

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

LAMONT D. WALKER,

Plaintiff,

v.

RYAN ARMSON, JAMES KOTTKA,
LIEUTENANT KELLER, DYLON RADTKE,
and DALIA SULIENE,

Defendants.

ORDER

10-cv-313-slc

Plaintiff, a prisoner at the Columbia Correctional Institution, is proceeding in this case on his claims that defendants Armson, Kottka, Keller, Radtke and Suliene were deliberately indifferent to his asthmatic condition and that defendant Keller used excessive force in violation of the Eighth Amendment. Now before the court is plaintiff's motion for appointment of counsel.

In determining whether to appoint counsel, I must find first 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, 1073 (7th Cir. 1992). To prove that he has made reasonable efforts to find a lawyer, plaintiff must give the court the names and addresses of at least three lawyers whom he asked to represent him in this case and who turned him down. Plaintiff has not complied with this preliminary step.

Moreover, even if plaintiff had shown that he made a reasonable effort, this case has not progressed sufficiently to allow me to determine the complexity of the issues and plaintiff's competence to prosecute his case, *Pruitt v. Mote*, 503 F.3d 647, 655 (7th Cir. 2007), so I will deny his motion.

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. Congress has appropriated funds for court-appointed counsel in criminal cases but it has not appropriated any funds for court-appointed counsel in civil cases like this one. Lawyers who accept appointments to represent pro se plaintiffs in civil cases can obtain compensation for their services only if they are successful and even then, the compensation may fall short of their time and effort. So the court only appoints counsel in cases where there is a demonstrated need, using the appropriate legal test.

In his motion, plaintiff says he requires the assistance of a lawyer because he has limited access to the law library and limited knowledge of the law and that he has very low level reading and math skills. Indeed, the Inmate Classification Report included with plaintiff's motion, reveals that "[h]is reading score is too low to enter into treatment programs."

However, at this stage of the proceedings it is simply too early to tell if plaintiff lacks the ability to litigate his case. So far, plaintiff's submissions have been and coherent and well organized and it appears that plaintiff is capable of following court instructions and making clear, intelligible arguments in his pleadings.

Turning to plaintiff's argument that he has limited knowledge of the law, plaintiff should know that he is in the same position as most other pro se litigants, almost none of which have legal training of any kind. Plaintiff has personal knowledge of the incidents surrounding his claims and the treatment he did or did not get. He should be able to obtain access to his own medical records to corroborate this information. In addition, at the preliminary pretrial

conference set for September 22, 2010, I will instruct plaintiff about how to use discovery techniques available to all litigants so that he can gather the evidence he needs to prove his claim. Plaintiff will have an opportunity to ask questions about this court's procedures and he will be sent a written copy of the procedures discussed at the conference, which were written for the very purpose of helping pro se litigants understand how these matters work. In denying plaintiff's motion, I stress that the rulings reflect my assessment of plaintiff's ability to prosecute the case at its current stage only; if at some point plaintiff's reading ability keeps him from litigating the case, he is free to write to the court for additional clarification about procedures or renew his motion for appointment of counsel.

ORDER

IT IS ORDERED that plaintiff's motion for appointment of counsel, dkt. 13, is DENIED without prejudice.

Entered this 20th day of September, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge