

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ANTHONY MAURICE SMALLS,

Plaintiff,

vs.

CIVIL ACTION
No. 11-3150-SAC

SHELTON RICHARDSON, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter is a civil rights action filed by a prisoner incarcerated in Cumberland, Maryland. Plaintiff brings this action pro se, and he has submitted the full filing fee. Accordingly, the court will deny his motions for leave to proceed in forma pauperis.

The court has examined the materials filed in this case and finds that a responsive pleading is required to ensure the proper resolution of plaintiff's claims.

Also before the court are plaintiff's motion to appoint counsel (Doc. 5) and his motion to deny any motion to dismiss and to award him summary judgment (Doc. 6).

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 has considered the complaint and the pleadings filed by plaintiff and concludes that the appointment of counsel is not warranted in this matter. The plaintiff is able to set forth the factual basis for his claims with sufficient clarity, and his pleadings contain sufficient legal citations and references to the federal constitutional rights plaintiff believes have been violated to persuade the court that he is able to proceed pro se.

Next, plaintiff moves the court to deny any motion to dismiss and for an award of summary judgment. This motion is denied. No motion to dismiss is pending in this matter, and the request to deny such a motion is, at best, premature. Next, a motion for summary judgment may be granted where the record shows there is no genuine issue of material fact and the moving

party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(a). The present record does not provide an adequate basis for such relief, as it contains only plaintiff's allegations that he was denied access to the courts due to his transfer between correctional facilities.

IT IS, THEREFORE, BY THE COURT ORDERED that plaintiff's motion for leave to proceed in forma pauperis (Docs. 3, 9, and 10) are denied.

IT IS FURTHER ORDERED the clerk of the court shall issue appropriate waivers pursuant to Rule 4 of the Federal Rules of Civil Procedure with costs assessed to the plaintiff.

IT IS FURTHER ORDERED plaintiff's motion for the appointment of counsel (Doc. 5) is denied.

IT IS FURTHER ORDERED plaintiff's motion to deny any motion to dismiss and to award him summary judgment (Doc. 6) is denied.

Copies of this order shall be transmitted to the parties.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 1st day of November, 2011.

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