

OTHMAN A. RAHAB
aka **OTHEL GRAY, JR.,**

Case No. 15-1138-MLB

MEMORANDUM AND ORDER

This matter is before the court on plaintiff's Motion to Proceed without Prepayment of Fees (Doc. 3) and plaintiff's Motion for Appointment of Counsel (Doc. 4). For the reasons outlined below, plaintiff's Motion to Proceed without Prepayment of Fees (Doc. 3) is GRANTED and his Motion for Appointment of Counsel (Doc. 4) is DENIED.

I. Motion to Proceed In Forma Pauperis (Doc. 3)

On April 30, 2015, plaintiff filed a Motion to Proceed without Prepayment of Fees (Doc. 3) and later filed two Supplements to that motion (Docs. 5, 7, 8). The court has reviewed the affidavit of financial status and the supplements and finds that plaintiff has established that he is financially unable to pay the costs of the filing fee. Therefore, plaintiff's motion (Doc. 3) is GRANTED.

II. Motion for Appointment of Counsel (Doc. 4)

An evaluation of whether to appoint counsel requires consideration of those factors discussed by the Tenth Circuit Court of Appeals in *Castner v. Colorado Springs Cablevision*,¹ including: (1) plaintiff's ability to afford counsel, (2) plaintiff's diligence in searching for counsel, (3) the merits of plaintiff's case, and (4) plaintiff's capacity to prepare and present the case without the aid of counsel. Thoughtful and prudent care in appointing representation is necessary so that willing counsel may be located; however, the indiscriminate appointment of volunteer counsel to undeserving claims wastes a precious resource and may discourage attorneys from volunteering their time.²

After careful consideration, the court declines to appoint counsel to represent plaintiff. Although plaintiff appears unable to afford counsel at this time, the court recommends dismissal of plaintiff's claims in the Report and Recommendation filed contemporaneously with this Order. Under the circumstances, the motion for appointment of counsel shall be DENIED.

IT IS THEREFORE ORDERED that plaintiff's Motion to Proceed without Prepayment of Fees (**Doc. 3**) is **GRANTED**. The Clerk is directed to stay service of process pending the District Court's review of the Report and Recommendation filed simultaneously herein (Doc. 17).³

¹ 979 F.2d 1417, 1420-21 (10th Cir. 1992).

² *Id.* at 1421.

³ See *Webb v. Vratil*, No. 12-2588-EFM-GLR, Doc. 7 (Sept. 28, 2012) (withholding service of process pending review under 28 U.S.C. § 1915(e)(2)(B) and Fed. R. Civ. P. 12(h)(3)) (citing *Fuller v. Myers*, 123 F. App'x 365, 368 (10th Cir. 2005)).

IT IS FURTHER ORDERED that plaintiff's application for appointment of counsel (**Doc. 4**) is **DENIED**.

IT IS SO ORDERED.

Dated at Wichita, Kansas this 20th day of May 2015.

s/ Karen M. Humphreys
KAREN M. HUMPHREYS
United States Magistrate Judge