

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

SHAUN MATZ,

Plaintiff,

v.

DR. VANDENBROOK, DR. KURT SCHWEBKE,
DR. NELSON, CPT. SEAN SALTER,
LT. LANE, LINDA FAIT, C.O. TRAVIS
BIDDLEMAN, C.O. VASOS and
C.O B. NEUMAIER,

Defendants.

ORDER

10-cv-668-slc¹

Plaintiff Shaun Matz, a prisoner currently located at the Wisconsin Resource Center, is proceeding on the following Eighth Amendment claims concerning his previous incarceration at the Columbia Correctional Institution: (1) defendants Dr. Vandebrook, C.O. Travis Biddleman, C.O. Vasos, C.O. B. Neumaier, Dr. Kurt Schwebke and Dr. Nelson knew that he was feeling suicidal, but failed to take any steps to help him; (2) defendants Lane and Salter placed him in segregation for 240 days for harming himself, even though a psychologist testified that he was mentally ill; and (3) defendants Lt. Lane and Linda Fait transferred him to the Green Bay Correctional Institution, even though they knew that he would harm himself if transferred there.

¹ I am assuming jurisdiction over this case for the purpose of issuing this order.

Now before the court is plaintiff's renewed motion for appointment of counsel. In a December 13, 2010 order, I noted that plaintiff lacks the ability to litigate this action himself. Pruitt v. Mote, 503 F.3d 647, 654-55 (7th Cir. 2007) (district court must consider both complexity of case and pro se plaintiff's ability to litigate it himself). However, given that plaintiff received a cash settlement in a previous litigation in this court, I concluded that there were three issues plaintiff needed to address before I could appoint him counsel in this case:

First, a plaintiff seeking appointment of counsel must show that he has made reasonable efforts to find a lawyer on his own. Id. at 654. Given that plaintiff has \$4200 available with which to pay a lawyer, plaintiff would have to show that he has contacted at least three attorneys and offered to pay them this amount to represent him. . . .

Second, plaintiff's trust fund account information indicates that on October 21, 2010, plaintiff paid \$5000 to attorney Robert N. Meyeroff as an "attorney retainer fee." This raises the question whether Meyeroff could represent plaintiff in this case. . . .

Third, it is unclear whether the settlement agreement in plaintiff's previous cases in this court allows him to litigate issues of past harm similar to those raised in those cases. It does not make sense to appoint counsel for plaintiff if the settlement agreement bars him from litigating the case. . . .

Dkt. #14.

Now plaintiff has submitted an affidavit in response, indicating that he offered three attorneys at least \$4200 to take the case and they turned him down, and he paid Meyeroff a retainer to represent him in a his criminal appeal, not a civil case. In addition, he has provided a copy of the settlement agreement concerning his previous litigation, which does not have a provision barring plaintiff from bringing the present lawsuit. Because plaintiff has

adequately responded to the issues raised by his previous filing, I conclude that his motion for appointment of counsel should be granted.

Accordingly, I will stay all further proceedings in this case temporarily in order to locate a lawyer who is willing to represent plaintiff. A lawyer accepting appointments in cases such as this take on the representation with no guarantee of compensation for his or her work. Plaintiff should be aware that in any case in which a party is represented by a lawyer, the court communicates only with counsel. Thus, once counsel is appointed, the court will no longer communicate with plaintiff directly about matters pertaining to this case. Plaintiff will be expected to communicate directly with his lawyer about any concerns and allow the lawyer to exercise his or her professional judgment to determine which matters are appropriate to bring to the court's attention and what motions and other documents are appropriate to file. Plaintiff will not have the right to require counsel to raise frivolous arguments or to follow every directive he makes. He should be prepared to accept his lawyer's strategic decisions even if he disagrees with some of them, and he should understand that it is unlikely that this court will appoint another lawyer to represent him should plaintiff choose not to work cooperatively with the first appointed lawyer.

ORDER

IT IS ORDERED that

1. Plaintiff's second motion for appointment of counsel, dkt. #10, is GRANTED.
2. Further proceedings in this case are STAYED pending appointment of counsel for

plaintiff. If I find counsel willing to represent plaintiff, I will advise the parties of that fact.

Soon thereafter, a status conference will be held to establish a new schedule for this case.

Entered this 18th day of January, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge