

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

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CHARLES LEE HEGNA,

Plaintiff,

v.

DR. MARY SAUVEY, MORGAN BAILEY,  
SARA KROPP, DR. PATRICK MURPHY,  
DONNA LARSON, JUDY P. SMITH and  
LORI ALSUM,

Defendants.

ORDER

12-cv-184-bbc

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Plaintiff Charles Hegna is proceeding in this case on his claims that defendants failed to provide him with adequate medical treatment in violation of the Eighth Amendment and Wisconsin state law. 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 support of his motion, plaintiff says he has limited knowledge of the law and limited access to the law library. In addition, plaintiff believes this is a complex case requiring medical and other expert testimony and that this case will substantial discovery , including identifying, locating and interviewing nurses and other witness. Furthermore, plaintiff believes counsel to be necessary prevail in a “credibility contest” between himself and the defendants.

Plaintiff's case depends largely on the facts surrounding his claim. This court will apply the appropriate law to these facts, even if plaintiff cannot provide the law on his own or does not understand how the law applies to his facts. Although plaintiff may lack legal knowledge and have limited access to legal resources, the law governing plaintiff's claims was explained to him in the May 17, 2012 order granting him leave to proceed and plaintiff has personal knowledge of the circumstances surrounding his claims. Plaintiff should be able to obtain through discovery any necessary documentation he does not already have in his possession to prove his claims. With regard to plaintiff's concern about locating witnesses, he does not explain what difficulties he is having or if he has attempted to garner the information he seeks through the discovery process. I encourage plaintiff to re-read the pretrial conference order, which was written for the very purpose of helping pro se litigants understand how these matters work.

Although it may be more difficult for plaintiff to investigate his case and obtain expert testimony without the assistance of a lawyer, plaintiff has not shown that he has attempted to do either on his own and been unsuccessful. 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.

I note that plaintiff's filings have been well written and he has made clear, intelligent arguments in his submissions. Additionally, plaintiff's brief in support of his motion to appoint counsel cites extensively to case law and thus far plaintiff's filings have surpassed that of the average pro se litigant this appears before this court. At this early stage of the case, I conclude that plaintiff has not shown that he is incapable of prosecuting this case on his own and his motion for appointment of counsel will be denied.

#### ORDER

IT IS ORDERED that plaintiff Charles Henga's motion for appointment of counsel, dkt. 17 is DENIED without prejudice.

Entered this 25<sup>th</sup> day of July, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge