

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

CARL BARRETT,

Plaintiff,

v.

ORDER

12-cv-24-slc

LAVERNE WALLACE, SHAWN GALLINGER,
DONALD HANDS, KEVIN KALLAS, RICK RAEMISCH,
PETER HUIBREGTSE, LYNDIA SCHWANDT,
CRAIG TOM, MICHAEL HANFELD,
SCOTT RUEBIN-ASH, STACEY HOEM,
WILLIAM BROWN and LEBBEUS BROWN,

Defendants.

Plaintiff Carl Barrett is proceeding *in forma pauperis* in this case on his claims that defendants violated his rights under the Eighth Amendment. A preliminary pretrial conference was held on May 24, 2012 and dispositive motions are due March 1, 2013. Now plaintiff has filed a renewed motion for appointment of counsel. *See* dkt. 39.

On April 12, 2012, I denied plaintiff's first motion to appoint counsel because I concluded that it was too early to tell if plaintiff lacked the ability to litigate his case. I am denying this motion as well.

Unfortunately, this court does not have nearly enough lawyers available and willing to handle all of the prisoner cases filed in this district. If we did, then we would appoint an attorney in almost every case, but we get around 300 new pro se lawsuits every year, and there are only about 10 to 15 lawyers who are willing and qualified to accept a pro bono assignment to a prisoner civil rights lawsuit. As a result, the court has no choice but to limit appointment of counsel to the cases in which it is clear, under the appropriate test, that the plaintiff must have the assistance of a lawyer.

Plaintiff has provided rejection letters from lawyers that he asked to represent him on the issues on which he has been allowed to proceed and who turned him down. 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 states that he has serious mental health issues and has been relying on the assistance of a fellow inmate who can no longer help him. He also states that he knows nothing of the law and doesn't know how to conduct discovery or how to obtain an expert witness. Lastly, plaintiff states that he doesn't have enough money to conduct his lawsuit.

Plaintiff's concerns about his legal skill are shared by all persons who file cases without the assistance of a lawyer. Although plaintiff admits that he has received assistance from another inmate in preparing his filings thus far, his complaint and subsequent submissions are clear and contain information appropriate to the type of document filed. There is nothing in the record to suggest that plaintiff is incapable of gathering and presenting evidence to prove his claims. Although plaintiff may be lacking in legal knowledge and skill, this handicap is almost universal among pro se litigants.

The court will try to make litigating this case as easy for plaintiff as possible. The facts of this case are pretty straightforward, they are within plaintiff's personal knowledge, and the law governing plaintiff's claims was explained to him in the April 3, 2012 and August 28, 2012

orders granting him leave to proceed. In addition, in the May 25, 2012 pretrial conference order, plaintiff was provided a copy of the procedures to use to prove his claims, which were written for the very purpose of helping pro se litigants understand how federal civil cases work in this court. Plaintiff is encouraged to re-read the May 25, 2012 pretrial conference order. Dispositive motions are due by March 1, 2013. I encourage plaintiff to focus on preparing to meet this deadline. Going forward, if plaintiff has questions about aspects of this lawsuit, he may write to the court for clarification.

Turning to plaintiff's suggestion that counsel would better conduct discovery and retain an expert witness to support plaintiff's claims, helpful as this would be for plaintiff, it is not the court's practice to appoint counsel just so a pro se plaintiff will have the assistance of an expert witness and discovery conducted at counsel's expense. Plaintiff must make efforts on his own behalf to conduct discovery and to find an expert witness who would have been willing to provide evidence on plaintiff's behalf, either at a sharply reduced rate, or for no charge at all. Plaintiff's deadline for submitting his expert witness disclosures was January 14, 2013. I will give plaintiff an enlargement of time to submit his expert disclosures, to February 14, 2013.

Finally, plaintiff's mental health issues may present a legitimate concern, but he has not yet shown that they have affected his litigation of this case. As this case progresses, it might become clear that appointment of counsel is required, but this is not clear right now, so for now I will deny plaintiff's motion. Plaintiff is free to renew his motion at a later date.

ORDER

IT IS ORDERED that

1. Plaintiff Carl Barrett's renewed motion for appointment of counsel, dkt. 39, is DENIED without prejudice.

2. Plaintiff's deadline for submitting his expert witness disclosures is extended to February 15, 2013. Defendants' deadline for submitting their expert witness disclosures is extended to March 1, 2013.

Entered this 4th day of February, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge