

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

CARL BARRETT,

Plaintiff,

v.

LAVERNE WALLACE and
SHAWN GALLINGER,

Defendants.

OPINION AND ORDER

12-cv-24-slc¹

In this civil action for monetary and injunctive relief, plaintiff Carl Barrett alleges that defendants Laverene Wallace and Shawn Gallinger failed to take measures to prevent him from harming himself, despite knowing that he was suicidal. In an order entered March 4, 2012, I granted plaintiff leave to proceed on his claim under the Eighth Amendment. The case is now before the court on plaintiff's motions for leave to amend his complaint, dkt. #9, for a stay of the screening process in order to file a second amended complaint, dkt. #19, for a preliminary injunction, dkt. #7, and for appointment of counsel, dkt. #11. I will grant plaintiff's motion to amend his complaint and deny his other motions.

¹For purposes of issuing this order, I am assuming jurisdiction over the case.

OPINION

A. Amended Complaint

Plaintiff has filed a motion to amend his complaint, dkt. #9, and a proposed first amended complaint, dkt. #10. He filed this motion before the initial complaint was served and therefore may amend the pleadings as a matter of course. Fed. R. Civ. P. 15(a)(1). The proposed amended complaint contains no new factual allegations that require any change to the April 4, 2012 order granting him leave to proceed. Dkt. #14. Accordingly, I will grant plaintiff's motion to amend the complaint.

B. Motion to Stay the Screening Process

On April 5, 2012, a day after entry of the order granting plaintiff leave to proceed, he sent a motion to stay the screening process to permit him time to file a second amended complaint. I will deny his motion as unnecessary. However, plaintiff may amend his complaint according to the procedure described in Rule 15.

C. Preliminary Injunction

Plaintiff's motion for preliminary injunction must be denied at this time because the motion does not comply with the court's procedures and because the requested injunction concerns individuals and facts unrelated to plaintiff's claims. First, plaintiff has not filed a set of proposed findings of facts, and I cannot piece together a coherent story from the materials he has submitted that might warrant a preliminary injunction. In his motion, he

asserts that Columbia Correctional Institution staff members are refusing to give him treatment. As evidence, he submitted an affidavit in which he avers that his mental illnesses cause him to have suicidal thoughts and that his repeated requests for treatment have been denied, but he does not specify whom he asked for treatment or when this person or persons denied his request. Dkt. #8. However, in support of his motion for appointment of counsel, plaintiff states that he is taking sertraline for depression currently. Dkt. #11. Moreover, he submitted a psychiatric report documenting his treatment history in the prison system up to March 2011. Dkt. #11-2. In the report, the reviewing psychiatrist concludes that plaintiffs' psychotic symptoms are likely malingered, reaches ambivalent conclusions about plaintiff's symptoms of depression and recommends ongoing medication for a mood disorder and monitoring for determining the validity of his self-reported symptoms of depression and for any increased risk of suicide. These materials suggest that plaintiff has received treatment for his mental health problems and is receiving medicine for his depression.

More important, even if plaintiff *had* submitted proposed findings of fact and evidence to support them, this court still would deny his motion for a preliminary injunction; I cannot grant injunctive relief against individuals who are not parties to this lawsuit or on claims unrelated to the claims on which plaintiff was allowed leave to proceed. In his amended complaint, plaintiff alleges that on October 4, 2010, while he was at the Wisconsin Secure Program Facility, defendants Wallace and Gallinger knew that he was suffering from a suicidal episode and failed to provide treatment, which led plaintiff to attempt to commit suicide. However, in his motion for a preliminary injunction, plaintiff

complains that he was transferred to the Columbia Correctional Institution in retaliation for filing this lawsuit and that prison officials at the Columbia Correctional Institution are refusing to give him mental health treatment. The alleged denial of treatment, the alleged retaliatory transfer and the denial of treatment at Columbia Correctional Institution are three distinct events. Moreover, the latter two events are alleged to have been caused by individuals who are not parties to this lawsuit.

When a plaintiff alleges that the defendants have retaliated against him for initiating a lawsuit, it is the policy of this court to require plaintiff to present his claim in a lawsuit separate from the one that allegedly provoked the retaliation. This prevents the complication of issues that often results from the ongoing accumulation of claims in one action. The court recognizes an exception to this policy only where it appears that the alleged retaliation would directly, physically impair the plaintiff's ability to prosecute his lawsuit. The transfer is not the sort of action that would hamper plaintiff's ability to prosecute this lawsuit.

Accordingly, I will deny plaintiff's motion for a preliminary injunction. If plaintiff wants to raise (1) a claim that prison officials at the Wisconsin Secure Program Facility retaliated against him for filing this lawsuit by transferring him or (2) a claim that prison officials at the Columbia Correctional Facility are refusing to treat his mental health problems, he will need to raise these two new claims in two separate lawsuits after he exhausts his administrative remedies as to each new claim.

D. Appointment of Counsel

Plaintiff has filed a motion for appointment of counsel, dkt. #11. 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 mental health problems, including depression and hearing voices and thoughts of self-harm, and that he is taking medication with strong side effects. Plaintiff says that he believes this is a complex case and that he has limited knowledge of the law and limited law library access. Plaintiff believes that a lawyer would be able to better conduct discovery, depose witnesses and secure expert witnesses testimony.

Although there is no doubt that a lawyer would be able to help plaintiff, at this stage of the proceedings it is simply too early to tell if plaintiff lacks the ability to litigate his case. Although plaintiff argues that he has no legal knowledge and suffers from mental illness, his filings have been clear and appropriately directed. Nothing in the record suggests 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 facts of this case are fairly straightforward, they are within plaintiff's personal knowledge and the law governing plaintiff's claims was explained to him in the April 4, 2012 order granting him leave to proceed. After the defendants have filed an answer, the court will schedule a preliminary pretrial conference, at which the magistrate judge will instruct plaintiff on how to gather any additional evidence he needs to prove his claims. In addition, at the pretrial conference, plaintiff will have an opportunity to ask questions about this court's procedures and he will be sent a written copy of the procedures, which were written for the very purpose of helping pro se litigants understand how federal civil cases work in this court. 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.

Finally, plaintiff's mental health problems 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 I will deny plaintiff's motion at this time. Plaintiff is free to renew his motion at a later date.

ORDER

IT IS ORDERED that

1. Plaintiff Carl Barrett's motion to amend his complaint, dkt. #9, is GRANTED.
2. Plaintiff's motion to stay the screening of his complaint, dkt. #19, is DENIED.
3. Plaintiff's motion for preliminary injunction, dkt. #7, is DENIED.
4. Plaintiff's motion for appointment of counsel, dkt. #11, is DENIED.

Entered this 12th day of April, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge