

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

---

CARL T. HARRIS,

Plaintiff,

v.

SGT. ERIC BILLINGTON, *et al.*,

Defendants.

---

ORDER

12-cv-437-wmc

Plaintiff Carl T. Harris is currently incarcerated by the Wisconsin Department of Corrections at the Waupun Correctional Institution. Plaintiff was granted leave to proceed *in forma pauperis* against two defendants (Billington and Russell) on the grounds that they failed to protect him from a serious risk of self-harm and against three other defendants (Schraufnagel, Grisdale and Garbelman) on the grounds that they acted with deliberate indifference to his need for mental health care, all in violation of the Eighth Amendment. (Dkt. #13.) Pending before the court is plaintiff's motion for the "appointment" of counsel. (Dkt. #26.) For the reasons set forth below, the court will deny the motion at this time, without prejudice to later reconsideration.

First, plaintiff should be aware that civil litigants have no constitutional or statutory right to the appointment of counsel. *E.g., Ray v. Wexford Health Sources, Inc.*, 706 F.3d 864, 866 (7th Cir. 2013); *Luttrell v. Nickel*, 129 F.3d 933, 936 (7th Cir. 1997). The court may exercise its discretion in determining whether to recruit counsel *pro bono* to assist an eligible plaintiff who proceeds under the federal *in forma pauperis* statute. *See* 28 U.S.C. § 1915(e)(1) ("The court may request an attorney to represent an indigent civil litigant *pro bono publico*."); *Luttrell*, 129 F.3d at 936. The court cannot, however, "appoint" counsel to

represent an indigent civil litigant; it merely has the discretion to recruit a volunteer in an appropriate case.

Because plaintiff has been found indigent previously in this case, the court will construe his motion to appoint counsel as one seeking the court's assistance in recruiting a volunteer under 28 U.S.C. § 1915(e)(1). Before deciding whether it is necessary to recruit counsel, however, a court must find that the plaintiff has made reasonable efforts to find a lawyer on his own and has been unsuccessful, or that he has been prevented from making such efforts. *Jackson v. County of McLean*, 953 F.2d 1070, 1072-73 (7th Cir. 1992). This generally requires plaintiff to provide the names and addresses of at least three attorneys to whom he has written seeking *pro bono* representation, but have turned him down. Plaintiff has provided rejection letters from two different law firms, as well as the name and address of one additional firm to which he has written. (See Mot. for Appt. of Counsel Exh. (dkt. #26-1).) Thus, it appears plaintiff has met the threshold requirement.

The next step is to determine “whether the difficulty of the case – factually and legally – exceeds the particular plaintiff’s capacity as a layperson to coherently present it to the judge or jury himself.” *Pruitt v. Mote*, 503 F.3d 647, 655 (7th Cir. 2007). A court may consider any or all of the following five factors when making this determination: (1) the merits of the claim for relief; (2) the ability of plaintiff to investigate crucial facts unaided; (3) whether the nature of the evidence indicates the truth will more likely be exposed when both sides have counsel; (4) the indigent’s capability to present the case; and (5) the complexity of the legal issues involved. *Jackson*, 953 F.2d at 1072.

Here, plaintiff alleges that he has limited access to the law library and limited knowledge of the law, but this is true of nearly all incarcerated *pro se* litigants and does not

demonstrate that *this case* presents extraordinary circumstances necessitating the assistance of trained legal counsel. The same is true of plaintiff's allegation that a trial in this case would likely involve conflicting testimony. Plaintiff also alleges that the issues involved in this case are "complex, and will require significant research and investigation." (Mot. for Appt. of Counsel (dkt. #26) ¶ 2.) This may be true, but the law governing failure-to-protect claims and deliberate indifference under the Eighth Amendment is well-established and was explained to plaintiff in the order granting him leave to proceed. (Dkt. # 13). Likewise, it appears that plaintiff's claims depend in large part on events for which he was present and about which he has personal knowledge. The extensive factual detail found in his pleadings also supports an inference that this case will not require a substantial amount of investigation.

Additional factors also weigh against the need for counsel in this case. Most notably, it is too early to know whether plaintiff's claims are meritorious. The case recently had a preliminary pretrial conference, where plaintiff was provided with a lengthy set of written instructions. (Dkt. # 21). According to the scheduling order, dispositive motions are not due until July and there is nothing otherwise pending before the court that requires plaintiff to respond. Thus far, plaintiff has done a more-than-able job of representing himself. His pleadings and other submissions are neatly prepared, well-organized and demonstrate a working understanding of the Federal Rules of Civil Procedure. The complaint also includes citations to controlling case law relevant to plaintiff's Eighth Amendment claims. Based on this record, it does not presently appear that the case exceeds plaintiff's capacity to litigate as a layperson.

Finally, although the court will deny plaintiff's motion for counsel at this time, the decision is without prejudice to reconsideration. In that respect, it is possible that the issues involved in this case are more complicated than they appear right now, or that more investigation and discovery than currently seems necessary will be required. Plaintiff may renew his motion if circumstances change and it becomes clear that this case exceeds his capacity as a layperson to litigate. Plaintiff should be aware, however, that the court receives many more requests for counsel than the small pool of available volunteers can accommodate. Only those cases presenting exceptional circumstances can be considered for court-assistance in recruiting a volunteer. Any future request for court assistance in locating a volunteer must include specific details explaining why counsel is needed or what counsel would be required to perform such that plaintiff is unable to continue litigating effectively on his own behalf.

ORDER

IT IS ORDERED that plaintiff Carl T. Harris' motion for counsel (dkt. #26) is DENIED without prejudice as to later reconsideration.

Entered this 3rd day of February, 2014.

BY THE COURT:

/s/

---

WILLIAM M. CONLEY  
District Judge