

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

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SAMUEL S. UPTHEGROVE,

Plaintiff,

ORDER

v.

08-cv-661-slc

CHARLES TUBBS, PAUL  
WESTERHOUSE, MR. OURADA,  
BRUCE SUNDE, SUPERVISOR  
BRANDT, YC KRAFT, YC GERDES  
and JOHN DOES 3-10,

Defendants.

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In this case plaintiff was allowed to proceed *in forma pauperis* on his claims that defendants Supervisor Brandt, YC Kraft, YC Gerdes, and John Does ##3-10 used excessive force against him during a cell entry and defendant Gerdes forced him to kneel naked for as long as 90 minutes for the purpose of humiliating and demeaning him in violation of the Eighth Amendment. He was also allowed to proceed on his claims that defendants Charles Tubbs, Paul Westerhouse, Mr. Ourada and Bruce Sunde failed to train the other defendants.

Now plaintiff has filed a motion for appointment of counsel. In deciding whether to appoint counsel, I must first find that plaintiff has made reasonable efforts to find a lawyer on his own and has been unsuccessful or that he has been prevented from making such efforts. *Jackson v. County of McLean*, 953 F.2d 1070 (7th Cir. 1992). To show that he has made reasonable efforts to find a lawyer, plaintiff must give the court the names and

addresses of at least three lawyers who he has asked to represent him in this case and who turned him down. Plaintiff has complied with this requirement and I will address the merits of his motion for appointment of counsel.

In resolving a motion for appointment of counsel, a district court must consider both the complexity of the case and the pro se plaintiff's ability to litigate it himself. Pruitt v. Mote, 503 F.3d 647, 654-55 (7th Cir. 2007). With respect to the complexity of the case, there is nothing in the record to suggest that this case is factually or legally difficult. Plaintiff's claims are straightforward Eighth Amendment claims that defendants Supervisor Brandt, YC Kraft, YC Gerdes, and John Does ##3-10 used excessive force against him during a cell entry and defendant Gerdes forced him to kneel naked for as long as 90 minutes for the purpose of humiliating and demeaning him and that Charles Tubbs, Paul Westerhouse, Mr. Ourada and Bruce Sunde failed to train the other defendants. The law governing these claims is straightforward and was explained to plaintiff in the order entered in this case on November, 2008. Furthermore, plaintiff has personal knowledge of the circumstances surrounding his claims and he should already possess or be able to obtain through discovery relevant documentation he needs to prove his claim.

However, plaintiff asserts in his motion that he cannot represent himself because he suffers from multiple severe mental illnesses, namely Anxiety Disorder, Borderline Personality Disorder and Borderline Intellectual Functioning and that because he is in

segregation he has limited access to a law library. He also claims that he will have difficulty locating his witnesses who would testify at trial.

Although plaintiff contends that he has severe mental illnesses, the pleadings he has filed in this case have been well-written and easy to understand. At this time, I cannot find that plaintiff's mental illness are a reason to appoint him counsel.

Also plaintiff contends that because he has limited access to the law library and will have difficulty locating witnesses, he needs appointed counsel to help him with discovery, summary judgment and trial. However, to help plaintiff represent himself, this court instructs pro se litigants at a preliminary pretrial conference, which will be scheduled as soon as defendants file a responsive pleading, about how to use discovery techniques available to all litigants so that he can gather the evidence he needs to prove his claim. In addition, pro se litigants are provided a copy of this court's procedures for filing or opposing dispositive motions and for calling witnesses, both of which were written for the very purpose of helping pro se litigants understand how these matters work. Further, because it is too early to tell whether this case will survive dispositive motions, I will not consider whether plaintiff possesses the skills to present his case at trial. I cannot find at this early stage of the proceedings that plaintiff has shown he has any limitations that would interfere with his ability to represent himself in this matter.

ORDER

IT IS ORDERED that plaintiff's motion for appointment of counsel, dkt. #7, is DENIED.

Entered this 2<sup>nd</sup> day of December, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge