

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

ORLANDO LARRY,

Plaintiff,

v.

JOANNE ANDERSON,

Defendant.

ORDER

06-C-223-C

Plaintiff Orlando Larry has moved for the appointment of counsel in this case. The motion will be denied, because I am convinced that plaintiff is competent to litigate this case on his own given the relative lack of complexity of the case and even if he is not, having a lawyer will make no difference in the outcome of this lawsuit.

As a preliminary matter, I note that the Court of Appeals for the Seventh Circuit has suggested that before a district court consider a motion for appointment of counsel, it first find that the plaintiff made reasonable efforts to find a lawyer on his own and was unsuccessful or was prevented from making such efforts. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). Plaintiff does not suggest that he has asked any lawyer to help him with his case. Even if he had made a reasonable attempt to find a lawyer on his own,

however, I would not appoint a lawyer for him. The determination whether counsel is appropriate in a given case is made by considering whether the plaintiff is able to represent himself given the legal difficulty of the case, and if he is not, whether having a lawyer 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 is not a difficult or complex case and plaintiff is articulate and reasonably intelligent. Plaintiff has been allowed to proceed on a single claim: that defendant Anderson violated plaintiff's Fourteenth Amendment due process rights by failing to afford him a preliminary hearing shortly after detaining him for four alleged violations of the terms and conditions of his probation, including a condition that he report to his probation officer as directed for scheduled and unscheduled appointments. As the record currently stands, plaintiff is proceeding on this claim only because he appears to have misled the court about the facts of his case.

A history of plaintiff's case shows that in an order dated May 12, 2006, I stayed a decision whether to grant plaintiff leave to proceed in forma pauperis on his claim because it was not possible to tell from the complaint whether he had admitted to defendant either before or shortly after his detention that he had violated his probation. I told plaintiff that if he had made such an admission, he would not have been entitled to a preliminary hearing and I would deny his request for leave to proceed in forma pauperis. I gave plaintiff until

May 19, 2006 in which to submit a supplement to his complaint indicating whether he admitted to his probation officer or any other law enforcement officer any conduct that violated the terms of his probation at or near the time he was detained.

On May 22, 2006, plaintiff filed a supplement to his complaint consisting of a letter and several attachments. In the letter, plaintiff stated that he never admitted violating the terms of his probation until his final revocation hearing. To prove this point, plaintiff attached to his letter a partial copy of a statement he had given to defendant Anderson on October 31, 2005, the day of his arrest and detention. The statement consisted of two pages of questions directed to plaintiff about the alleged conduct forming the basis for his arrest and detention and plaintiff's responses to those questions.

In an order dated May 25, 2006, I noted that the question and answer statement plaintiff had attached to his letter to the court was missing a page. Nevertheless, nothing in plaintiff's responses to the questions appearing on the two pages plaintiff had sent to the court showed conclusively that he had admitted to any of the charged violations. Therefore, I allowed him leave to proceed in forma pauperis on his claim that defendant Anderson violated his Fourteenth Amendment due process rights.

On August 16, 2006, a preliminary pretrial conference was scheduled to be held by telephone before Magistrate Judge Stephen Crocker. The purpose of the conference was to schedule this case for trial and to establish deadlines within which the parties were to

complete discovery and file dispositive motions. The conference was cut short, however, upon the magistrate judge's learning that defendant had filed a motion for summary judgment earlier in the day, and had supported the motion with evidence that plaintiff had been less than truthful when he claimed not to have admitted violating the terms of his probation. In particular, defendant submitted an authenticated copy of the full three pages of plaintiff's question and answer statement. On the page plaintiff omitted sending this court, the following questions and answer appear:

[Question] Did you report to your agent on August 30, 2005 as scheduled or thereafter, until your arrest on 10/21/05? Why not?

[Answer] I reported by telephone that I was aware of the fact that I may've missed our scheduled appointment due to me starting work and training and that if there was anything specific that she wanted me to do, to leave me a message on my answering service. Her message stated Orlando Larry contact Joanne Anderson at 266-???? 266-5079.

Plaintiff has been given until September 28, 2006 in which to respond to defendant's motion. This is a generous offering, in light of the circumstances. District court judges have the authority to withdraw a grant of leave to proceed in forma pauperis and sanction a plaintiff for intentional fraud upon the court. Whether or not plaintiff's omission was purposeful, however, there is little chance that he will be able to put into dispute defendant's evidence that he admitted to violating the condition of his probation that required him to report to his probation officer as directed for scheduled and unscheduled appointments. I

am not convinced that having a lawyer to assist him with his response will make any difference in the outcome of this case.

ORDER

IT IS ORDERED that plaintiff's motion for appointment of counsel to represent him in this case is DENIED.

Entered this 23d day of August, 2006.

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