

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

SCOTT REIDELL,

Plaintiff,

ORDER

v.

05-C-667-C

CO RON GRAY, in his individual capacity,
and CO CLARK, in his individual capacity,

Defendants.

Plaintiff Scott Reidell is a prisoner at the New Lisbon Correctional Institution. In an order entered in this case on December 8, 2005, I granted plaintiff leave to proceed on his claim that defendant Gray used excessive force against him in violation of the Eighth Amendment when he let plaintiff fall as plaintiff stepped out of the van in a hospital parking lot. In addition, I granted plaintiff leave to proceed on his claim that defendant Gray retaliated against him for filing an offender complaint in violation of the First Amendment. I denied plaintiff leave to proceed on a claim that the use of restraints during transport violated plaintiff's rights under the Eighth Amendment. Finally, I stayed a decision whether plaintiff could proceed on a claim that Correctional Officer Clark denied plaintiff access to medical care in violation of the Eighth Amendment, because plaintiff's allegations concerning

Clark were vague and conclusory and appeared to be in conflict with information contained in an attachment to the complaint. I instructed plaintiff to submit a statement clarifying the facts relating to his claim against Clark no later than December 19, 2005. Now plaintiff has submitted a document titled "Statement for Judge Crabb," which I construe as plaintiff's response to the December 8 order.

In his response, plaintiff states that he wants to dismiss Correctional Officer Clark from this lawsuit. I accept plaintiff's notice of voluntary dismissal of Clark.

In addition, plaintiff asks a second time for appointment of counsel. In the December 8 order, I denied a motion plaintiff had made for appointment of counsel because plaintiff had not shown that he had made reasonable efforts to secure counsel on his own and because it was too early to assess his abilities against the complexity of the claims on which he would be allowed to proceed. Plaintiff still has not made a showing that he has contacted three lawyers who declined to represent him. Even if plaintiff had made such a showing, however, I would deny his request for appointed counsel.

It is now clear that plaintiff will be proceeding in this action against a single defendant on two claims only. Plaintiff should have personal knowledge of the facts surrounding the incident that occurred in the hospital parking lot. In addition, he should have access to any medical records that confirm that he suffered injuries resulting from the fall. With respect to his retaliation claim, it is common for plaintiffs making such claims to have difficulty proving the factual basis for the claim. Nevertheless, I do not believe that

appointing counsel will affect the outcome of the claim. As plaintiff is aware, he was allowed to proceed on his retaliation claim on his bald assertion that a conduct report he received from defendant Gray was retaliatory. It is too early to know whether defendant Gray will move to dismiss this claim for plaintiff's failure to exhaust his administrative remedies or whether defendant can put in evidence on a motion for summary judgment to show that the conduct report was warranted for reasons wholly unrelated to plaintiff's exercise of his right to file a grievance against defendant Gray. 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 does not know the law and had help preparing his complaint. However, plaintiff's 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.

Plaintiff appears to be 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, which will be scheduled in this case as soon as defendant Gray files his response to plaintiff's

complaint. The law regarding plaintiff's claims was explained in the December 8 order. In sum, 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.

ORDER

IT IS ORDERED that

1. Plaintiff's notice of voluntary dismiss of defendant Clark is ACCEPTED and defendant Clark is DISMISSED from this lawsuit.

2. Plaintiff's second motion for appointment of counsel is DENIED.

3. Pursuant to an informal service agreement between the Attorney General and this court, a copy of plaintiff's complaint, the December 8 order and this order are being sent today to the Attorney General for service on defendant Gray.

Entered this 4th day of January, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge