

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Mitchell v. Ryer

No. 23cv661-BJC (MSB) (S.D. Cal. June 16, 2025) · No. 23cv661-BJC (MSB) · Decided June 16, 2025

OPINION

Mitchell v. Ryer

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 JOHN E. MITCHELL, Case No.: 23cv661-BJC (MSB) 12 Plaintiff, ORDER: 13 v.

(1) DENYING MOTION TO APPOINT

14 M. RYER, et al., COUNSEL [ECF NO. 44]; 15 Defendants.

(2) DENYING MOTION FOR A COURT

16

ORDER UNDER THE ALL WRITS ACT [ECF

17 NO. 35] 18 19 Plaintiff John E. Mitchell (“Plaintiff”) is incarcerated in state prison and
proceeding 20 pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. §
1983. 21 Now pending before the Court are Plaintiff’s Motion to Appoint Counsel [ECF No. 44]
22 and Motion for a Court Order Under the All Writs Act [ECF No. 35]. The Court addresses 23
each in turn.

24 I. MOTION TO APPOINT COUNSEL

25 On May 1, 2024, the Court denied Plaintiff’s first motion to appoint counsel, 26 finding
Plaintiff failed to demonstrate a likelihood of success on the merits or that he 27 was unable to
articulate his own claims. (See ECF No. 21 at 3–4.) On April 21, 2025, 2 appoint counsel
(hereinafter “Motion”). See *Bernhardt v. Los Angeles Cnty.*, 339 F.3d 3 920, 925 (9th Cir. 2003)
 (“Courts have a duty to construe pro se pleadings liberally, 4 including pro se motions as well as
complaints.”). 5 In his single page Motion, Plaintiff raises concerns about “the invasion of privacy
6 and theft of documents that pertained to the merits of [this] case.” (ECF No. 44 at 1.) 7 He
contends the theft of documents “leaves all other pending actions as contaminated 8 because I
don’t know what else they took, what they read?” (Id.) Plaintiff says he does 9 not know the
remedy for such a situation, which is why counsel must be appointed and 10 for “the integrity of
my files/property.” (Id.) Plaintiff states “there is no lawful 11 explanation for the intrusion[s].”
(Id.) The Motion does not contain further details 12 about which documents were allegedly stolen,
nor does it explain what other “invasion 13 of privacy” may have occurred. (Id.) However, in a

separate February 21, 2025, filing, 14 Plaintiff alleged that correctional officers searched his cell without his knowledge and 15 took an eyewitness declaration signed by inmate Juan Rosales, as well as other 16 eyewitness statements. (ECF No. 36 at 2–3.) 17 A. Legal Standard 18 The Constitution provides no right to appointment of counsel in a civil case unless 19 an indigent litigant may lose his physical liberty if he loses the litigation. *Lassiter v. Dep’t Soc. Servs.*, 452 U.S. 18, 25 (1981); *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 21 2009). Additionally, there is no constitutional right to a court-appointed attorney in 22 cases filed by inmates arising under 42 U.S.C. § 1983. *Storseth v. Spellman*, 654 F.2d 23 1349, 1353 (9th Cir. 1981). While 28 U.S.C. § 1915(e)(1) gives district courts discretion 24 to “request” that an attorney represent indigent civil litigants, it may only be exercised 25 upon a showing of “exceptional circumstances.” *Agyeman v. Corr. Corp. Am.*, 390 F.3d 26 1101, 1103 (9th Cir. 2004); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). When 27 assessing whether exceptional circumstances exist, the Court must undergo “an 2 involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting 3 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). Courts must review both factors 4 before deciding whether to appoint counsel, and neither factor is individually 5 dispositive. *Id.* 6 B. Analysis 7 a. Likelihood of Success on the Merits 8 First, Plaintiff has not shown he is likely to succeed on the merits at this stage in 9 the proceedings. See *Bailey v. Lawford*, 835 F. Supp. 550, 552 (S.D. Cal. 1993) (finding 10 that where the plaintiff offered “no evidence other than his own assertions to support 11 his claims,” he failed to satisfy the first Wilborn factor). Though the Court found 12 Plaintiff’s First Amended Complaint (“FAC”) raised cognizable constitutional claims 13 against various California Department of Corrections and Rehabilitation (“CDCR”) 14 employees [ECF No. 7], it is still premature to determine the strength of these claims. 15 See e.g., *Arellano v. Blahnik*, No. 16cv2412-CAB-RNB, 2018 WL 4599697, at *2 n.1 (S.D. 16 Cal. Sept. 25, 2018) (denying motion to appoint counsel because “[a]lthough plaintiff’s [17] claim survived defendant’s motion to dismiss, it is still too early to determine the 18 likelihood of success on the merits.”); *Hearn v. RJD Warden*, No. 22cv255-TWR-DDL, 19 2022 WL 17407996, at *2 (S.D. Cal. Dec. 2, 2022) (when the plaintiff’s claims remain 20 unproven at early stages of proceedings, “there is no basis upon which the Court can 21 predict Plaintiff’s success at trial.”). 22 Since his initial April 2024 motion to appoint counsel, Plaintiff has not provided 23 any new evidence demonstrating he is likely to be successful on the merits. (Compare 24 ECF No. 21, with ECF No. 44.) The instant Motion merely makes general allegations 25 about the invasion of privacy and theft of documents, without explaining why Plaintiff is 26 likely to prevail in this lawsuit. (See ECF No 44 at 1.) Therefore, Plaintiff fails to satisfy 27 the first factor of the Wilborn test. See, e.g., *Bailey v. Lawford*, 835 F. Supp. 550, 552 2 assertions to support his claims,” he failed to satisfy the first Wilborn factor). 3 b. Plaintiff’s Ability to Articulate Claims 4 Second, Plaintiff has not established that this case is “exceptional” or that the 5 issues in it are particularly complex. In the instant Motion, Plaintiff asks for 6 appointment of counsel to protect the “integrity of my files/property.” (ECF No. 44 at 7 1.) However, he does not explain why counsel is needed

considering the complexity of 8 the legal issues involved in this case, as required by the Wilborn test. See 789 F.2d at 9 1331. In addition to the filings currently before the Court, Plaintiff has filed various 10 pleadings including a First Amended Complaint [ECF No. 6], Requests for a Stay of 11 Proceedings [ECF Nos. 9 & 10], a Motion to Appoint Counsel [ECF No. 20], and various 12 Requests for Judicial Notice [ECF Nos. 36, 39–41]. Plaintiff also appeared by video at 13 settlement conferences on January 24, 2025; March 10, 2025; and April 22, 2025, and 14 represented himself admirably during those sessions. (ECF Nos. 32, 37, 42.) To date, 15 Plaintiff has demonstrated a good grasp of basic litigation procedure and has articulated 16 his claims adequately. See *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (finding 17 that the second Wilborn factor was not satisfied where the District Court observed 18 Plaintiff “was well-organized, made clear points, and presented evidence effectively”). 19 Other factors like indigency, incarceration, and being untrained in the law are 20 difficulties that any imprisoned litigant would have in proceeding pro se; although the 21 Court is sympathetic to these circumstances, they are not exceptional factors. See 22 *Wood v. Housewright*, 900 F.2d 1332, 1335–36 (9th Cir. 1990) (upholding denial of 23 appointment of counsel where plaintiff complained that he had limited access to law 24 library and lacked a legal education); *Sanford v. Doe*, No. 8cv1049-H-PCL, 2009 WL 25 10659695, at *2 (S.D. Cal. Sept. 17, 2009) (denying appointment of counsel due to a lack 26 of exceptional circumstances where plaintiff argued an attorney would “better enable” 27 him to present evidence and cross-examine witnesses). 2 The evidence before the Court does not demonstrate that Plaintiff enjoys a 3 likelihood of success on the merits or that he is unable to articulate his claims without 4 the assistance of an attorney. Moreover, up to this point Plaintiff has been able to 5 convey his arguments, communicate with the Court, and navigate civil procedure 6 without legal counsel. Based on the foregoing, the Court DENIES without prejudice 7 Plaintiff’s Motion to Appoint Counsel [ECF No. 44].

8 II. MOTION FOR A COURT ORDER UNDER THE ALL WRITS ACT

9 On January 29, 2025, Plaintiff filed a “Request for a Court Order Under the All 10 Writs Act 28 U.S.C. § 1651.” (ECF No. 35.) Plaintiff appears to be asking the Court to 11 issue an order directed at non-party attorneys Crystal Morgan and Michael Hayden for 12 reimbursement of \$5,500 in legal fees that Plaintiff claims he is owed for non- 13 performance related to this case and several other civil cases. (Id. at 2–3.) Plaintiff 14 contends “he has been taken advantage of by [an] organization [that] ‘preys’ on the 15 desparate [sic] and mental anxious incarcerated [sic] persons who seek help.” (Id. at 3.) 16 Citing a Ninth Circuit case, Plaintiff asks the Court to “ ‘wield its civil contempt powers 17 for two separate and independent purposes: (1) to coerce the defendant into 18 compliance with the Court’s order; and (2) to compensate the complainant for losses 19 sustained.’ ” (Id. at 4 (citing *Shell Offshore Inc. v. Greenpeace, Inc.*, 815 F.3d 623, 626 20 (9th Cir. 2016).) Plaintiff also attached the following: (1) a “Trust Account Withdrawal 21 Order” requesting \$5,500 be withdrawn from his account and paid to Unite the People 22 for legal services [ECF No. 35-1 at 2]; (2) an invoice from Unite the People showing 23 Plaintiff paid

\$5,500 by check on January 30, 2024 [ECF No. 35-1 at 3]; and (3) various 24 electronic message requests sent by Plaintiff that discuss Unite the People, though the 25 recipients and statuses of these requests are unclear [ECF No. 35-2]. 26 A. Legal Standard 27 The All Writs Act states: “The Supreme Court and all courts established by Act of 2 The Act is “not a grant of plenary power to the federal courts. Rather, it is designed to 3 aid the courts in the exercise of their jurisdiction.” Plum Creek Lumber Co. v. Hutton, 4 608 F.2d 1283, 1289 (9th Cir. 1979). Under the Act, a court may exercise authority over 5 persons or entities who, “though not parties to the original action or engaged in 6 wrongdoing, are in a position to frustrate the implementation of a court order or the 7 proper administration of justice.” United States v. N.Y. Tel. Co., 434 U.S. 159, 174 (1977) 8 (internal citations omitted). However, the Supreme Court has held that if alternative 9 remedies exist, then courts cannot justify an exercise of authority pursuant to the All 10 Writs Act. See Clinton v. Goldsmith, 526 U.S. 529, 537 (1999) (“The All Writs Act invests 11 a court with a power essentially equitable and, as such, not generally available to 12 provide alternatives to other, adequate remedies at law.”) Further, the Supreme Court 13 has explained that “injunctive relief under the All Writs Act is to be used sparingly and 14 only in the most critical and exigent circumstances” and only when “the legal rights at 15 issue are indisputably clear.” Brown v. Gilmore, 122 S. Ct. 1, 2 (2001) (internal citations 16 and quotations omitted). 17 B. Analysis 18 Here, Plaintiff has not demonstrated that an order under the All Writs Act is 19 “necessary” or “appropriate,” as required by the statute. 28 U.S.C. § 1651(a). Plaintiff 20 seeks an order directed at two attorneys who are not parties to the instant litigation. 21 (ECF No 35.) Specifically, Plaintiff asks the Court to order attorneys Crystal Morgan and 22 Michael Hayden to reimburse Plaintiff \$5,500 for alleged non-performance of legal 23 services in multiple federal court cases, including this one. (Id. at 4.) Although a court 24 may exercise some authority over individuals who are not parties to the underlying 25 litigation, N.Y. Tel. Co., 434 U.S. at 174, the All Writs Act is meant to aid the court in the 26 exercise and preservation of jurisdiction it has acquired from an independent source. 27 Plum Creek Lumber Co., 608 F.2d at 1289. Plaintiff has not cited to any legal authority 1 Further, if alternative remedies exist, then courts cannot justify an exercise of 2 || authority pursuant to the All Writs Act. Clinton, 526 U.S. at 537. Here, it is unclear if 3 || Morgan and Hayden are aware that Plaintiff is seeking reimbursement of \$5,500, 4 || because Plaintiff’s message requests do not indicate recipients or delivery status. (ECF 5 35-2.) Plaintiff states, “[t]he Los Angeles District Attorney Office was contacted in 6 || efforts to file criminal charges against employees at Unite the People.” (ECF No. 35 at 7 ||3.) However, Plaintiff does not otherwise indicate that he has made any attempts to 8 || address the problems.’ Finally, injunctive relief under the All Writs Act should be used 9 || “sparingly and only in the most critical and exigent circumstances,” and such 10 || circumstances do not exist here. Brown, 533 U.S. at 1303. Although the Court is 11 || sympathetic to the obstacles Plaintiff has faced while trying to procure legal services, he 12 not provided sufficient support justifying issuance of an order directed at two non- 13 || party attorneys. Thus, the Court DENIES Plaintiff’s Motion for a Court Order Under the

14 || All Writs Act [ECF No. 35]. 15 lil. CONCLUSION 16 For the reasons stated above, the Court DENIES Plaintiff's Motion to Appoint 17 || Counsel [ECF No. 44] and Motion for a Court Order Under the All Writs Act [ECF No. 35]. 18 IT IS SO ORDERED. 19 || Dated: June 16, 2025
_ ———> tH 20 □ Honorable Michael S. Berg United States Magistrate Judge 22 23 24 25 26 1 In February 2025, the undersigned independently contacted the California State Bar after learning 27 || about Plaintiff's dispute with Unite the People. The following month, the California State Bar responded that the Court's correspondence was added to Mr. Mitchell's file. Plaintiff has not provided 28 any further updates about the status of his attorney complaint.