

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

BOBBY J. JOHNSON, JR.,

Plaintiff,

v.

SGT. INGUM; CAPTAIN STITCH and
C/O BERNS,

Respondents.

ORDER

03-C-592-C

This is a civil action for declaratory, injunctive and monetary relief, brought under 42 U.S.C. § 1983. Plaintiff has been allowed to proceed against defendants Ingum, Stitch and Berns on a claim that these defendants violated his Eighth Amendment rights when they failed to respond promptly to his asthma attack. Defendants have moved to dismiss plaintiff's complaint on the ground that plaintiff failed to exhaust his administrative remedies as the exhaustion procedures require. That motion is under advisement. Now before the court is plaintiff's motion for appointment of counsel, which will be denied.

Although civil litigants do not have a constitutional or statutory right to counsel, a district court has discretion to request a lawyer to represent an indigent litigant in

appropriate cases. Luttrell v. Nickel, 129 F.3d 933, 936 (7th Cir. 1997). “As a threshold matter, a litigant must make a reasonable attempt to secure private counsel.” Zarnes v. Rhodes, 64 F.3d 285, 288 (7th Cir. 1995). Plaintiff alleges that he has made diligent efforts to obtain counsel but he has not submitted the names and addresses of three lawyers that he has contacted regarding his case, a typical requirement of parties seeking appointed counsel in this court. However, this is of little consequence because this is not a case in which appointment of counsel is warranted.

In deciding whether to appoint counsel, the court must ask whether, given the difficulty of the case, the plaintiff appears competent to try it himself and, if not, whether the presence of counsel would make a difference in the outcome. Donald v. Cook County Sheriff’s Dept., 95 F.3d 548, 554 n.1 (7th Cir. 1996) (quoting Farmer v. Haas, 990 F.2d 319, 322 (7th Cir. 1993)). The test is not, however, whether a good lawyer would do a better job than the pro se litigant. Luttrell, 129 F.3d at 936.

Plaintiff’s case is not complex. The law governing a claim of deliberate indifference to a serious medical need is well-settled. Assuming plaintiff’s case is not decided on a threshold procedural ground such as exhaustion of administrative remedies, plaintiff’s ability to prevail will rest largely upon the facts presented on a motion for summary judgment or at trial. With respect to the facts, plaintiff should have personal knowledge of the incident giving rise to his claim and should already have access to medical records showing his

condition at the time he eventually received treatment. Because I am convinced that plaintiff has the ability to prosecute a case of minor complexity such as this and that appointed counsel would not make a significant difference in the case's outcome, his motion for appointment of counsel will be denied.

ORDER

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

Entered this 30th day of December, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge