

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

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LARRY RAY HOLMON,

Plaintiff,

v.

DR. LORIA LOYDA, JAN KRUEGER,  
DAVID BARNEY, PAT MCCULLOUGH,  
MARIO CANZIANI, CAROLYN CADA  
and DONNA DUNNETT,

Defendants.

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ORDER

11-cv-234-slc

Plaintiff Larry Holmon is proceeding in this case on his claims that defendants failed to provide him with adequate medical treatment in violation of the Eighth Amendment. Now before the court is plaintiff's motion for appointment of counsel.

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.

The next question is whether plaintiff meets the legal standard for appointment of counsel. Litigants in civil cases do not have a constitutional right to a lawyer; federal judges have

discretion to determine whether appointment of counsel is appropriate in a particular case. *Pruitt v. Mote*, 503 F.3d 647, 654, 656 (7th Cir. 2007). They exercise that discretion by determining from the record whether the legal and factual difficulty of the case exceeds the plaintiff's demonstrated ability to prosecute it. *Id.* at 655.

In his motion, plaintiff reports that he suffers from a mental disability, low IQ and is on several medications for medical illnesses. Plaintiff further states that he believes this to be a complex case, that he has limited knowledge of the law and he has relied on help from other patients to assist him in legal procedures. Additionally, plaintiff believes that a lawyer would be able to better conduct discovery and cross-examine witnesses at trial.

Taking all of these facts into account, it is too early to determine whether plaintiff will require appointed counsel. At this early stage of the lawsuit, it is not yet clear whether plaintiff's case will be decided on the merits or, for instance, whether a threshold procedural issue such as exhaustion of administrative remedies will decide the case. Notwithstanding plaintiff's report that he has no legal knowledge and suffers from mental illness, so far his filings been coherent and appropriately directed. Next, there is nothing in the record yet to suggest that plaintiff's case is factually or legally difficult or that he is incapable of gathering and presenting evidence to prove his claims. Although plaintiff may lack legal knowledge and skill, this is true for almost every pro se litigant.

Regarding plaintiff's assertions that he has relied on assistance from other patients, but things have changed, the fact that plaintiff may no longer be receiving legal help from fellow patients is not, by itself, an exceptional circumstance warranting appointment of counsel at this early stage. Plaintiff was instructed at the July 8, 2011 preliminary pretrial conference 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 has or will soon 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. As for the claimed complexity of this lawsuit, plaintiff has personal knowledge of what happened and he should already possess or be able to obtain through discovery relevant documentation he needs to prove his claims. If this 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.

Finally, plaintiff's mental health issues may be a concern but he has not yet shown that they have hampered his ability to pursue this lawsuit. But things change; as this case move forward, it may become clear that plaintiff meets the requirements for the appointment of a pro bono attorney appointment of counsel is warranted. So, plaintiff may renew his motion later. Right now, I am denying plaintiff's motion and he should try his hardest to litigate this lawsuit on his own.

ORDER

IT IS ORDERED that plaintiff's motion for appointment of counsel, dkt. 30 is DENIED without prejudice.

Entered this 18<sup>th</sup> day of July, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge