

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

RANDY McCAA,

Plaintiff,

v.

MICHAEL MEISNER, JANEL NICKEL,
DONALD MORGAN, BRIAN FRANSON,
TONY ASHWORTH, COREY SABISH,
LESLIE BAIRD, PATRICK KUMKE,
RAYMOND MILLONIG, JR., TRAVIS BITTELMAN,
BRIAN NEUMAIER, MICHAEL RATA CZAK,
JOSEPH EBERT and JOHN DOE,

Defendants.

ORDER

12-cv-61-bbc

In an order dated October 22, 2012, I addressed several pending motions, including defendants' motion for summary judgment on the ground that plaintiff failed to exhaust his administrative remedies. I denied that motion without prejudice to defendants' filing a renewed motion no later than November 2, 2012. Dkt. #67. In addition, I stayed a decision on plaintiff's motion for appointment of counsel until the exhaustion issues were resolved. Finally, I noted that plaintiff had named a John Doe defendant, but he had not received a deadline for amending his complaint to identify that defendant by name. Using the description of the unnamed defendant in plaintiff's complaint, I directed counsel for defendant to attempt to identify the John Doe. In response to the October 22 order,

plaintiff has filed a motion to reconsider the decision giving defendants another opportunity to file a motion regarding exhaustion, dkt. #68, and defense counsel has filed a notice with the court in which he says that he is having difficulty identifying the John Doe. Dkt. #69.

I am denying plaintiff's motion for reconsideration as moot because defendants did not file a renewed motion for summary judgment as permitted by the court. Accordingly, they have waived an argument that plaintiff failed to exhaust his administrative remedies with respect to any of the claims in this case.

This means that plaintiff's motion for appointment of counsel is ripe for consideration. In light of the complexity of the case and plaintiff's alleged mental illness, I am persuaded that appointing counsel is appropriate in this case. Pruitt v. Mote, 503 F.3d 647, 654-55 (7th Cir. 2007) (district court must consider both complexity of case and pro se plaintiff's ability to litigate it himself). Accordingly, I will stay all further proceedings in this case temporarily in order to locate a lawyer who is willing to represent plaintiff. A lawyer accepting appointments in cases such as this takes on the representation with no guarantee of compensation for his or her work. Plaintiff should be aware that in any case in which a party is represented by a lawyer, the court communicates only with counsel. Thus, once counsel is appointed, the court will no longer communicate with plaintiff directly about matters pertaining to this case.

Plaintiff will be expected to communicate directly with his lawyer about any concerns and allow the lawyer to exercise his or her professional judgment to determine which matters are appropriate to bring to the court's attention and what motions and other documents are

appropriate to file. Plaintiff will not have the right to require counsel to raise frivolous arguments or to follow every directive he makes. He should be prepared to accept his lawyer's strategic decisions even if he disagrees with some of them, and he should understand that it is unlikely that this court will appoint another lawyer to represent him should plaintiff choose not to work cooperatively with the first appointed lawyer.

Because I am appointing counsel, I believe it makes sense to stay any further efforts to identify the John Doe defendant until after a lawyer takes up the case. At that time, counsel and plaintiff may decide to re-evaluate which claims to assert. If plaintiff and counsel decide to continue with the claim against the John Doe defendant, counsel may conduct discovery at that time to determine John Doe's real name.

ORDER

IT IS ORDERED that

1. Plaintiff Randy McCaa's motion for reconsideration, dkt. #68, is DENIED as moot.

2. Plaintiff's motion for appointment of counsel, dkt. #58, is GRANTED. Further proceedings in this case are STAYED pending appointment of counsel for plaintiff. If I find counsel willing to represent plaintiff, I will advise the parties of that fact. Soon thereafter,

a status conference will be held to establish a new schedule for this case.

Entered this 13th day of November, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge