

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MELVIN E. BOARDLEY, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 03-343-KAJ  
 )  
 FIRST CORRECTIONAL MEDICAL, )  
 DR. HOFFERMAN, JOHN DOE, )  
 NURSE KIM, and NURSE ASHTON )  
 )  
 Defendants. )  
 )

**MEMORANDUM ORDER**

Before the Court are Melvin E. Boardley’s (“Plaintiff”) Motions for Appointment of Counsel (Docket item [“D.I.”] 9 and 20; the “Motions”)<sup>1</sup>. For the reasons that follow, Plaintiff’s Motions are denied.

Plaintiff is a *pro se* litigant incarcerated at the Delaware Correctional Center (“DCC”) in Smyrna, Delaware. (D.I. 2 at 3.) On March 18, 2003, Plaintiff commenced this action by filing a Complaint under the Civil Rights Act, 42 U.S.C. §1983, alleging that First Correctional Medical (“FCM”), the healthcare provider for DCC, and certain FCM employees<sup>2</sup> (collectively “Defendants”) were negligent and violated Plaintiff’s rights. (D.I. 2; D.I. 22.) Specifically, Plaintiff alleges that Defendants’ violated his 8<sup>th</sup> Amendment right to be free of cruel and unusual punishment, and are liable for medical

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<sup>1</sup> I take D.I. 20, entitled “Motion for Counsel for Brief Scheduling Order,” as also being a Motion for Appointment of Counsel by Plaintiff.

<sup>2</sup> Dr. Hofferman is apparently Dr. Hoffman, a former employee or agent of FCM. (D.I. 2; D.I. 22.) Nurse Kim is apparently Kim Brown, an FCM employee, and Nurse Ashton is apparently Ashton Pyne, also an FCM employee. (*Id.*) It is assumed that John Doe is an employee or agent of FCM. (D.I. 22.)

malpractice, in connection with treatment Defendants' provided Plaintiff for two ingrown toenails. (D.I. 2.) Plaintiff alleges that he developed complications after undergoing surgery on his right toe on August 27, 2002, and his left toe on September 9, 2002, and that Defendants' continually failed to give Plaintiff the proper medical care to correct the complications. (*Id.*) As a result, Plaintiff lacked mobility and suffered from severe pain and discomfort. (*Id.*)

On July 11, 2003 and November 6, 2003, Plaintiff filed these Motions. (D.I. 9 and 20.) In support of the Motions, Plaintiff argues that he has demonstrated to the Court that his Complaint is not frivolous or malicious. (*Id.*) Further, Plaintiff argues that the issues in this case are complex. (*Id.*) Therefore, in the interests of justice and to ensure the protection of his Constitutional rights, Plaintiff urges the Court to appoint counsel. (*Id.*)

A plaintiff has no constitutional or statutory right to the appointment of counsel in a civil case. See *Parham v. Johnson*, 126 F.3d 454, 456-57 (3d Cir. 1997); *Tabron v. Grace*, 6 F.3d 147, 153-54 (3d Cir. 1993). However, under certain circumstances, the Court may appoint counsel to represent an indigent civil litigant. See 28 U.S.C. § 1915 (e)(1).

The standard for evaluating whether a court will appoint counsel to a civil litigant was articulated by the Third Circuit Court of Appeals in *Tabron* and *Parham*. Initially, the Court will examine the plaintiff's claim to determine whether it has some arguable merit in fact and law. *Parham*, 126 F.3d at 457. If the Court is satisfied that the claim is factually and legally meritorious, then it will examine the following factors: (1) the plaintiff's ability to present his own case; (2) the complexity of the legal issues; (3) the

extensiveness of the factual investigation necessary to effectively litigate the case and the plaintiff's ability to pursue such an investigation; (4) the degree to which the case may turn on credibility determinations; (5) whether the testimony of expert witnesses will be necessary; and (6) whether the plaintiff can attain and afford counsel on his own behalf. *Id.* at 457-58. However, this list is merely illustrative and, by no means exhaustive. *Id.* at 458. Nevertheless, it provides a sufficient foundation for the Court's decision.

Here, the *Parham-Tabron* factors do not weigh in favor of appointing counsel for Plaintiff. First, although Plaintiff can not afford to retain counsel, he has demonstrated, through his correspondence with the court in his Complaint and Motions (D.I. 2, 9, 10, 20.), his ability to present his own case, including a detailed description of the events surrounding the alleged incident. (D.I. 2) Second, from Plaintiff's description of events, there appears to be no need for an extensive factual investigation. Further, Plaintiff's allegations that Defendants' were negligent, and violated his 8<sup>th</sup> Amendment rights, presents no complex legal issues. *Cf. Parham*, 126 F.3d at 459 ("[T]he ultimate issue appears relatively simple – whether [defendant doctor] was deliberately indifferent to [plaintiff's] serious medical needs. A lay person, like [plaintiff] should be able to comprehend what he has to prove when the legal issue is understandable."). While medical expert testimony may be required, and although the case may turn on credibility determinations, these factors are not enough to weigh in favor of appointing counsel. *Cf. Parham*, 126 F.3d at 460 ("While the case ultimately may have relied upon credibility, it is difficult to imagine a case that does not.") Therefore, the appointment of counsel for Plaintiff is not warranted.

Accordingly, it is hereby ORDERED that Plaintiff's Motions for Appointment of Counsel (D.I. 9 and 20) are DENIED.

Kent A. Jordan  
UNITED STATES DISTRICT JUDGE

March 15, 2004  
Wilmington, Delaware