

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

DANIEL J. MITCHELL,

Plaintiff,

v.

JAKE KRUEGER and THOMAS CICHA,

Defendants.

ORDER

11-cv-279-wmc

Plaintiff Daniel Mitchell is proceeding in this case on his claims that defendants Jake Krueger and Thomas Cicha violated his rights under the Eighth Amendment by using excessive force against him while plaintiff was incarcerated at the Stanley Correctional Institution. 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 willingness 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 show that he has made reasonable efforts to find a lawyer, plaintiff must give the court the names and addresses of at least three lawyers that he has asked to represent him in this case and who turned him down. Plaintiff has attached to his motion two letters from attorneys who have declined to represent him and he avers that he and members of his family have

contacted numerous attorneys who have turned him down or not responded. Plaintiff asks the court to appoint Owen R. Wilson, one of the attorneys who declined to represent him, as counsel in this case. This isn't going to happen. Plaintiff may not realize that the court does not have the funds to pay the costs of representation in a case like his. Congress provides funds for court-appointed counsel only in criminal cases. There are no funds to pay court-appointed counsel in civil cases like this one. Lawyers who accept appointments to represent pro se plaintiffs in civil cases can obtain compensation for their services only if they are successful and even then, any compensation may fall short of their time and effort. A lawyer who accepts appointment does so on the understanding that he is donating his services. Therefore, this court does not draft attorneys to represent indigent pro se parties, it only assigns cases to attorneys who volunteer, "for the good of the public."

Next, a district court must consider both the complexity of the case and the pro se plaintiff's ability to litigate it himself. *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007). In his motion, plaintiff says that he is unable to afford counsel and that his imprisonment will greatly limit his ability to litigate his case. Specifically, plaintiff states that he has limited access to the law library and limited knowledge of the law. Also plaintiff says that he requires the assistance of a lawyer because a lawyer would be able to better investigate the claims and present evidence at trial. These are not sufficient reasons to appoint counsel. These handicaps are universal among pro se litigants. To help plaintiff in this regard, however, this court instructs pro se litigants at a preliminary pretrial conference, which will be scheduled as soon as defendants file a responsive pleading, 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, pro se

litigants are provided 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.

With respect to the complexity of the case, nothing in the record suggests that it is factually or legally difficult. The law concerning plaintiff's claim was explained to him in the September 2, 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.

In sum, I am not persuaded that plaintiff's case is so complex or his skills so lacking that appointment of counsel is warranted at this time. Therefore, plaintiff's motion will be denied without prejudice to plaintiff bringing it at a later stage in his lawsuit.

ORDER

IT IS ORDERED that plaintiff's motion for appointment of counsel, dkt. 13 is DENIED without prejudice.

Entered this 19th day of September, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge