

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

REAL PROPERTY LOCATED AT
7199 GRANT ROAD, ARPIN,
WOOD COUNTY, WISCONSIN, WITH
ALL APPURTENANCES AND IMPROVEMENTS
THEREON,

Defendant.

ORDER

05-C-0731-C

This is a proceeding for civil forfeiture, brought pursuant to 21 U.S.C. § 881(a)(7). Plaintiff United States contends that it is entitled to claimant Allen L. Oleson's house (the defendant property) because claimant used the property to violate or facilitate the violation of federal drug laws. Claimant filed a Statement of Interest or Right on April 12, 2006 and an Answer to the complaint on May 3, 2006. Subsequently, plaintiff moved for summary judgment. Claimant was given an opportunity to respond to the motion and was advised of the consequences of failing to respond. Instead of opposing the motion, however, claimant moved for appointment of counsel and to stay the proceedings. I conclude that

although the motion for appointment of counsel will be denied, claimant may be entitled to a stay of the proceedings pending resolution of the question of his guilt in the related criminal proceedings pending against him. I will not decide that motion, however, until the government has had an opportunity to respond to it.

In support of his motion for appointment of counsel, claimant has submitted proof that he attempted to secure counsel on his own and that his efforts were unsuccessful, as required by Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). In addition, although claimant has not submitted an affidavit of indigency, I accept his unsworn statements that his only sizeable asset is the property that is the subject of this forfeiture action and that he is otherwise indigent. Nevertheless, because this is a civil proceeding, claimant has no constitutional or statutory right to counsel, even though the proceeding has the punitive consequences of a forfeiture hearing. The right to counsel accompanies the risk of loss of liberty for one year or more; it does not attach to a risk of loss of property. United States v. 7108 West Grand Ave., 15 F.3d 632, 635 (7th Cir. 1994) (“the Supreme Court has so far been unwilling to deem forfeiture proceedings ‘criminal’ for the purpose of counsel”); see also United States v. \$292,888.04 in U.S. Currency, 54 F.3d 564, 569 (9th Cir. 1995) (no right to counsel in forfeiture proceeding where imprisonment not authorized by forfeiture statute).

28 U.S.C. § 1915(e)(1) authorizes a court to appoint counsel in civil cases in which

the party seeking counsel qualifies for indigent status. However, there are no funds available to reimburse counsel appointed under this section for their costs of representing the party. Therefore, such appointments are made only when “exceptional circumstances” justify such an appointment. Farmer v. Haas, 990 F.2d 319, 322 (7th Cir. 1993) (quoting with approval Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991)). The Court of Appeals for the Seventh Circuit will find such an appointment reasonable where the party’s likely success on the merits would be substantially impaired by an inability to articulate his claims in light of the complexity of the legal issues involved. Id. In other words, the test is whether, given the difficulty of the case, the party requesting counsel appears to be competent to represent himself and, if not, whether the presence of counsel would make a difference in the outcome of the case. Id.

This is not a complex case. To prevail in the action, the government must establish by a preponderance of the evidence the existence of a substantial connection between the property to be forfeited and the underlying criminal activity. 18 U.S.C. § 983(c)(2). The ordinary defense raised by claimants in such cases is that no such connection exists or that he is an “innocent owner,” that is, he had no knowledge and gave no consent to the use of his property to commit or facilitate the commission of a drug-related offense. If claimant believes he is an innocent owner, he can set forth the facts underlying that belief.

Moreover, claimant does not appear to be incapable of responding to plaintiff’s

proposed facts. Indeed, his submissions in the case thus far show that he is fluent in his use of the English language and that he has asserted his positions clearly and effectively. I am persuaded that the outcome of this case will be the same whether or not claimant has counsel.

A decision on claimant's motion for a stay of proceedings will be delayed until claimant explains with precision how he will be prejudiced if this action proceeds while his criminal action is pending, and until plaintiff has had an opportunity to file a response to claimant's submission. A blanket assertion of a Fifth Amendment privilege against self-incrimination does not provide a sufficient basis for a district court to grant a stay. U.S. v. Certain Real Property, Commonly Known as 6250 Ledge Road, Egg Harbor, Wis., 943 F.2d 721, 729 (7th Cir. 1991). Rather, a stay contemplates "special circumstances" and the need to avoid "substantial and irreparable prejudice." Id. In this regard, claimant should be aware that if he intends to enter a plea of guilty in the state court proceedings, his plea will operate as a waiver of his right against self-incrimination. In that instance, there will be no reason not to proceed in this case.

ORDER

IT IS ORDERED that claimant Allen L. Oleson's motion for appointment of counsel is DENIED.

Further, IT IS ORDERED that a decision on plaintiff's motion for summary judgment is STAYED pending resolution of claimant's motion to stay proceedings until the state court criminal case against him has been completed. Claimant may have until August 28, 2006, in which to serve and file a statement explaining how he will be prejudiced if this action proceeds while his criminal action is pending. Plaintiff may have until September 8, 2006, in which to serve and file a response to claimant's statement.

Entered this 15th day of August, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge