

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Carr v. Balaji

Carr v. Balaji · No. 2:19-cv-00688-TLN-EFB (PC) · Decided August 2, 2023

SUMMARY

The United States District Court for the Eastern District of California granted a state prisoner additional time to conduct discovery and oppose a pending motion for summary judgment after appointed counsel withdrew. The court denied without prejudice the request to file a second amended complaint and denied the request to compel another attorney from former counsel’s firm to represent the plaintiff. The order set discovery, motion-to-compel, and summary-judgment opposition deadlines.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Edmund F. Brennan
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	August 2, 2023
DOCKET	2:19-cv-00688-TLN-EFB (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Order resolving a prisoner-plaintiff's motions concerning former counsel's withdrawal, modification of the discovery and briefing schedule, additional discovery, appointment of replacement counsel, and leave to file a second amended complaint while defendants' motion for summary judgment remained pending.
STANDARD OF REVIEW	A scheduling order may be modified only upon a showing of good cause, assessed primarily by the moving party's diligence and potentially by prejudice to the opposing party. Requests for discretionary appointment of counsel require exceptional circumstances, evaluated by considering the likelihood of success and the plaintiff's ability to articulate claims in light of their complexity. Leave to amend requires sufficient information, including a proposed amended complaint, to evaluate the propriety of amendment.
PRECEDENTIAL VALUE	nonprecedential district court order

TOPICS

discovery dispute

summary judgment

motion to amend

section 1983

civil procedure

PRACTICE AREAS

civil procedure

civil rights

prisoner litigation

QUESTIONS PRESENTED

1. Whether plaintiff showed good cause to modify the scheduling order and obtain additional time for discovery and to oppose the pending summary judgment motion.
2. Whether the court could require another attorney from plaintiff's former counsel's firm to represent him.
3. Whether plaintiff should receive leave to file a second amended complaint asserting unspecified new claims.
4. Whether summary judgment should proceed before plaintiff had an opportunity for additional discovery relevant to his claims.

HOLDINGS

1. The court granted plaintiff additional time to conduct discovery, file discovery motions, and oppose the pending motion for summary judgment because the circumstances surrounding counsel's withdrawal and the apparent lack of completed discovery supported modification of the schedule.
2. The court denied plaintiff's request to compel an attorney from former counsel's law firm to represent him.
3. The court denied plaintiff's request for leave to file a second amended complaint without prejudice.

KEY QUOTATIONS

"Thus summary judgment in the face of requests for additional discovery is appropriate only where such discovery would be 'fruitless' with respect to the proof of a viable claim." (at 2)

"District courts lack authority to require counsel to represent prisoners in § 1983 cases." (at 3)

FACTUAL BACKGROUND

Plaintiff is a state prisoner proceeding under 42 U.S.C. § 1983. His appointed counsel, Chijioke Ikonte, provided what plaintiff characterized as minimal discovery responses and withdrew after an apparent breakdown in communication. Defendants' motion for summary judgment remained pending, and plaintiff sought additional discovery time and an opportunity to respond. Plaintiff also sought replacement counsel and leave to assert unspecified new claims in a second amended complaint.

PROCEDURAL HISTORY

Plaintiff initially filed the action pro se under 42 U.S.C. § 1983 and later obtained appointed counsel. The court entered a discovery and scheduling order, extended the discovery deadline, and subsequently granted counsel's

motion to withdraw. Plaintiff then sought additional time for discovery and to oppose defendants' pending summary judgment motion, appointment of another attorney from former counsel's firm, and leave to file a second amended complaint. The court granted additional time for discovery and opposition to summary judgment, but denied the requests for replacement counsel and amendment without prejudice.

DISPOSITION

other

CASES CITED

- Johnson v. Mammoth Recreations, 975 F.2d 604, 609 (9th Cir. 1992)
- Jones v. Blanas, 393 F.3d 918, 930 (9th Cir. 2004)
- Klingele v. Eikenberry, 849 F.2d 409, 412 (9th Cir. 1988)
- Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989)
- Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991)
- Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990)
- Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009)

OPINION

(PC) Carr v. Balaji

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 ARTHUR CARR, No. 2:19-cv-00688-TLN-EFB (PC)

12 Plaintiff, 13 v. ORDER 14 A. BALAJI, et al., 15 Defendants. 16 17 Plaintiff is a state prisoner
proceeding without counsel in an action brought pursuant to 42 18 U.S.C. § 1983. Currently
before the court are several motions filed by plaintiff objecting to the 19 withdrawal of his former
counsel, Chijioke Ikonte, and seeking modification of the schedule to 20 allow him to file a second
amended complaint, seek discovery from defendants, and file an 21 opposition to the pending
motion for summary judgment. ECF Nos. 79-82. Defendants have 22 filed no response to
plaintiff’s filings. For the reasons that follow, the court will modify the 23 schedule to allow
plaintiff additional time for discovery and to oppose the summary judgment 24 motion, but the
court will deny plaintiff’s requests for leave to file a second amended complaint 25 and for an
order directing one of Ikonte’s law firm colleagues to represent plaintiff. 26 I. Plaintiff’s Motion to
Modify the Discovery Schedule 27 Plaintiff initiated this action with the filing of a pro se
complaint. ECF No. 1. On October 28 28, 2020, the court granted plaintiff’s request to substitute
Mr. Ikonte in as his counsel. ECF No. 1 28. The discovery and scheduling order issued on October

18, 2021, providing a discovery 2 deadline of February 18, 2022. ECF No. 55. That deadline was later extended by the court to

3 September 15, 2022. ECF No. 61. Defendants filed a motion for summary judgment on February 4 28, 2023, which remains pending. ECF No. 68. On June 9, 2023, the court granted Mr. Ikonte's 5 motion to withdraw as plaintiff's counsel. ECF No. 78. 6 Federal Rule of Civil Procedure 16(b)(4) provides: "A schedule may be modified only for 7 good cause and with the judge's consent." Courts considering a request to modify a schedule 8 under Rule 16(b)(4) look primarily to the whether the party seeking modification could not 9 reasonably meet the deadline despite his diligence. *Johnson v. Mammoth Recreations*, 975 F.2d 10 604, 609 (9th Cir. 1992). While the focus is primarily on the moving party's diligence, "the 11 existence or degree of prejudice to the party opposing the motion might supply additional reasons 12 to deny" the requested modification. Id. 13 The court must consider additional factors where, as here, additional discovery is 14 requested by an incarcerated, pro se plaintiff facing a summary judgment motion. *Jones v. 15 Blanas*, 393 F.3d 918, 930 (9th Cir. 2004). "Though the conduct of discovery is generally left to 16 a district court's discretion, summary judgment is disfavored where relevant evidence remains to 17 be discovered, particularly in cases involving confined pro se plaintiffs." *Jones*, 393 F.3d at 930 18 (citing *Klinge v. Eikenberry*, 849 F.2d 409, 412 (9th Cir. 1988)). "Thus summary judgment in 19 the face of requests for additional discovery is appropriate only where such discovery would be 20 'fruitless' with respect to the proof of a viable claim." Id. (quoting *Klinge*, 849 F.2d at 412). 21 Plaintiff states that Mr. Ikonte has provided him with minimal discovery responses, and 22 plaintiff suspects that Mr. Ikonte failed to diligently propound discovery. In light of the pending 23 summary judgment motion and Mr. Ikonte's withdrawal following an apparent breakdown of 24 communication between he and plaintiff, the court will grant plaintiff's request to modify the 25 schedule to allow him an opportunity to propound discovery requests on defendants and to 26 prepare an opposition to the pending summary judgment motion. 27 //// 28 //// 1 II. Issues Regarding Counsel 2 Plaintiff objects to his counsel's withdrawal from the case. ECF Nos. 80, 81, 82. 3 However, the court has already granted counsel's request to withdraw, and plaintiff's filings do 4 not alter the court's opinion as to the propriety of his withdrawal. Indeed, those filings 5 underscore the deterioration of the relationship between plaintiff and Mr. Ikonte. Plaintiff 6 requests that the court order another attorney from Mr. Ikonte's firm to represent him. District 7 courts lack authority to require counsel to represent prisoners in § 1983 cases. *Mallard v. United 8 States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may 9 request an attorney to voluntarily to represent such a plaintiff. See 28 U.S.C. § 1915(e)(1); 10 *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 11 1335-36 (9th Cir. 1990). When determining whether "exceptional circumstances" exist, the court 12 must consider the likelihood of success on the merits as well as the ability of the plaintiff to 13 articulate his claims pro se in light of the complexity of the legal issues involved. *Palmer v. 14 Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). Having considered those factors, the court finds there

15 are no exceptional circumstances in this case. 16 III. Request for Leave to File a Second Amended Complaint 17 In one of his recent filings, plaintiff states briefly that he would like leave to file a second 18 amended complaint to assert new claims that “relate back” to his original claims. ECF No. 81. 19 Plaintiff does not specify what these new claims are, nor has he provided the court with a copy of 20 the proposed second amended complaint as the court’s local rules require. E.D. Cal. L.R. 137(c). 21 Without the proposed amended complaint or an explanation of the claims plaintiff seeks to add, 22 the court cannot conduct the analyses required to determine the propriety of allowing the 23 amendment. See *Johnson v. Mammoth Recreations*, 975 F.2d 604, 607-09 (9th Cir. 1992). 24 Accordingly, the court will deny leave to amend without prejudice. 25
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1 IV. Order 2 In accordance with the above, it is hereby ORDERED that: 3
1. Plaintiff’s motion to modify the schedule, asserted in ECF Nos. 79 through 82, is 4 GRANTED:
5 A. Plaintiff shall have until October 2, 2023 to conduct discovery. 6 B. Plaintiff shall have until October 16, 2023 to file any motions to compel 7 discovery responses. Any such motion must identify the discovery responses 8 which are the subject of the motion. 9 C. Plaintiff shall file his opposition to the pending motion for summary 10 judgment on or before October 30, 2023. 11 D. The court will schedule pretrial proceedings, if necessary, upon the 12 resolution of any pretrial motions filed. Requests to modify this schedule 13 will be looked upon with disfavor and must be supported by good cause 14 pursuant to Fed. R. Civ. P. 16(b). 15 2. Plaintiffs request for leave to file a second amended complaint, asserted in ECF No. 16 81, is DENIED without prejudice. 17 3. Plaintiff’s request for an order compelling an attorney from Chiyioke Ikonte’s law firm 18 to represent him, asserted in ECF No. 81, is DENIED. 19 4. The Clerk of Court is directed to terminate the motions appearing at ECF Nos. 79, 81, 20 and 82. 21 22 | Dated: August 2, 2023. □□

PDEA

EDMUND F. BRENNAN

23 UNITED STATES MAGISTRATE JUDGE

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