

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Trevino v. Jimenez

Trevino · No. 2:21-cv-1415-DC-JDP (P) · Decided April 17, 2025

SUMMARY

The United States District Court for the Eastern District of California denies Robert Trevino’s motion to appoint counsel in his First Amendment access-to-courts action. The magistrate judge recommends denying Trevino’s motion to stay, construed as a motion for reconsideration under Federal Rule of Civil Procedure 60(b), and recommends that he file an opposition to the pending motion for summary judgment within fourteen days of any order adopting the recommendations. The findings and recommendations were issued on April 16, 2025.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Jeremy D. Peterson
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 17, 2025
DOCKET	2:21-cv-1415-DC-JDP (P)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for appointment of counsel and to stay the proceedings. The court construed the motion to stay as a motion for reconsideration under Federal Rule of Civil Procedure 60(b), denied the motion to appoint counsel, and recommended denial of reconsideration and an order requiring plaintiff to oppose the pending motion for summary judgment.
STANDARD OF REVIEW	For appointment of counsel, the court evaluated the likelihood of success on the merits and the plaintiff's ability to articulate his claims pro se in light of the complexity of the legal issues. For reconsideration under Rule 60(b), relief requires a showing of mistake, surprise, or excusable neglect; newly discovered evidence; fraud; a void judgment; satisfaction or discharge of the judgment; or extraordinary circumstances justifying relief.

PRECEDENTIAL VALUE

Nonprecedential magistrate judge order and findings and recommendations; recommendation subject to review by the assigned district judge.

TOPICS

motion for reconsideration

summary judgment

civil procedure

prisoners rights

first amendment

PRACTICE AREAS

civil procedure

prisoner civil rights

constitutional law

QUESTIONS PRESENTED

1. Whether plaintiff demonstrated exceptional circumstances warranting appointment of counsel in his prisoner civil-rights action.
2. Whether plaintiff's motion to stay, construed as a motion for reconsideration under Federal Rule of Civil Procedure 60(b), established any ground for relief from the prior denial of substitution.
3. Whether plaintiff should receive additional discovery or an extension to respond to the pending motion for summary judgment.

HOLDINGS

1. Appointment of counsel was unwarranted because plaintiff did not show exceptional circumstances; he appeared capable of representing himself and his allegations were not unusually complex.
2. Plaintiff's motion to stay, construed as a motion for reconsideration, should be denied because he failed to establish any Rule 60(b) ground and merely repeated arguments previously rejected.
3. Because substitution was recommended for denial, plaintiff's request for additional discovery upon substitution should also be rejected, and plaintiff should be directed to respond to the pending summary-judgment motion within fourteen days after any order adopting the recommendations.

KEY QUOTATIONS

"However, without a means to compensate counsel, I will seek volunteer counsel only in exceptional circumstances." (at 1)

"A motion for reconsideration should not be used to re-assess arguments that have already been raised and rejected." (at 2)

FACTUAL BACKGROUND

Plaintiff is incarcerated and proceeding pro se in a First Amendment access-to-the-courts action. Defendant Burke died, and plaintiff made a late request to substitute a successor, which the court previously denied. Plaintiff argued that his imprisonment, lack of legal knowledge, and good-faith efforts to substitute a successor justified appointment of counsel and reconsideration, but the court found his allegations were not especially complex and that his arguments largely repeated contentions previously rejected.

PROCEDURAL HISTORY

Robert Trevino brought a prisoner civil-rights action alleging that Burke and Jimenez violated his First Amendment right of access to the courts. During the case, the court denied plaintiff's motion to compel, refused to issue a subpoena, denied a motion to amend, and denied a late motion to substitute a successor for deceased defendant Burke. Plaintiff then sought a stay and appointment of counsel. The magistrate judge denied appointment of counsel and issued findings and recommendations recommending denial of the stay/reconsideration motion; the parties were advised that they could object within fourteen days.

DISPOSITION

other

CASES CITED

- Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997)
- Mallard v. U.S. District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989)
- Sch. Dist. No. LI, Multnomah Cnty., Or. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993)
- United States v. Westlands Water Dist., 134 F. Supp. 2d 1111, 1131 (E.D. Cal. 2001)
- Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998)
- Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 ROBERT TREVINO, Case No. 2:21-cv-1415-DC-JDP (P) 12 Plaintiff, 13 v.
ORDER; FINDINGS AND RECOMMENDATIONS 14 J. JIMENEZ, 15 Defendant. 16 17
Plaintiff brought this case alleging that defendants Burke and Jimenez violated his First 18
Amendment right to access the courts.

Pending are plaintiff's motion to appoint counsel, ECF 19 No. 98, and motion to stay, ECF No. 99.
For the reasons stated hereafter, plaintiff's motion to 20 appoint counsel is denied, and I
recommend that his motion to stay, which I construe as a motion 21 for reconsideration, be denied.
22 Motion to Appoint Counsel 23 Plaintiff argues that his imprisonment and lack of knowledge of
the law limit his ability to 24 litigate effectively.

ECF No. 98 at 1. He also contends that his claims are potentially meritorious 25 and that being
appointed counsel would make a difference in the outcome. Id. Plaintiff does not 26 have a
constitutional right to appointed counsel in this action, see Rand v. Rowland, 113 F.3d 27 1520,
1525 (9th Cir. 1997), and I lack the authority to require an attorney to represent him.

See 28 1 Mallard v. U.S. District Court for the Southern District of Iowa, 490 U.S. 296, 298
(1989). I may 2 request the voluntary assistance of counsel. See 28 U.S.C. § 1915(e)(1) ("The

court may request 3 an attorney to represent any person unable to afford counsel”); Rand, 113 F.3d at 1525. 4 However, without a means to compensate counsel, I will seek volunteer counsel only in 5 exceptional circumstances.

In determining whether such circumstances exist, “the district court 6 must evaluate both the likelihood of success on the merits [and] the ability of the [plaintiff] to 7 articulate his claims pro se in light of the complexity of the legal issues involved.” Rand, 113 8 F.3d at 1525 (internal quotation marks and citations omitted).

Here, the factors do not weigh in 9 favor of appointing counsel. Plaintiff’s contention that his imprisonment makes litigation 10 difficult and that being appointed counsel would improve his odds of success are not unique to 11 this prisoner case. Nearly all pro se inmate litigants request counsel and make similar arguments. 12 Here, plaintiff seems capable of representing himself and his allegations are not especially 13 complex.

His motion is denied. 14 Motion to Stay 15 Plaintiff’s motion to stay is properly construed as a motion for reconsideration under 16 Federal Rule of Civil Procedure 60(b). In his motion, he argues that I have frustrated his ability 17 to litigate this case by: (1) denying his motion to compel; (2) refusing to issue him a subpoena; 18 (3) denying his motion to amend; and (4) denying his late motion to substitute a successor for 19 defendant Burke, who passed away.

ECF No. 99 at 1-2. The substance of his motion, however, 20 focuses on my denial of his motion to substitute. “Rule 60(b) provides for reconsideration only 21 upon a showing of (1) mistake, surprise, or excusable neglect; (2) newly discovered evidence; 22 (3) fraud; (4) a void judgment; (5) a satisfied or discharged judgment; or (6) extraordinary 23 circumstances which would justify relief.” Sch.

Dist. No. LI, Multnomah Cnty., Or. v. ACandS, 24 Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). Plaintiff’s motion fails to make a showing of any of 25 these elements. He argues that “extraordinary circumstances” are present because Burke passed 26 away and he made good-faith efforts to substitute a successor. ECF No. 99 at 4. These 27 arguments are duplicative of ones that I have previously rejected and, thus, do not weigh in favor 28 of reconsideration.

See ECF Nos. 81 at 20 (arguing he was unaware of Federal Rule of Civil 1 Procedure 25) & 91 at 4 (arguing that he is a layman and should be afforded flexibility in 2 substitution). A motion for reconsideration should not be used to re-assess arguments that have 3 already been raised and rejected. See *United States v. Westlands Water Dist.*, 134 F. Supp. 2d 4 1111, 1131 (E.D.

Cal. 2001) (“A party seeking reconsideration [under Rule 60(b)] must show 5 more than a disagreement with the Court’s decision, and recapitulation of the cases and 6 arguments considered by the court before rendering its original decision fails to carry the moving 7 party’s

burden.”) (internal quotations and citation omitted). Absent any showing of the required 8 elements, this motion should be denied.

9 Extension of Time to Respond to Defendant’s Motion for Summary Judgment 10 Given that I am recommending that substitution be denied, it follows that plaintiff’s 11 request to conduct additional discovery upon substitution, ECF No. 99 at 13, should also be 12 rejected. Plaintiff should be directed to submit his opposition to the pending motion for summary 13 judgment within fourteen days of any order adopting these recommendations.

14 Accordingly, it is ORDERED that plaintiff’s motion to appoint counsel, ECF No. 98, is 15 DENIED. 16 Further, it is RECOMMENDED that plaintiff’s motion to stay, ECF No. 99, be DENIED 17 and he be directed to submit an opposition to the pending motion for summary judgment, ECF 18 No. 85, within fourteen days of any order adopting these recommendations. 19 These findings and recommendations are submitted to the United States District Judge 20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).

Within fourteen days of 21 service of these findings and recommendations, any party may file written objections with the 22 court and serve a copy on all parties. Any such document should be captioned “Objections to 23 Magistrate Judge’s Findings and Recommendations,” and any response shall be served and filed 24 within fourteen days of service of the objections.

The parties are advised that failure to file 25 objections within the specified time may waive the right to appeal the District Court’s order. See 26 Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 27 1991). 28 1 | 1718 SO ORDERED. 3 (— Dated: __April 16, 2025 ssn (aioe 4 JEREMY D. PETERSON UNITED STATES MAGISTRATE JUDGE 7 g 9 10 il 12 3 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28