

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

LEIGHTON D. LINDSEY,

Plaintiff,

v.

ORDER

12-cv-923-bbc

TANIA CLARK, DAVID GARDNER,
ROBERT HABLE, TROY HERMANS,
STACEY HOEM, MARY MILLER,
SARAH MASON, SCOTT RUBIN ASCH,
JENNIFER ANDERSON, JERRY SWEENEY,
ANDRES NAGLE, DEANNA THEIN,
MARLA WALTERS, KEVIN TRIPP,
JEFFREY KNUPPLE, BURTON COX,
JONI SHANNON-SHARPE,
BRIAN KOOL and MELANIE HARPER,

Defendants.

Plaintiff Leighton Lindsey is proceeding in this case on his claim that defendants violated his rights under the Eighth Amendment by failing to place him on a “no kneel” restriction. Now plaintiff has filed a letter dated March 14, 2013 written in crayon, in which he asks the court to “set an injunction on defendant Sarah Mason from making me use a crayon to do my legal work. . .” Dkt. #19. In addition, plaintiff has filed a motion for assistance in finding counsel to represent him in his case. I will construe plaintiff’s submission as a motion for preliminary injunction brought under Fed. R. Civ. P. 65(a).

As an initial matter, plaintiff’s motion for preliminary injunction does not comply with this court’s *Procedure To Be Followed On Motions For Injunctive Relief*, a copy of which is included with this order. Under these procedures, plaintiff must file with the court and serve

on defendants proposed findings of fact supporting his claim. He must support each of those proposed facts with a citation to the source of that proposition, such as to his pleadings, a prison document such as an order requiring him to use only a crayon to prepare filings for the court, or an affidavit. If he is basing his motion on facts within his own knowledge, he must prepare an affidavit setting out each fact and either swear to it before a notary public or sign it with a statement that he is doing so under the penalty of perjury. 28 U.S.C. § 1746.

Plaintiff's failure to follow the proper procedural rules is sufficient to deny plaintiff's motion for injunctive relief, but even if I were to consider plaintiff's submissions, I would still have to deny his motion because he has not shown how being required to use crayons is keeping him from prosecuting this lawsuit. This court routinely accepts pleadings written in crayon and will do so in this case if necessary. Plaintiff's recent pleadings have been written in ink, so I cannot assume that plaintiff is forced to use ink for all of the documents he sends to this court. Therefore, his motion for preliminary injunctive relief will be denied.

Turning to plaintiff's request that the court assist him in finding counsel to represent him in this case, I will deny the motion as premature. Recruitment of counsel is appropriate in those relatively few cases in which it appears from the record that the legal and factual difficulty of the case exceeds the plaintiff's demonstrated ability to prosecute it. Pruitt v. Mote, 503 F.3d 647, 654, 655 (7th Cir. 2007). It is too early to make that determination in this case.

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 submitted documentation showing that on February 20, 2013, March 12, 2013 and March 14, 2013, he completed disbursement requests for legal loan postage to be sent to three Wisconsin law firms. Therefore, plaintiff has made the necessary showing of having made a reasonable effort to find a lawyer on his own.

Even though plaintiff has shown that he made a reasonable effort, this case has not progressed sufficiently to allow me to determine the complexity of the issues and plaintiff's competence to prosecute his case. Pruitt, 503 F.3d at 654-55. He says he requires the assistance of a lawyer because he is in segregation, has limited legal experience and limited access to the law library. In addition, he says that counsel would be helpful to him in obtaining records and finding expert witnesses. Plaintiff's concerns about his legal skill are shared by all persons who file cases without the assistance of a lawyer. As this case progresses, plaintiff will improve his knowledge of court procedure. To help him, this court will be holding a preliminary pretrial conference by telephone on May 3, 2013, at which time the magistrate judge will explain to plaintiff how to use discovery techniques available

to all litigants so that he can gather the evidence he needs to prove his claim. In addition, plaintiff will be provided with a copy of this court's procedures for filing or opposing dispositive motions and for calling witnesses, both of which were written for the very purpose of helping pro se litigants understand how these matters work. Also at the May 3 conference, plaintiff will be given the opportunity to ask any questions he has about litigating his case.

With respect to the complexity of the case, it is too early to determine whether this case is factually or legally difficult. The law governing plaintiff's claims was explained to him in the order granting him leave to proceed and the facts of the case are within plaintiff's personal knowledge. Plaintiff should be able to obtain access to his own medical records to prove his claims.

Moreover, plaintiff's lawsuit is in its earliest stages. A date for trial has not yet been scheduled and there are many steps yet to take to move the case to resolution. In sum, at this early stage I conclude that plaintiff has not shown that he is incapable of prosecuting this case on his own in light of its complexity. His motion will be denied without prejudice to plaintiff's renewing his request at a later date.

ORDER

IT IS ORDERED that plaintiff Leighton Lindsey's motion for preliminary injunctive relief, *dk.* #19 is DENIED. Further, IT IS ORDERED that his motion for appointment of

counsel, dkt. #25, is DENIED without prejudice.

Entered this 24th day of April, 2013.

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