IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

WAR N. MARION,

ORDER

Plaintiff,

09-cv-723-bbc

v.

CHAD KELLER and
BENJAMIN NEUMAIER,

Defendants.

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

Plaintiff War Marion has filed another post verdict motion, which he calls "Motion for Renewing Motion for Judgment after Trial; Alternative for New Trial Pursuant to Fed. R. Civ. P. 50(b) and Rule 38(A), (B) and Rule 59(A)." This motion will be denied.

In this motion plaintiff identifies many perceived errors in the trial, although not all of his arguments are easy to follow. First, he repeats some of the arguments in the letter he filed with the court on March 29, 2011 regarding the credibility of defendants and their witnesses. Dkt. #131. However, as I explained to plaintiff in April 8, 2011 order dkt. #134, the credibility of witnesses is a matter for the jury to determine.

Second, he challenges the decision to grant judgment as a matter of law to defendant

Benjamin Neumaier under Fed. R. Civ. P. 50. I explained my reasons for that decision on the record at trial on March 21. Plaintiff has not shown that it was error to grant that motion.

Third, he challenges aspects of the special verdict form and instructions related to compensatory and punitive damages. I need not consider those arguments because the jury never reached the damages questions; it found that plaintiff had failed to prove by a preponderance of the evidence that defendant Keller had retaliated against plaintiff from filing a previous lawsuit.

Fourth, plaintiff says that he was prejudiced because defendants did not give him a copy of the deposition they took of prisoner Eric Long. Even if this is true, plaintiff was present at the Long's deposition; if plaintiff believed Long's testimony would be helpful, he was free to call Long as a witness at trial, but he declined to do so. In any event, the only testimony by Long that plaintiff discusses was cumulative of other testimony by plaintiff and Tony Merriweather.

Fifth, plaintiff challenges a number of evidentiary rulings, but he has not shown that any of these rulings are wrong or that they would have made any difference to the outcome of the case. Sixth, plaintiff says that he did not receive adequate discovery, but he does not identify with any specificity what documents he should have received or how they would have helped his case.

Finally, plaintiff says the court should have appointed counsel for him, but this argument fails because plaintiff never filed a motion for appointment of counsel. Courts do not have an independent obligation to insure that a pro se plaintiff is capable of representing himself at trial. Pruitt v. Mote, 503 F.3d 647, 656 (7th Cir. 2007). In any event, plaintiff has stated in another case that he is *more* capable of litigating his claims than appointed counsel. Marion v. Radtke, 07-cv-243-bbc, Plt.'s Motion, dkt. #41, at 2 ("counse[l] failed to use the plaintiff['s] strategic decisions [which were] more relevant than theirs"); id. at 3 (stating that counsel used "irrelevant discovery questions" and criticizing counsel for failing to use discovery questions proposed by plaintiff); id. ("counsel did not have a sufficient strategy to win the plaintiff's claim"). Plaintiff identified no reason in the context of this case to believe that he could not litigate the case on his own.

ORDER

IT IS ORDERED that plaintiff War Marion's "Motion for Renewing Motion for Judgment after Trial; Alternative for New Trial Pursuant to Fed. R. Civ. P. 50(b) and Rule

38(A), (B) and Rule 59(A)," dkt. #135, is DENIED.

Entered this 15th day of April, 2011.

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