

**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

OPINION

(PC) Trevino v. Burke

PER CURIAM.

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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

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