

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

RAYMOND D. SHAW,

Plaintiff,

v.

STEVE HELGERSON and LORI ALSUM,

Defendants.

ORDER

Case No. 10-cv-598-slc

This case is set for trial on July 2, 2012. Plaintiff Raymond Shaw has filed a motion asking the court to issue subpoenas for two unincarcerated witnesses: 1) Dalia Suliene, a prison doctor; and 2) Cynthia Thorpe, a Regional Nursing Coordinator for the Department of Corrections who rendered a decision on plaintiff's grievance concerning plaintiff's alleged lack of medical care for his knee pain. Dkt. 95. Defendants object to plaintiff's request as to Thorpe, asserting that she has no relevant evidence to provide insofar as she is neither a defendant, medical expert or caregiver in this case. Dkt. 86.

I agree with defendants that Thorpe's testimony would at best be marginally relevant in this case. Thorpe is not a medical expert, so she cannot offer an opinion regarding plaintiff's condition or the treatment it required. Nor can Thorpe she offer an opinion whether defendants were deliberately indifferent to plaintiff's knee pain. Although F.R.Ev. 704(a) would not *forbid* such testimony, Thorpe has not been disclosed or qualified as an expert as required by F.R. Civ. Pro. 26(a)(2) and this court's March 17, 2011 preliminary pretrial conference order, *see* dkt. 13 at 5. Therefore, even if Thorpe had an opinion on this matter, plaintiff could not elicit this opinion at trial. Finally, plaintiff does not need to call Thorpe to establish that he was scheduled to see the doctor five days after Thorpe issued her decision on plaintiff's grievance, stating that plaintiff "should be scheduled soon" to see the doctor: plaintiff can put Thorpe's decision into evidence, or he can establish this fact through his own testimony or on cross-examination of the defendants.

More dispositive is the cost issue: even if this court were to give plaintiff the benefit of the doubt as to whether Thorpe could provide sufficiently relevant testimony at trial, I still would have to deny plaintiff's request to subpoena her because plaintiff states that he lacks the funds necessary to pay the witness fees up front. Unfortunately for plaintiff, district courts do not have statutory authority to advance or waive witness fees for indigent litigants. *McNeil v. Lowney*, 831 F.2d 1368, 1373 (7th Cir. 1987); 28 U.S.C. § 1915(d) (witnesses shall attend as in other cases . . ."); *see also Marozsan v. United States*, 90 F.3d 1284, 1290-91(7th Cir. 1996). Accordingly, plaintiff's request for the issuance of subpoenas must be denied.

With respect to Dr. Suliene, I note that defendants have identified her as one of their trial witnesses. Plaintiff should contact opposing counsel to discuss having Dr. Suliene testify during plaintiff's case-in-chief. As is this court's practice in such a circumstance, both sides would be able to elicit all of Dr. Suliene's testimony during her appearance so that she did not have to testify twice.

ORDER

IT IS ORDERED THAT plaintiff Raymond Shaw's motion for the issuance of subpoenas, dkt. 95, is DENIED.

Entered this 30th day of May, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge