

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

JOSE R. PADILLA,

Plaintiff,

v.

DR. GARY MAIER, DR. DALIA SULIENE
and C.O. TRAVIS BITTELMAN

Defendants.

ORDER

11-cv-425-bbc

Plaintiff Jose Padilla is proceeding in this action on his claims that defendants Maier and Suliene failed to provide him proper health care for his mental and physical needs and that defendant Bittleman used excessive force against him in violation of the Eighth Amendment. Now, plaintiff has filed a renewed 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.

When Judge Crabb denied plaintiff's first motion, she stated that it was too early to tell whether plaintiff's asserted mental health issues would prevent him from litigating this case, and that so far there was nothing in the record suggesting that the facts and law relevant to plaintiff's claims were so complicated that they exceeded plaintiff's demonstrated ability to prosecute those claims. *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007) . This situation has not changed. Plaintiff has personal knowledge of the incidents surrounding his claims and the treatment he did or did not get. He should be able to obtain access to his own medical and other records to corroborate this information. The law governing plaintiff's claims was explained to him in the

June 15, 2011 order granting him leave to proceed and the court's procedures for litigating this case were explained to him in the August 5, 2011 pretrial conference order.

Notwithstanding plaintiff's report that he has no legal knowledge and suffers from mental illness, so far his filings been coherent and appropriately directed. There is nothing in the record yet to suggest that plaintiff's case is factually or legally difficult or that his mental health issues have hampered his ability to gather and present evidence to prove his claims. Although plaintiff lacks legal knowledge and skill, this is true for almost every pro se litigant. I urge plaintiff to consult the pretrial conference order and if at some point he does not understand something that is happening in this case, he is free to write to the court for additional clarification about procedures.

Therefore, at this stage of the case, I conclude that plaintiff has not shown that he is incapable of prosecuting this case on his own. This ruling reflects my assessment of plaintiff's ability at *this* stage only; as this case moves forward, it may become clear that plaintiff meets the requirements for the appointment of a pro bono attorney, but for now plaintiff's motion is denied. Plaintiff is free to renew his motion at a later date.

Accordingly, IT IS ORDERED that plaintiff's second motion for appointment of counsel, dkt. 34, is DENIED without prejudice.

Entered this 5th day of October, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge