

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

MARLON J. POWELL,

Plaintiff,

v.

MARIO GARCIA and JOHN SAMUELSON,

Defendants.

ORDER

10-cv-202-bbc

Plaintiff Marlon J. Powell is proceeding in this case on a claim that defendants Mario Garcia and John C. Samuelson violated his First Amendment right to free exercise of his religion and violated the Religious Land Use and Institutionalized Persons Act by preventing plaintiff from receiving meal bags during Ramadan in 2009. Now before the court is plaintiff's motion for appointment of counsel. Dkt. 12.

As a starting point, this court would appoint a lawyer to almost every pro se plaintiff if lawyers were available to take these cases. But they are not. Most lawyers do not have the time, the background or the desire to represent pro se plaintiffs in a pro bono capacity, and this court cannot make them. So the court only appoints counsel in cases where there is a demonstrated need, using the appropriate legal test.

As a first step, plaintiff must make a reasonable effort to find a lawyer on his own. *Jackson v. County of McLean*, 953 F.2d 1070 (7th Cir. 1992). Plaintiff has attached copies of letters from three attorneys who declined to represent him. This is an adequate showing, but it is only the first step.

Next, the 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). Plaintiff says that he is unable to afford counsel and that he cannot present evidence and cross examine witnesses at trial.

Although there is no doubt that a lawyer could help plaintiff in these ways, at this stage in the proceedings, he appears capable of representing himself. It is too early to determine whether a trial will be necessary in this case. At the August, 6, 2010 preliminary pretrial conference the court informed plaintiff how to use discovery techniques available to all litigants so that he could gather the evidence he needs to prove his claim. In addition, he has been 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.

Finally, as to the complexity of the case, there is nothing in the record to suggest that this case is factually or legally difficult. Plaintiff has personal knowledge of the relevant events and he should be able to fill in the gaps through discovery. In sum, I am not persuaded that plaintiff's case is so complex or his skills so lacking that appointment of counsel is warranted at this time. Plaintiff may renew his motion at a later stage in this lawsuit if he thinks things have changed enough to persuade the court to change its view.

ORDER

IT IS ORDERED that plaintiff's motion for appointment of counsel, dkt. 12 is DENIED.

Entered this 18th day of August, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge