

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

KELSEY NELSON,

Plaintiff,

v.

ORDER

12-cv-573-wmc

JANE DOE 1, JANE DOE 2,
CAPTAIN FRANSON, and BRYAN
BARTOW,

Defendants.

Plaintiff Kelsey Nelson is incarcerated by the Wisconsin Department of Corrections at the Columbia Correctional Institution (“CCI”). In this case, plaintiff alleges that staff members employed at the Wisconsin Resource Center were deliberately indifferent to the risk that he would attempt suicide. He contends that other staff members at CCI deprived him of due process by refusing to allow him to call witnesses during a disciplinary hearing. Plaintiff was recently granted leave to proceed on claims under the Eighth and Fourteenth Amendments. (Dkt. #9.) Now pending before the court is plaintiff’s one-page motion to “appoint” counsel. (Dkt. #11.) For the reasons set forth briefly 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's motion states only that he has written to an unspecified number of lawyers seeking professional legal help. He provides no names, addresses or rejection letters from any of these lawyers. To that extent, plaintiff has failed to show that he has made "reasonable efforts" to find counsel on his own. For this reason, his motion must be denied.

Even assuming that plaintiff had met this threshold requirement, it would deny his motion due to the current state of this case. The relevant question in deciding whether to recruit counsel for an indigent civil litigant is "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 intelligence and that he lacks a full knowledge of the law. This is true of nearly all incarcerated *pro se* litigants, however, and does not demonstrate that *this case* presents extraordinary circumstances that would benefit from the assistance of trained legal counsel. Plaintiff also states that he is no longer incarcerated at the Wisconsin Resource Center, where the events underlying his Eighth Amendment claim took place. While this is true, it also appears that much of plaintiff's Eighth Amendment case will depend on the facts surrounding the events forming the basis of his complaint -- events for which he was present and with which he should therefore be personally familiar.

Other factors also weigh against the need for counsel at this time. It is too early in this case to know whether any of his claims are meritorious. The named defendants have only recently been served. Plaintiff will receive additional instructions, both orally and in writing, in connection with the preliminary pretrial conference that will be held after defendants have answered in this case. Additionally, the law governing plaintiff's claims is well-established and was explained to him at length in the order granting him leave to proceed. Plaintiff has done an able job representing himself thus far. His pleadings are legible, neatly organized and reflect at least some familiarity with the law underlying his 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 on his own behalf.

ORDER

IT IS ORDERED that plaintiff Kelsey Nelson's Motion to Appoint Counsel (dkt. #11) is DENIED without prejudice as to later reconsideration.

Entered this 3rd day of February, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge