

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Felder v. Brewer

Felder · No. 2:22-cv-01702-JDP (PC) · Decided March 8, 2023

SUMMARY

The United States District Court for the Eastern District of California denied without prejudice a state inmate’s motion to appoint counsel in his 42 U.S.C. § 1983 action. The court found no exceptional circumstances because the claims were not unusually complex and the plaintiff had not shown a likelihood of success on the merits. The court stated that it could revisit the issue if the interests of justice later required it.

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	March 8, 2023
DOCKET	2:22-cv-01702-JDP (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Pro se state prisoner plaintiff in a 42 U.S.C. § 1983 action moved for appointment of counsel.
PRECEDENTIAL VALUE	unpublished, nonprecedential district court order
PARTIES	Bobby Dewayne Felder v. M. Brewer, et al.

TOPICS

civil rights section 1983 civil procedure

PRACTICE AREAS

civil rights prisoner civil rights appointment of counsel

QUESTIONS PRESENTED

1. Whether exceptional circumstances justified requesting volunteer counsel for a pro se prisoner in a 42 U.S.C. § 1983 action.

HOLDINGS

1. Appointment of counsel was not warranted because the plaintiff failed to establish exceptional circumstances, including a sufficient likelihood of success on the merits and an inability to articulate his claims pro se in light of the complexity of the legal issues.

KEY QUOTATIONS

“the district court must evaluate both the likelihood of success on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the legal issues involved.” (1-2)

FACTUAL BACKGROUND

Bobby Dewayne Felder is a state inmate proceeding without counsel in a civil rights action under 42 U.S.C. § 1983. He requested appointed counsel, citing his lack of prior litigation experience and low reading level. The court found that the allegations were not exceptionally complicated and that plaintiff had not demonstrated a likelihood of success on the merits.

PROCEDURAL HISTORY

Plaintiff filed a civil rights action and moved for appointment of counsel. The district court denied the motion without prejudice, allowing plaintiff to renew it later if circumstances justified appointment.

DISPOSITION

other

CASES CITED

- Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997)
- Mallard v. U.S. Dist. Ct. for the S. Dist. of Iowa, 490 U.S. 296, 298 (1989)

OPINION

(PC) Felder v. Brewer

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 BOBBY DEWAYNE FELDER, Case No. 2:22-cv-01702-JDP (PC) 12 Plaintiff, ORDER
DENYING PLAINTIFF’S

MOTION TO APPOINT COUNSEL

13 v. ECF No. 18 14 M. BREWER, et al., 15 Defendants. 16 17 18 Plaintiff is a state inmate
proceeding without counsel in this civil rights action brought 19 under 42 U.S.C. § 1983. He has
filed a motion asking that he be appointed counsel. ECF No. 18. 20 Plaintiff does not have a

constitutional right to appointed counsel in this action, see *Rand 21 v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court lacks the authority to require an attorney to represent plaintiff. See *Mallard v. U.S. Dist. Ct. for the S. Dist. of Iowa*, 490 U.S. 296, 23 298 (1989). The court can request the voluntary assistance of counsel. See 28 U.S.C. 24 § 1915(e)(1) (“The court may request an attorney to represent any person unable to afford counsel”); *Rand*, 113 F.3d at 1525. But without a means to compensate counsel, the court will seek volunteer counsel only in exceptional circumstances. In determining whether such circumstances exist, “the district court must evaluate both the likelihood of success on the merits 1 | [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the 2 | legal issues involved.” *Rand*, 113 F.3d at 1525 (internal quotation marks and citations omitted). 3 Plaintiff asks that counsel be appointed because he has never filed a lawsuit and he has a 4 | low reading level. ECF No. 18 at 1. The court cannot conclude that exceptional circumstances 5 || requiring the appointment of counsel are present here. The allegations in the complaint are not 6 | exceptionally complicated, and plaintiff has not demonstrated that he is likely to succeed on the 7 | merits. For these reasons, plaintiff’s motion to appoint counsel, ECF No. 18, is denied without 8 || prejudice. 9 The court may revisit this issue at a later stage of the proceedings if the interests of justice 10 | so require. If plaintiff later renews his request for counsel, he should provide a detailed 11 | explanation of the circumstances that he believes justify appointment of counsel in this case. 12 Accordingly, it is hereby ORDERED that plaintiff’s motion for appointment of counsel, 13 | ECF No. 18, is denied without prejudice. 14 1s IT IS SO ORDERED. 16 | q Sty — Dated: _ March 7, 2023 q——

17 JEREMY D. PETERSON

18 UNITED STATES MAGISTRATE JUDGE

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