IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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TIMOTHY SCOTT ACKERMANN,

Plaintiff,

v.

JOHN POWERS,

Defendant.

ORDER

04-C-845-C

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Defendant John Powers has filed a motion pursuant to 28 U.S.C. § 636(b)(1)(A) for reconsideration of Magistrate Judge Stephen Crocker's order of August 1, 2005. In the August 1 order, Magistrate Judge Crocker construed plaintiff's July 1, 2005 letter to include a motion for appointment of counsel and granted the motion. According to defendant, the magistrate judge erred in interpreting plaintiff's statement that he "need[ed] help and [couldn't] find any" as a motion for appointment of counsel. In addition, defendant contends that the magistrate judge's decision was clearly erroneous and contrary to law because it is improper to appoint counsel when 1) no motion for appointment of counsel has been made; 2) the litigant is not a prisoner; and 3) the claim is one lawyers often prosecute on a contingent fee basis. Because I am not persuaded that the magistrate judge's decision

was clearly erroneous or contrary to law, defendant's motion will be denied.

It is not surprising that defendant cites no case law to support his contentions that it is legal error for a court to appoint counsel where the indigent person has not "specifically requested [appointment] by motion" and is not a prisoner. Perhaps this is because the law is to the contrary. District courts are vested with inherent authority to control their dockets and manage their own affairs to achieve orderly and expeditious disposition of cases. Moser v. Universal Engineering Corp., 11 F.3d 720 (7th Cir. 1993). Moreover, 28 U.S.C. § 1915(e)(1) authorizes a court "to request an attorney to represent *any person* unable to afford counsel." Nothing in the statute requires the indigent litigant to make such a request or restricts the appointment of counsel to prisoners. Indeed, recent cases holding that district courts abused their discretion by failing to appoint counsel focus strictly on the questions whether the court properly considered whether the indigent litigant has demonstrated an inability to prosecute the action on his own given its complexity and, if he has, whether counsel is likely to make a difference in the outcome of the case. Greeno v. Daley, 414 F.3d 645 (7th Cir. 2005); Gil v. Reed, 381 F.3d 649, 655 (7th Cir. 2004), both cases citing Farmer v. Haas, 990 F.2d 319 (7th Cir. 1993).

Here, defendant admits that plaintiff has filed "rambling missives," "missed deadlines," and "only provided responses after motions were filed by the defendant and additional directives were issued by the court." Defendant alleges that he has "incurred

thousands of dollars in fees and costs thus far, all necessitated by [plaintiff's] complete failure to follow the rules and directives of the court, which were clear and unambiguous." Defendant submits no evidence suggesting that plaintiff is faking his incompetence. I am not convinced that plaintiff is engaging in such impermissible conduct. Plaintiff's submissions from the outset have been rudimentary. From a copy of what appears to be his answers to defendant's interrogatories, he has revealed that he has Post Traumatic Stress Disorder, is "disabled" and is receiving psychiatric care. These adversities might well account for his demonstrated lack of ability to prosecute his case effectively thus far.

Moreover, I have no doubt that a lawyer will make a difference in the outcome of this case. As the magistrate judge pointed out in his order, an objective person would be likely to respond skeptically to plaintiff's allegations about defendant Powers's conduct. That fact alone is likely to make it extremely hard for plaintiff to find a lawyer willing to represent him. Nevertheless, the magistrate judge's own skepticism was diminished by a review of the public record showing defendant's past criminal charges. Although defendant is correct that his criminal history may be inadmissible should the case go to trial, the revelation of defendant's possible penchant for deviant sexual behavior is a factor properly considered in determining whether the case may rise or fall on conflicting testimony and whether examination and cross examination by trained counsel will aid in the determination of the truth.

Gil v. Reed, 381 F.3d 649, forecloses defendant's argument that the court should not appoint counsel when the claim is one for personal injury that may be remedied on a contingent fee basis. Defendant notes correctly that § 1915(e)(1) limits the district court's authority to appoint counsel to only those litigants who are "unable to afford counsel." He reasons that when a case raises a claim that lawyers ordinarily litigate on a contingent fee basis, the litigant cannot contend he is "unable to afford counsel." While the argument is mildly compelling at first blush, its reasoning does not square with the holding in Gil. Gil raised claims of medical malpractice and mistreatment, the kind of claims classically amenable to resolution in a contingent fee action. Nevertheless, he was unable to convince a lawyer to take his case. The court of appeals held that it was error for this court to consider plaintiff's lack of success in finding counsel in determining whether the outcome of his case would likely be affected by appointed counsel. The court never suggested that because Gil's claim was the type lawyers agree to litigate on a contingent fee basis Gil was properly disqualified from obtaining counsel on the ground that he did not fit the category of persons § 1915 covers, that is, a person "unable to afford counsel."

In sum, defendant has made no showing that the magistrate judge's August 1, 2005 order should be disturbed.

ORDER

IT IS ORDERED that defendant's motion pursuant to 28 U.S.C. § 636(b)(1)(A) for reconsideration of Magistrate Judge Crocker's order of August 1, 2005 is DENIED.

Entered this 10th day of August, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge