

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

GLENN T. TURNER,

Plaintiff,

v.

DR. BURTON COX, JR., and
JOLINDA WATERMAN,

Defendants.

ORDER

12-cv-502-bbc

In this case, plaintiff Glenn Turner is proceeding pro se and *in forma pauperis* on his claim that defendants violated his Eighth Amendment rights by refusing to treat plaintiff's h. pylori infection from 2005 to 2007. Plaintiff has filed a motion asking the court to appoint an h. pylori expert "to collect any statistical evidence of h. pylori outbreak at W.S.P.F. during the time periods between January 1, 2004 to June 30, 2007."

With a full understanding of what plaintiff is claiming, the court does not see the need to appoint an expert in this case. Rules 706 and 614, Fed. R. Ev., give district courts discretion to appoint *impartial* expert witnesses in a civil case to assist the *court* in evaluating complex scientific evidence. For instance, in *McKinney v. Anderson*, 924 F.2d 1500 (9th Cir. 1991), the court of appeals suggested that the district court might appoint an impartial expert to help the court evaluate the scientific evidence bearing on the plaintiff inmate's claim that his Eighth Amendment rights were violated as a result of his exposure to secondary cigarette smoke. In that instance, a court has the discretion to apportion the cost of the expert to one side. *Ledford v. Sullivan*, 105 F3d 354, 361 (7th Cir. 1997).

In this case, plaintiff is not asking the court to appoint an impartial expert to assist the court in the court's evaluation of his evidence and that of defendants. Instead, plaintiff is

asking the court to obtain expert testimony to assist him in presenting his claim rather than to assist the court in evaluating conflicting evidence. I am not persuaded that an expert of the sort plaintiff requests actually would be that useful to the resolution of his claims, but in any event, the funds to pay for his expert are not available under 28 U.S.C. § 1915 and are not compelled under Fed. R. Evid. 614 or 706(b). Therefore, I will deny plaintiff's request for the court's assistance in obtaining expert evidence.

ORDER

IT IS ORDERED that plaintiff Glenn Turner's request for a court appointed expert, dkt. #18, is DENIED.

Entered this 11th day of March, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

