

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

GEORGE R. SPRY,

Plaintiff,

vs.

CIVIL ACTION
No. 11-3057-SAC

DAVID R. MCKUNE, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter is a civil rights action filed pursuant to 42 U.S.C. § 1983. By its Memorandum and Order of May 11, 2011, the court directed plaintiff to submit an initial partial filing fee and to show cause why this matter should not be dismissed for failure to state a claim upon which relief may be granted.

Plaintiff has submitted a response to the order concerning the partial filing fee (Doc. 5), a motion for an extension of time to file a response (Doc. 6), and a motion to appoint counsel (Doc. 7).

Plaintiff's response shows that he has insufficient funds in his institutional account to pay the initial partial filing fee. The court will grant leave to proceed in forma pauperis but advises plaintiff that he remains responsible for payment of

the \$350.00 filing fee.¹

Plaintiff's request for an extension of time to and including July 13, 2011, to file a response is granted.

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).

1

The Finance Office of the facility where plaintiff is incarcerated will be directed by a copy of this order to collect from plaintiff's account and pay to the clerk of the court twenty percent (20%) of the prior month's income each time the amount in plaintiff's account exceeds ten dollars (\$10.00) until the filing fee has been paid in full. See 28 U.S.C. § 1915(b)(2). Plaintiff is directed to cooperate fully with his custodian in authorizing disbursements to satisfy the filing fee, including providing any written authorization required by the custodian or any future custodian to disburse funds from his account.

The court has considered the nature of plaintiff's claims and his ability to present his arguments and concludes the appointment of counsel is not warranted in this matter. The issues presented here are not unusually complicated, and plaintiff is able to articulate his claims and legal theories.

IT IS, THEREFORE, BY THE COURT ORDERED plaintiff's motion for leave to proceed in forma pauperis (Doc. 2) is granted. Collection action shall continue pursuant to 28 U.S.C. §1915(b)(2) until plaintiff satisfies the \$350.00 filing fee.

IT IS FURTHER ORDERED plaintiff's motion for an extension of time (Doc. 6) is granted, and the time for filing a response is extended to and including July 13, 2011.

IT IS FURTHER ORDERED plaintiff's motion to appoint counsel (Doc. 7) is denied.

Copies of this order shall be transmitted to the plaintiff and to the finance office of the facility where he is incarcerated.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 23rd day of June, 2011.

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