

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

GEORGE RAYMOND SPRY,

Plaintiff,

vs.

CIVIL ACTION  
No. 11-3057-SAC

DAVID R. MCKUNE, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter comes before the court on plaintiff's motion for leave to proceed on appeal in forma pauperis (Doc. 23) and his motion for the appointment of counsel (Doc. 24).

Plaintiff was granted leave to proceed in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. All relief was denied and the action dismissed by the court's Order entered on January 18, 2012.

Plaintiff has certified financial records from his institutional account in support of his application to proceed in forma pauperis (Doc. 27), and the court finds plaintiff is unable to pay the \$455.00 appellate filing fee in full at this time. Accordingly, plaintiff will be allowed to proceed on appeal in forma pauperis with installment payments to be made pursuant to

28 U.S.C. § 1915(b)(2).

Plaintiff also moves for the appointment of counsel on appeal (Doc. 24). 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).

Having considered the record, the court finds the appointment of counsel is not warranted in this action. The court will deny the motion; however, plaintiff may renew his request by filing a motion in the U.S. Court of Appeals for the Tenth Circuit.

IT IS, THEREFORE, BY THE COURT ORDERED plaintiff's motion for leave to proceed on appeal in forma pauperis (Doc. 23) is granted. Plaintiff's payments will continue as directed until he satisfies the balance of the original filing fee assessed in this matter and the appellate filing fee of \$455.00.

IT IS FURTHER ORDERED plaintiff's motion to appoint counsel (Doc. 24) is denied.

Copies of this order shall be transmitted to the parties, the finance office of the facility where plaintiff is incarcerated, and the Clerk of the United States Court of Appeals for

the Tenth Circuit.

**IT IS SO ORDERED.**

Dated at Topeka, Kansas, this 6<sup>th</sup> day of March, 2012.

S/ Sam A. Crow  
SAM A. CROW  
United States Senior District Judge