

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Nancy Heath, guardian for
Anthony Heath

v.

Civil No. 18-cv-624-PB

Helen E. Hanks, Commissioner,
New Hampshire Department of
Corrections; et al.¹

O R D E R

Nancy Heath ("Nancy"), proceeding pro se, and in her capacity as guardian for her son Anthony Heath, brings this action, pursuant to 42 U.S.C. § 1983, alleging violations of her son's federal constitutional and statutory rights. Ms. Heath seeks declaratory relief and an Order directing that her son be transferred from the Secure Psychiatric Unit ("SPU") to the New Hampshire Hospital ("NHH"). Before the court at this time is plaintiff's motion for court-appointed counsel (Doc. No. 3).

Although federal law permits persons to represent themselves in federal court, see 28 U.S.C. § 1654, this provision does not allow unlicensed laypersons to represent co-plaintiffs or any other individuals. This principle is unaltered even when, by operation of Rule 17(c) of the Federal Rules of Civil Procedure, a minor or incompetent person must be represented by a next friend, guardian ad litem, or other fiduciary.

¹In this action, the plaintiff has sued the following defendants in their official capacities: New Hampshire Department of Corrections Commissioner Helen E. Hanks, Gov. Christopher T. Sununu, and New Hampshire Department of Health and Human Services Commissioner Jeffrey A. Meyers.

Albert v. Mass. Exec. Office of Health & Human Serv., C.A. No. 17-12403-ADB, 2018 U.S. Dist. LEXIS 61902, at *2-*3, 2018 WL 1763634, at *1 (D. Mass. Apr. 11, 2018).

A plaintiff in a civil case, even one proceeding in forma pauperis, does not have a right to counsel, and the court has discretion to deny a motion for counsel absent a showing that "exceptional circumstances [are] present such that a denial of counsel [would be] likely to result in fundamental unfairness impinging on his due process rights." DesRosiers v. Moran, 949 F.2d 15, 23 (1st Cir. 1991). The court finds that the circumstances presented here, however, warrant the appointment of counsel to represent the plaintiff in this case. Accordingly, plaintiff's motion for court-appointed counsel (Doc. No. 3) is granted, subject to the terms of this Order.

The court directs the clerk's office to attempt to find counsel willing to represent plaintiff pro bono, pursuant to this Order, using the list of attorneys registered to file documents electronically in this court. Counsel shall be notified that she or he is free to decline the request without consequences. Counsel shall further be notified that no funds would be available to pay counsel's fees and costs in this case, except that counsel may seek payment for expert expenses not to exceed \$5000.00 if counsel determines that, in his or her professional opinion, expert services are needed to litigate plaintiff's claims.

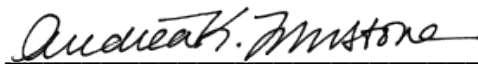
Upon request of counsel, the clerk's office shall forward to counsel a copy of the complaint (Doc. No. 1); the motion for appointment of counsel (Doc. No. 3), and this Order. Counsel, upon request, may have twenty-one days to review documents and contact plaintiff before notifying the court as to whether or not she or he will accept the appointment.

The clerk's office will notify plaintiff by December 31, 2018, as to whether suitable counsel willing to accept a pro bono appointment in this matter has been located. Upon the appearance of counsel in this matter, or the notification to Nancy Heath that counsel could not be located, the court will issue a further procedural order in this case.

Conclusion

For the foregoing reasons, plaintiff's motion for the appointment of counsel (Doc. No. 3) is GRANTED pursuant to the terms set forth in this Order. The clerk's office is directed to attempt to locate pro bono counsel as set forth in this Order.

SO ORDERED.



Andrea K. Johnstone
Andrea K. Johnstone
United States Magistrate Judge

November 1, 2018

cc: Nancy Heath, pro se, as guardian for Anthony Heath