

NORMAN E. JOHNSON, Plaintiff vs. ANGELA HAAS, M.D.; WILLIAM KEENAN, M.D.; JEFFREY VERZELLA, M.D.; AJAY KOSHEY, M.D.; KIM POORMAN, NURSE; and JOYCE FAIRFAX, NURSE, Defendants	: IN THE COURT OF COMMON PLEAS OF : LYCOMING COUNTY, PENNSYLVANIA : : NO. 02-01,253 : : CIVIL ACTION - LAW : : : : PRELIMINARY OBJECTIONS
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Date: January 10, 2003

OPINION and ORDER

The motion before the Court is a Motion for Appointment of Counsel filed November 29, 2002, by Plaintiff Norman E. Johnson. Plaintiff argues that because he is incarcerated he is unable to effectively present his case and conduct any factual investigation to support his claim. Plaintiff also contends that his incarceration prevents him from retaining private counsel who could present his case and conduct a factual investigation.

Despite the difficulties enunciated by the Plaintiff, the Court is denying his Motion for Appointment of Counsel. "There is no authority in this Commonwealth for the appointment of counsel to represent parties in civil actions." *Johnson v. Desmond*, 658 A.2d 375, 376 (Pa. Super. 1995). Plaintiff has cited to the case of *Tabron v. Grace*, 6 F.3d 147 (3rd Cir. 1993) to support his argument that courts have discretion in deciding whether to appoint

counsel for prisoners in civil cases if certain factors exist.¹ In *Tabron*, the authority that gave the court this discretion to appoint counsel was 28 U.S.C. §1915(d). However, 28 U.S.C. §1915(d)² is a federal statute governing the discretion of federal courts. The statute has no applicability to state courts. *Johnson*, 658 A.2d at 376. Therefore, this Court has discerned no authority that would require it to appoint counsel for Plaintiff to assist him in the prosecution of his medical malpractice claim.

ORDER

It is hereby ORDERED that Plaintiff's, Norman E. Johnson, Motion for Appointment of Counsel filed November 29, 2002 is denied. The Court will not appoint counsel to represent Plaintiff in the prosecution of his medical malpractice claim.

BY THE COURT:

William S. Kieser, Judge

cc: Robin E. Read, Esquire
Gary L. Weber, Esquire
Norman E. Johnson – ES-6785
SCI Smithfield; P. O. Box 999; Huntingdon, PA 16652
Judges
Christian J. Kalas, Esquire

¹ Those factors are: whether the claim has merit in fact and law; the plaintiff's ability to present his case; the difficulty of the particular legal issues, the degree to which a factual investigation will be required and the ability of the indigent plaintiff to pursue such an investigation; whether the plaintiff could retain counsel on his or her own behalf. *Tabron v. Grace*, 6 F.3d 147 (3rd Cir. 1995).

² 28 U.S.C. 1915(d) cited to in the *Tabron* case is now cited as 28 U.S.C. 1915(e)(1).