

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

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PARISH GOLDEN,

Plaintiff,

v.

GERALD BERGE and JON LITSCHER,

Defendants.  
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ORDER

03-C-0403-C

In an order entered in this case on September 25, 2003, I granted plaintiff leave to proceed in forma pauperis on his claims that while he was a prisoner at the Wisconsin Secure Program Facility (formerly known as the Supermax Correctional Institution) in Boscobel, Wisconsin, defendants Berge and Litscher violated his Eighth Amendment rights by denying him the ability to exercise, subjecting him to sleep deprivation and other physical and psychological injuries as the result of constant cell illumination, and causing him physical injury as a result of severe cell temperatures. In the same order, I denied plaintiff leave to proceed in forma pauperis on several other claims. Defendants' counsel has filed a notice of appearance, but defendants have not yet filed a response to plaintiff's complaint. Presently before the court is plaintiff's motion for appointment of counsel.

In determining whether counsel should be appointed, I must find that plaintiff has made reasonable efforts to retain counsel and was unsuccessful or that he was precluded effectively from making such efforts. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). Plaintiff has provided the court with several letters from lawyers who indicate they cannot represent him. One of the letters is dated December 8, 2000, two were written in 2001, and one was written in January 2002. Only two were written in 2003, and those were addressed to plaintiff well before he signed his complaint in this case in July 2003. Thus, it is impossible to tell what kind of assistance plaintiff sought from the lawyers he wrote to or even with what claims he was asking counsel to give him assistance.

Ordinarily, I will not find that a pro se litigant has made a reasonable effort to find counsel on his own until he supplies the court with the names and addresses of at least three lawyers that he has asked to represent him in the particular case he has filed and who have declined to take the case. This is particularly important here, where the case has been reduced to just three claims, eliminating several legally meritless claims set out in plaintiff's original complaint. Therefore, I cannot conclude that plaintiff has not made the required showing that he make a reasonable effort to find counsel on his own.

Petitioner should be aware that if he attempts to obtain a lawyer to represent him on the claims remaining in this lawsuit and is unsuccessful, that does not mean that one will be appointed for him automatically. At that point, the court must determine whether plaintiff

is competent to represent himself given the complexity of the case, and if he is not, whether the presence of counsel 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)). This case is simply too new to permit the court to assess plaintiff's abilities or the potential outcome of the lawsuit. Therefore, plaintiff's motion will be denied without prejudice to his renewing it at some later stage of the proceedings.

ORDER

IT IS ORDERED that plaintiff's motion for the appointment of counsel to represent him in this case is DENIED without prejudice.

Entered this 22nd day of October, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge