

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

RICHARD OATES,

Plaintiff,

v.

LORI DOEHLING, SHARON MOERCHEN,
DR. CHARLES HUIBREGTSE and
JOHN and JANE DOES 1-10,

Defendants.

ORDER

10-cv-816-bbc

Plaintiff was granted leave to proceed *in forma pauperis* in this case on his claims that defendants failed to provide him with adequate medical treatment for his back pain in violation of the Eighth Amendment. On March 22, 2011 defendants filed an answer raising various affirmative defenses. Now plaintiff has filed both a response to defendants' answer and a motion for appointment of counsel. *See* dks. 13 and 14.

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.

In deciding whether to appoint counsel, I must first find that plaintiff has made a reasonable effort to find a lawyer on his own and has been unsuccessful or that he has been prevented from making such an effort. *Jackson v. County of McLean*, 953 F.2d 1070 (7th Cir. 1992). To prove that he has made a reasonable effort to find a lawyer, plaintiff must give the court the names and addresses of at least three lawyers that he asked to represent him on the issues on which he has been allowed to proceed and who turned him down. Plaintiff has complied with this preliminary requirement.

Even though plaintiff has 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, 654-55 (7th Cir. 2007). In his motion, plaintiff says he requires the assistance of a lawyer because he has no legal experience, he has only limited access to the law library, and a lawyer would be better able to present evidence at trial. These are not adequate reasons to appoint counsel in this case. Although plaintiff may lack legal knowledge, he is in the same position as most other pro se litigants, almost none of which have legal training of any kind. As this case progresses, plaintiff will improve his knowledge of court procedure. To help him, this court instructs pro se litigants at a preliminary pretrial conference, which is scheduled for May 12, 2011, about how to use discovery techniques available to all litigants so that he can gather the evidence he needs to prove his claim. In addition, plaintiff will be provided with 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.

As for the complexity of plaintiff's case, nothing in the record suggests that it is factually or legally difficult. The law concerning plaintiff's claim was explained to him in this court's February 10, 2011 order. Plaintiff has personal knowledge of the circumstances surrounding his lawsuit. If he does not have copies of documents he needs to prove his claim, he can use discovery to obtain any additional information he needs to make his case.

Finally, there is no way of knowing yet if plaintiff's case will go to trial. Many cases are resolved before trial, either on dispositive motions or through settlement. If the case does go to trial, the court will issue an order about two months before the trial date describing how the court conducts a trial and explaining to the parties what written materials they are to submit before trial.

Turning to plaintiff's response to defendants' answer and affirmative defenses, plaintiff does not need to be concerned. Although defendants have raised certain affirmative defenses in their answer, defendants have not filed an actual motion to dismiss. Therefore, plaintiff does not need to reply to the answer. If defendants later file an actual motion to dismiss, then plaintiff will be allowed to respond to that motion. In the meantime, Rules 7(a) and 8(b)(6) of the Federal Rules of Civil Procedure work together to protect plaintiff from defendants' claims in the answer. Because of those rules, this court does not need plaintiff to reply to the answer; instead, the court automatically assumes that plaintiff has denied the factual statements and affirmative defenses raised in that answer.

ORDER

IT IS ORDERED that:

(1) Plaintiff's reply to the answer, dkt 13, will be placed in the court's file but will not be considered; and

(2) Plaintiff's motion for appointment of counsel, dkt. 14, is DENIED without prejudice.

Entered this 6th day of April, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge