 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. Id. at 213. When appointment of counsel is denied, the district court should make specific findings as to why appointment was denied. Robbins, 750 F.2d at 413.

The magistrate judge declined to appoint counsel because "the questions of fact are rather routine, and the applicable law is well-settled," and because "it is evident from the quality of the pleadings that plaintiff has been able to articulate his claim[.]" A review of the record shows that this case is not sufficiently complex to warrant the appointment of counsel. Notwithstanding his assertion that he "is not schooled in the law and is a mental patient," Manuel has not shown that he cannot adequately investigate crucial facts, and his numerous pleadings demonstrate that he is capable of adequately presenting his case. Thus, the magistrate judge did not abuse his discretion in denying Manuel's motion for appointment of counsel.

The appeal from the partial dismissal is DISMISSED.

The denial of appointment of counsel is AFFIRMED.