IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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ARSENIO R. AKINS,

ORDER

Plaintiff,

15-cv-118-bbc

v.

DOCTOR MAIER, SERGEANT KRASOVIC and
CORRECTIONS OFFICER RIBBKE,

Defendants.

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Pro se prisoner Arsenio R. Akins is proceeding under 42 U.S.C. § 1983 on four claims: (1) defendant Dr. Maier was deliberately indifferent to plaintiff's serious medical needs when he abruptly stopped plaintiff's psychotropic medicine, which caused plaintiff to go into withdrawal; (2) defendant Dr. Maier negligently caused plaintiff harm by abruptly stopping the medicine; (3) defendants Sergeant Krasovic and Corrections Officer Ribbke were deliberately indifferent to plaintiff's serious medical needs when they delayed providing any medical care for his withdrawal symptoms; and (4) defendants Krasovic and Ribbke retaliated against plaintiff for filing grievances against them. Dkt. ##9, 21. In his complaint, plaintiff asked the court to "appoint" him counsel. Dkt. #1. I construed this request as one for assistance in recruiting counsel because I do not have the authority to appoint counsel in a civil case like this one. Nevertheless, I denied plaintiff's request because he had not shown that he had made efforts on his own to recruit counsel, Jackson v. County

of McLean, 953 F.2d 1070 (7th Cir. 1992), and because it was too early in the case to determine whether he was capable of representing himself, Pruitt v. Mote, 503 F.3d 647, 654, 655 (7th Cir. 2007). Dkt. #9. Now, plaintiff has renewed his motion for assistance in recruiting counsel. Dkt. #23. Although he has provided some evidence of his attempts to recruit counsel on his own and some evidence of his mental health problems, his motion will be denied because I cannot conclude that the complexity of this case exceeds his abilities.

As proof of his efforts to find counsel on his own, plaintiff has submitted three letters he wrote to lawyers and one letter he received in return. Dkt. #25, exh. ##1, 2. It is this court's general practice to require plaintiffs to provide letters from at least three lawyers who have declined to represent them. In the event the lawyer does not respond to the plaintiff's solicitation, it would be sufficient for plaintiff to provide a copy of the letter he wrote, a record of the date he sent the letter and a sworn declaration that the lawyer did not respond. In his affidavit, plaintiff states that he has "not received any responses from them." Dkt. #25, at 2. This clearly is not the case because a lawyer from Boardman and Clark wrote plaintiff in response to his letter dated May 20, 2015. Dkt. #25, exh. #2.

Although there may be many reasons why plaintiff has not received responses, it is important that the court verify that he has made diligent efforts to secure representation on his own. Accordingly, before I conclude that plaintiff has fulfilled this requirement, he must make at least one more attempt to recruit counsel. Specifically, plaintiff must write to at least two more lawyers and provide the court one of the following: (1) copies of the lawyers' responses or (2) copies of the letters plaintiff has written to the lawyers, the dates he sent

the letters and a sworn declaration that he has sent the letters with proper postage and has not received a response.

In addition, it is not clear that litigating these claims is beyond the scope of plaintiff's abilities. First, at this stage, plaintiff's allegations appear straightforward and, in any event, it is too early to determine their complexity. Plaintiff alleges that he was taken off his medicine abruptly and that correctional officers ignored his symptoms and retaliated against him for filing grievances on the incident. Although medical care claims have the potential to be complex and sometimes require expert testimony, at this stage in the proceedings, there has been little factual development, so it remains unclear whether plaintiff's claims will be so complex as to require legal assistance and expert testimony. Dewitt v. Corizon, Inc., 760 F.3d 654, 658 (7th Cir. 2014) (some medical care claims are "so complex and beyond the individual plaintiff's capacity as to warrant the recruitment of counsel"; others are not). Indeed, not every medical care case is beyond the scope of a pro se litigant's abilities and resources. Similarly, although a retaliation claim will be difficult to prove, it may require little discovery on plaintiff's part and be well within his resources to litigate.

Second, plaintiff says that his learning disability and mental illness prevent him from being able to litigate this case, but the proof he has submitted suggests otherwise. Plaintiff provides a test report and a psychiatric report as proof of his limited abilities. However, these reports do not help plaintiff. The test report appears to be a report of a standardized math test taken by plaintiff. Dkt. #25, exh. #3. According to the test, plaintiff scored above a seventh grade level in math. As an initial matter, it is not clear that plaintiff's scores

in math are the best indicator of his ability to litigate. In any event, plaintiff also says that he scored at the eighth grade level for reading. These scores do not show that plaintiff cannot comprehend the law, facts or procedures involved in his case. In addition, the psychiatric report is unhelpful. It is more than a year old and it suggests that plaintiff has the basic abilities necessary to litigate this case. The report states that although plaintiff is anxious and fearful about medical conditions, he is "oriented to time, place, and person"; "[h]is memory appears to be intact"; and he was able to provide his psychiatrist a detailed narrative about his feelings and recent behaviors. Dkt. #25, exh. #4. The report says he was declining in school as a result of his anxiety, but this does not mean that his abilities have decreased, only that his performance decreased.

So far, plaintiff's filings have been thorough, well-researched and persuasive. (Plaintiff says that other prisoners have helped him with his complaint and this motion, but his other filings have been just as well-written and argued. E.g., dkt. ## 14-18. Plaintiff's amended complaint was dismissed not because he failed to explain himself but rather because it showed that his proposed claims were unrelated to the claims on which he was granted leave to proceed.). At least until after the deadline for a motion for summary judgment on exhaustion of plaintiff's administrative remedies, I see no reason to recruit counsel. Responding to such motions is straightforward and often may be accomplished without the assistance of counsel.

Accordingly, plaintiff's motion will be denied. If after the deadline on a motion for summary judgment on exhaustion, it becomes apparent that the complexity of this case is

beyond plaintiff's abilities, he is free to renew his motion for assistance in recruiting counsel. If plaintiff files a motion before that date, it will be set aside and deemed denied if the court does not act on it within 30 days of its filing.

ORDER

IT IS ORDERED that plaintiff Arsenio R. Akins's renewed motion for assistance in recruiting counsel, dkt. #23, is DENIED without prejudice. If plaintiff files another motion for recruitment of counsel before the deadline on a motion for summary judgment on the exhaustion of plaintiff's administrative remedies (October 9, 2015) or before the court's ruling on such a motion, whichever comes later, plaintiff's motion will be set aside and deemed denied if the court does not act on it within 30 days of its filing.

Entered this 28th day of August, 2015.

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