[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 21-10049

Non-Argument Calendar

KIRK PRUITT,

Plaintiff-Appellant,

versus

CHARTER COMMUNICATIONS, INC.,
d.b.a. Spectrum Communications Inc,
GAGANDEEP S. DHALIWAL,
M.D., Psychiatrist,

Defendants-Appellees,

THOMAS M. RUTLEDGE,
Chairman and Chief Executive Officer, et al.,

Defendants.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 5:17-cv-01764-LCB

Before NEWSOM, LUCK, and ANDERSON, Circuit Judges.

PER CURIAM:

Kirk Pruitt appeals the district court's decision not to appoint him counsel in his employment discrimination case.[1] Pruitt

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[1] In his notice of appeal, Pruitt said he wanted us to review the district court's order granting summary judgment and closing the case, but he does not present sufficient explanation or legal authority regarding anything other than the appointment of counsel issue in his appellant brief, so that is the only issue we consider. *See* Fed. R. App. P. 28(a)(8)(A) ("The appellant's brief must contain . . . appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies."); *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) ("We have long held that an appellant abandons a claim when he either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority."). *See also Big Top Koolers, Inc. v. Circus-Man Snacks,*

argues that the district court abused its discretion because his case presented novel and complex issues and exceptional circumstances warranting the appointment of counsel.

We review a district court's decision not to appoint counsel in a civil case for abuse of discretion. *See Bass v. Perrin*, 170 F.3d 1312, 1320 (11th Cir. 1999). "Court appointed counsel in civil cases is warranted only in 'exceptional circumstances,' and whether such circumstances exist is also committed to district court discretion." *Steele v. Shah*, 87 F.3d 1266, 1271 (11th Cir. 1996), *as amended* (Sept. 6, 1996).

Pruitt maintains that the district court abused its discretion by not appointing him counsel because his case presented exceptional circumstances—both because his claims were novel and complex, and because he was a member of various protected classes, as well as indigent, "mentally anguished, legally beleaguered, and financially overmatched" against "corporations, executives[,] and medical professionals." He further contends that the district court "completely disregarded" his requests for appointment of counsel and showed "anti-pro se bias" in denying his requests, and that it was "unconstitutional and unethical" to allow him to proceed in the case without "proper legal counsel" given his need for help.

Inc., 528 F.3d 839, 844 (11th Cir. 2008) ("We decline to address an argument advanced by an appellant for the first time in a reply brief.").

We "look[] to the factors outlined in *Ulmer v. Chancellor*, 691 F.2d 209 (5th Cir. 1982) for guidance in determining if exceptional circumstances warrant appointment of counsel." *Smith v. Fla. Dep't of Corr.*, 713 F.3d 1059, 1065 n.11 (11th Cir. 2013). These factors include: (1) "the type and complexity of the case"; (2) "whether the indigent is capable of adequately presenting his case"; (3) "whether the indigent is in a position to investigate adequately the case"; (4) "whether the evidence will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and in cross examination"; and (5) "whether the appointment of counsel would be a service to [the plaintiff] and, perhaps, the court and defendant as well, by sharpening the issues in the case, shaping the examination of witnesses, and thus shortening the trial and assisting in a just determination." *Ulmer*, 691 F.2d at 213. Overall, "[t]he key is whether the *pro se* litigant needs help in presenting the essential merits of his or her position to the court." *Kilgo v. Ricks*, 983 F.2d 189, 193 (11th Cir. 1993).

Applying the *Ulmer* factors here, we conclude that the district court did not abuse its discretion. First, Pruitt's case was not complex. We have held that 42 U.S.C. section 1983 claims brought by indigent pro se prisoners are not novel or complex, *see, e.g.*, *Bass*, 170 F.3d at 1320, and the run-of-the-mill employment discrimination (and related) claims that Pruitt alleged are no more complicated than those.

Second, Pruitt was capable of adequately presenting his case. He had prior experiences with pro se employment suits and a

paralegal degree to aid him. He filed his own motions (including motions for entry of default and default judgment), responded to the defendants' motions, amended his complaint twice, sought discovery, and submitted pretrial papers. And he was able to survive the defendants' motions to dismiss.

Third, Pruitt was in a position to investigate adequately his employment discrimination case because he was present for the key events about which he complained.

Fourth, Pruitt's case did not require skills relating to witness testimony like the presentation of evidence and cross examination. Because Pruitt's claims did not survive summary judgment, he did not reach the point of examining witnesses or dealing with other trial matters.

And fifth, the district court didn't need the appointment of counsel to sharpen the issues, shape witness examinations, shorten the trial, or reach a just determination. Motion practice sharpened the issues. And summary judgment meant that a just determination was reached without witness examinations and, indeed, without a trial.

Overall, Pruitt did not need help presenting the merits of his case to the district court. He presented the merits adequately by himself. The fact that he lost his case is not to the contrary. After all, counseled parties lose cases, too. All the factors weighed against a finding of exceptional circumstances. Thus, the district court did not abuse its discretion by not appointing counsel for

Pruitt. *See Fowler v. Jones*, 899 F.2d 1088, 1096 (11th Cir. 1990) (finding that the plaintiff's request for counsel was properly denied because there were no exceptional circumstances when the claims were "relatively straightforward," the plaintiff himself witnessed most of the incidents on which he based his claims, and he "was capable of representing himself adequately").

Pruitt argues that his membership in protected classes, as well as economic and other disparities between him and the defendants, created exceptional circumstances. Memberships in protected classes and disparities between parties could produce exceptional circumstances if they prevented a pro se litigant from adequately investigating or presenting his case. But here, they didn't. Pruitt was able to investigate and present his case adequately.

Pruitt also argues that it was unconstitutional not to appoint counsel for him and that the district court disregarded his requests for counsel and exhibited bias against him because he was pro se. But no civil plaintiff has a constitutional right to counsel. *Id.* ("Appointment of counsel in a civil case is not a constitutional right. It is a privilege that is justified only by exceptional circumstances . . . .").

And the district court did not disregard Pruitt's motions to appoint counsel. The district court denied Pruitt's first request for counsel because "[his] claims [we]re not so novel or complex that he require[d] assistance presenting [them] to the [c]ourt at th[at] stage in the litigation." But the district court made the denial "without prejudice to [Pruitt] renewing the motion at a later stage of

th[e] litigation," allowing him to raise the issue again if the situation changed. When Pruitt requested counsel again, the district court denied his requests, presumably because the situation had not changed. The fact that the district court denied Pruitt's requests does not mean—and in fact disproves—that it ignored them.

Finally, the district court did not display anti-pro se bias. The district court took pains to explain what Pruitt needed to do to come up with a procedurally adequate pleading, gave him multiple opportunities to do it, and showed him leniency in the process. We see no bias here.

AFFIRMED.