

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

JERRY MEANS,

Plaintiff,

v.

ORDER

02-C-0695-C

DR. C. CULLEN, Psychologist,
DR. TWILA HAGAN, Head Psychologist,

Defendants.

Plaintiff is proceeding in this action on a claim that defendants were deliberately indifferent to his serious mental health care needs between April 11 and May 19, 2002. On April 30, 2003, Magistrate Judge Crocker held a preliminary pretrial conference in the case. At that time, he set a trial date of March 1, 2004 and an October 2, 2003, deadline for filing dispositive motions. That same day, defendants filed a motion for summary judgment raising two separate issues: 1) whether plaintiff exhausted his administrative remedies on his claim as it relates to the alleged conduct of defendant Twila Hagan; and 2) whether defendants are entitled to a judgment in their favor on the merits of plaintiff's claims against both defendants.

In an order entered on May 8, 2003, I stayed briefing on that portion of defendants' motion that sought a decision on the merits of plaintiff's case, so that plaintiff would have an opportunity to collect evidence to defend against the motion. I allowed the parties to brief the question whether plaintiff used the inmate complaint procedure as prison rules require it to be used to exhaust his administrative remedies. Plaintiff filed a brief in opposition to the exhaustion portion of the motion on May 21, 2003, and that motion remains under advisement.

On July 7, 2003, I granted plaintiff's motion for appointment of counsel after concluding that he would not be able to defend against defendants' motion on the merits given his skill level in relation to the complexity of the issue. Now I have located counsel willing to assist plaintiff with the merits of his case.

James R. Cole, a member of the Wisconsin Bar, has agreed to represent plaintiff, with the understanding that he will serve with no guarantee of compensation for his services. It is this court's intention that the appointment of Mr. Cole to represent plaintiff extends to proceedings in this court only and in particular to assisting plaintiff on the motion for summary judgment on the merits of the case and at trial if the case were to go to trial.¹

¹"Proceedings in this court" include all matters leading up to a final judgment on the merits, the filing of a Notice of Appeal, if appropriate, and ensuring that all steps are taken to transfer the record to the Court of Appeals for the Seventh Circuit.

Mr. Cole will need time to consult with plaintiff about this case before defending against defendants' motion for summary judgment on the merits. In addition, it will be helpful to the parties to know the resolution of defendant Twila Hagan's motion to dismiss plaintiff's claims against her for plaintiff's failure to exhaust his administrative remedies, so that the parties can limit the scope of their work on the remaining motion if need be. Therefore, the stay on the schedule for briefing defendants' motion for summary judgment on the merits will remain in place until October 2, the deadline originally set for the filing of dispositive motions, at which time the stay will lift automatically. At that time, the parties are to consider defendants' merits motion as having been filed that date and to follow the schedule set in the preliminary pretrial conference order for briefing the motion.

Plaintiff should be aware that because I am appointing counsel to represent him, he may not communicate directly with the court about matters pertaining to his case. He must work directly with his lawyer and permit him to exercise his professional judgment to determine which matters are appropriate to bring to the court's attention and in what form.

ORDER

IT IS ORDERED that James R. Cole is appointed to represent plaintiff Jerry Means in this case.

Further, IT IS ORDERED that the stay previously imposed on defendants' motion

for summary judgment on the merits of the case will remain in place until October 2, 2003, at which time the stay will lift automatically. Defendants' motion for summary judgment on the merits of the case will be considered as having been filed that date.

Entered this 25th day of July, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge