

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MARTIN VASQUEZ ARROYO,

Plaintiff,

v.

CASE NO. 07-3298-SAC

CURTIS STARKS,

Defendant.

MEMORANDUM AND ORDER

This matter is a civil rights action filed pursuant to 42 U.S.C. § 1983. By its order entered on October 20, 2011, the court granted defendant's motion for judgment on the pleadings and/or for summary judgment.

Plaintiff has filed a notice of appeal (Doc. 45), and the matter comes before the court on plaintiff's motion for leave to proceed in forma pauperis (Doc. 51) and his motion for the appointment of counsel (Doc. 50).

The court's docket reflects that plaintiff submitted the full appellate filing fee on December 5, 2011, and the court therefore will deny the motion to proceed in forma pauperis as moot.

Plaintiff also moves for the appointment of counsel. A party in a civil action has no constitutional right to the assistance of counsel in the prosecution or defense of such an action. *Bethea v. Crouse*, 417 F.2d 504, 505 (10th Cir. 1969). Rather, the decision whether to appoint counsel in a civil matter lies in the discretion of the district court. *Williams v. Meese*, 926 F.2d 994, 996 (10th

Cir. 1991). The court should consider "the litigant's claims, the nature of the factual issues raised in the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims." *Long v. Shillinger*, 927 F.2d 525, 526-27 (10th Cir. 1991). The court appointed counsel to represent plaintiff in this matter, but, after due consideration of the record, it finds no basis to continue that appointment on appeal. Plaintiff filed the notice of appeal pro se, and it is apparent he is able to articulate the basis for his appeal.

IT IS, THEREFORE, BY THE COURT ORDERED plaintiff's motion for the appointment of counsel on appeal (Doc. 50) is denied.

IT IS FURTHER ORDERED plaintiff's motion for leave to proceed on appeal in forma pauperis (Doc. 51) is denied as moot.

Copies of this order shall be transmitted to the parties and to the Clerk of the United States Court of Appeals for the Tenth Circuit.

IT IS SO ORDERED.

DATED: This 22nd day of December, 2011, at Topeka, Kansas.

S/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge