IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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DARRICK A. ALEXANDER,

ORDER

Plaintiff,

03-C-0578-C

v.

CORRECTIONAL OFFICER PERRENOUD,

Defendant.

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On November 7, 2003, I granted plaintiff leave to proceed in forma pauperis on his claims that defendant violated his substantive due process rights under the Fourteenth Amendment and is liable to him under state tort law for deliberately stopping the vehicle in which plaintiff was a passenger in the middle of an intersection, shifting the gear into reverse and backing into the front end of a parked car, causing plaintiff physical injury. Presently before the court is plaintiff's motion for appointment of counsel.

In deciding whether to appoint counsel, I must first find that plaintiff made reasonable efforts to find a lawyer on his own and was unsuccessful or that he was prevented from making such efforts. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). Plaintiff does not say that he has been prevented from trying to find a lawyer on his own and

he has not shown that he has made reasonable efforts to find a lawyer. Even if plaintiff had made such a showing, I would deny his request for appointment of counsel.

First, plaintiff filed his own complaint and motion for appointed counsel. His submissions are clear and direct. Second, he is proceeding on a simple claim that involves a one-time incident. He was personally present at the time of the incident and will be able to testify about what defendant did. Third, plaintiff's ability to succeed on his federal law claim will turn on plaintiff's ability to obtain evidence that defendant Perrenoud deliberately set out to harm him and that the collision was not an accident. Although this may be difficult, given the likelihood that defendant will not admit to deliberately harming plaintiff, I am not persuaded that counsel would make a difference in the outcome of this lawsuit. See Zarnes v. Rhodes, 64 F.3d 285 (7th Cir. 1995), citing Farmer v. Haas, 990 F.2d 319, 322 (7th Cir. 1993) (question whether to appoint counsel is, given difficulty of case, is plaintiff competent to try it himself and, if not, would presence of counsel make a difference in outcome?).

To the extent that plaintiff is attempting to bring a state law negligence claim under this court's pendent jurisdiction, there are numerous lawyers willing to represent plaintiffs in personal injury lawsuits on a contingent fee basis. This means that plaintiff need not pay the lawyer for his or her services unless he wins his lawsuit. The contingent fee system serves as a reality check for litigants. If no lawyer with a background in personal injury cases is

willing to take plaintiff's case, chances are high that the case is one the lawyers have assessed either as not likely to succeed or as not likely to result in a damage award large enough to recoup the expense of prosecuting the case.

As noted earlier, plaintiff has not indicated that he has asked any lawyer to take his case. Once he begins this process, he will either find a lawyer willing to take the case or he will discover that no lawyer is willing to do so. It is difficult for lawyers to decline to take a case when the court asks them to do so. Therefore, in an ordinary personal injury case, it is inappropriate for a court to select a lawyer to take the case without regard for his or her assessment of the risks of incurring the expense of the lawsuit against the probability of succeeding on the merits of the case. If plaintiff is to be represented by counsel, he will have to find counsel on his own. If he wishes, he may contact the Wisconsin State Bar Lawyer Referral and Information Service at P.O. Box 7158, Madison, Wisconsin, 53707, 1-800-362-8096, to obtain the names and phone numbers or addresses of lawyers whose practices include personal injury or Eighth Amendment cases.

ORDER

IT IS ORDERED that plaintiff's motion for the appointment of counsel is DENIED.

Entered this 2nd day of February, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge