

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

LAMONT D. WALKER,

Plaintiff,

v.

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

Defendants.

ORDER

10-cv-313-slc

Plaintiff Lamont Walker is proceeding to trial on August 22, 2011 on his Eighth Amendment claim that defendants Armson and Kottka denied him his asthma inhaler when he was having breathing problems. Before the court is Walker's latest motion to appoint counsel. The court has denied Walker's four previous motions for appointment of counsel in this case.

In Walker's renewed motion, he says that the legal issues are becoming complex and that he does not know how to litigate the case. Walker also says he does not know how to disclose trial witnesses, and his list is due on July 25, 2011. There is no denying that going from discovery and motions practice to trial presents a whole new set of concerns for a non-lawyer representing himself in a civil rights lawsuit. Even so, the test doesn't change: the court must consider both the complexity of the case and Walker's ability to litigate it himself. *Pruitt v. Mote*, 503 F3d 647, 655 (7th Cir. 2007). I remind Walker that this isn't about the court stubbornly refusing to call on an available lawyer from a full bullpen; this court has a lot of prisoner lawsuits and very few lawyers who will accept pro bono appointments, so the court has to give careful consideration to each case to determine if there is a legal need to appoint counsel. Here, there is not, so I am denying Walker's motion again. He will be representing himself at trial.

Walker actually has done a pretty good job of representing himself so far. For example, he was able to follow this court's procedures for filing his motion for summary judgment. As for providing the court with his trial witness disclosures, this is simply a list of the witnesses that Walker intends to call at trial. If Walker intends to call witnesses at trial (besides himself), then he must refer to the trial preparation order sent to him on June 30, 2011 which explains the procedure for calling witnesses in trial. The bottom line is that in this case, Walker's lack of litigation experience is not a circumstance that requires appointment of counsel.

More to the point right now, Walker's case became much simpler when the court granted summary judgment on all but one of Walker's claims. The only issue that the jury needs to hear about and decide at the trial is whether defendants Armson and Kottka refused to give Walker his asthma inhaler when he asked for it while he was having breathing problems.

The morning of trial, the court will hold a short pretrial conference with Walker and the defendants to talk about how the case is going to be tried. Then we will pick the jury, with the court doing most of the talking, after which each side can cross off three people whom they don't want as jurors. Then Walker may make a short opening statement if he wishes, as a way to introduce himself to the jury and to give a preview about what the lawsuit is about and what kind of evidence they will hear. This can be stressful for people who aren't used to talking in public, but it's not hard to do, especially if Walker writes his opening statement in advance and practices it so that he can be clear to the jury.

As for evidence at trial, this is basically what is called a "swearing contest," with Walker and the defendants all telling the jury their differing version of events. Walker is capable of telling the jury what he claims happened based on his personal knowledge. Walker can explain

who he is, what his medical condition is, where he was housed, who the defendants were, what their jobs were, how the institution handled Walker's inhaler, what Walker's symptoms were that day, what he told the defendants about his symptoms and his need for his inhaler, and what the defendants did (and did not do) in response. Many prisoners write down ahead of time what they wish to say and then they practice it so that it is clearer for the jury to understand what Walker is claiming happened. Then the assistant attorney general will ask Walker questions relevant to the inhaler dispute, and Walker will have to answer those questions as best he can, based on what he knows and what he remembers. Although Walker certainly won't enjoy being cross-examined, it is something he can handle on his own without assistance from an attorney.

Then, if Walker wants to, he can call Armson and Kottka as his witnesses and ask them questions directly; or Walker can wait and let the assistant attorney call them as witnesses so they can tell their version of what happened. Everybody already knows that Armson and Kottka will testify that Walker never asked for his inhaler, but that if he had, they would have given it to him. After they tell the jury their version of what happened, Walker will have a chance to ask them questions on cross-examination to see if he can make them seem less believable as witnesses, or make their version of what happened seem less logical than Walker's version.

After both sides are done presenting evidence, Walker will get a chance to argue to the jury why they should believe his version of what happened and why this is a violation of his constitutional right to be free from deliberate indifference to his serious medical needs. The defendants will get to make their closing argument, then Walker may, if he wishes, close out with a short rebuttal argument. Because this case is so straightforward, it appears that Walker is capable of doing this himself.

On June 30, 2011, Walker was sent the trial preparation order in this case which explains these procedures to him in more detail.

In sum, I am persuaded from Walker's prosecution of this case so far that he is capable of representing himself at this trial about whether the defendants deliberately denied Walker's request to use his asthma inhaler.

ORDER

IT IS ORDERED that plaintiff Lamont Walker's renewed motion for appointment of counsel, dkt. 85, is DENIED.

Entered this 11th day of July, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge