

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

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CEDRIC JOHNSON,

Plaintiff,

v.

PHIL KINGSTON,  
TIM DOUMA, JACK KESTIN and  
BILL PUCKETT,

Defendants.  
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ORDER

03-C-0143-C

This is a civil action in which plaintiff is proceeding in forma pauperis on a claim that defendants retaliated against him for exercising his right of access to the courts by transferring him to Waupun Correctional Institution. In an order dated June 30, 2003, I converted defendants' motion to dismiss pursuant to Fed. R. Civ. P. 6 to a motion for summary judgment and stayed briefing on the motion pending the preliminary pretrial conference to be held before the magistrate judge on July 15, 2003. Now plaintiff has moved for appointment of counsel. In addition, plaintiff has objected to an exhibit submitted by defendants in support of their motion for summary judgment and has asked in a letter dated July 2, 2003 for imposition of sanctions against defendants.

In deciding whether to appoint counsel, I must first find that plaintiff made a reasonable effort to find a lawyer on his own and was unsuccessful or that he was prevented from making such an effort. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). Plaintiff has submitted letters from three lawyers that he asked to represent him in this case who turned him down. From these letters, I conclude that plaintiff has made a reasonable effort to find a lawyer on his own and that he has been unsuccessful.

Next, the court must consider whether plaintiff is able to represent himself given the legal difficulty of the case, and if he is not, whether having a lawyer would make a difference in the outcome of his lawsuit. Zarnes v. Rhodes, 64 F.3d 285 (7th Cir. 1995), citing Farmer v. Haas, 990 F.2d 319, 322 (7th Cir. 1993).

Plaintiff's case is not legally complex. The only issue to be decided is whether defendants transferred plaintiff to the Waupun Correctional Institution because of plaintiff's earlier legal activities. It will not be necessary for plaintiff to scour law books in an effort to develop a novel legal theory. The law is clear that state officials may not retaliate against a prisoner for exercising his right of access to the courts.

No doubt it will be difficult for plaintiff to prove the factual basis for his claim, but in this regard a lawyer is not likely to make a difference in the outcome of the case. Plaintiff was allowed to proceed on his retaliation claim on his bald assertion that his transfer was retaliatory. In support of their motion for summary judgment, defendants have put in

evidence to show that a program review committee comprised of persons other than those making the initial decision to transfer plaintiff to Waupun have decided that plaintiff's placement at Waupun is proper. If plaintiff complied with Fed. R. Civ. P. 11 when he signed his complaint, he has represented to the court that to the best of his knowledge, information and belief formed after an inquiry reasonable under the circumstances, his factual contentions have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. Plaintiff does not suggest that he is incapable of following the Federal Rules of Civil Procedure to conduct discovery or of organizing and submitting whatever evidence he already has to support his claim. He simply states that he has trouble understanding "legal language" such as words like "respondeat superior, res judicata, estoppel, quasi-judicial, de novo and en banc," and that he has a low educational level.

So long as plaintiff has access to books from the law library at the prison, he appears capable of using a legal dictionary to look up legal terms he does not understand. In addition, he will have an opportunity to ask the magistrate judge various questions about civil procedure at the time of the preliminary pretrial conference. His lack of legal expertise is a condition shared by every pro se litigant. It is not a condition that warrants appointment of counsel by itself.

Because I am convinced that plaintiff is capable of representing himself in this case

given its relative simplicity and that a lawyer is not likely to make a difference in the outcome of the case, I will deny plaintiff's motion for appointment of counsel.

Plaintiff's request for the imposition of sanctions against defendants will be denied as well. If plaintiff believes that defendants' evidentiary material is flawed, he will have an opportunity to dispute that evidence at the time he submits his own evidence in opposition to defendants' motion.

ORDER

IT IS ORDERED that plaintiff's motions for the appointment of counsel and for imposition of sanctions against the defendants are DENIED.

Entered this 14th day of July, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge