

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

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DAVID CZAPIEWSKI,

ORDER

Plaintiff,

15-cv-208-bbc

v.

TODD RUSSELL, JOHN O'DONOVAN,  
WILLIAM POLLARD and ANTHONY MELI,

Defendants.  
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Plaintiff David Czapiewski, a prisoner at the Wisconsin Resource Center, is proceeding pro se on civil rights claims under the First, Eighth and Fourteenth Amendments. Plaintiff alleges that defendants Todd Russell, John O'Donovan, William Pollard and Anthony Meli punished him for expressing suicidal thoughts and ignored his requests for psychological assistance, causing him to harm himself. Plaintiff has filed a second motion for assistance in recruiting counsel.

When plaintiff filed his first motion for assistance in recruiting counsel, he demonstrated that he has made reasonable efforts to find a lawyer on his own. Dkt. # 22 at 1-2. Therefore, I will address the remaining question: "whether the difficulty of the case—factually and legally—exceeds [plaintiff's] capacity as a layperson to present it to the judge or jury himself." Pruitt v. Mote, 503 F.3d 647, 655 (7th Cir. 2007). I conclude that at this stage of the proceedings it does not.

First, plaintiff argues that this case is complex because he has alleged “several causes of action,” dkt. #27 at 3, and identified a “large number of defendants,” id. at 4. I disagree with this characterization of the case. I have allowed only two claims to proceed past screening: a deliberate indifference claim and a First Amendment retaliation claim. Neither one involves novel legal or factual issues and both are frequently litigated by pro se plaintiffs. Moreover, each defendants’ role in the circumstances that gave rise to plaintiff’s claims is well-defined by the allegations in the complaint. To the extent that there were “complex legal issues” in this case related to supervisory liability, those issues are no longer part of the lawsuit because I dismissed plaintiff’s “failure to train” claim. Dkt. #11 at 10. Finally, although state of mind issues may arise, the Court of Appeals for the Seventh Circuit has “reject[ed] [the] argument that state-of-mind questions are categorically too difficult for pro se litigants.” Olson v. Morgan, 750 F.3d 708, 712 (7th Cir. 2014).

Second, I must consider plaintiff’s apparent ability to litigate the case based on “whatever relevant evidence is available on the question.” Santiago v. Walls, 599 F.3d 749, 762 (7th Cir. 2010). This requires the court to “take into consideration the plaintiff’s literacy, communication skills, educational level, and litigation experience.” Pruitt, 503 F.3d at 655. Plaintiff argues that his medication causes him confusion, which “hinders him from strategizing and putting together dispositive motions.” However, as I mentioned in my order denying plaintiff’s first request for assistance in recruiting counsel, plaintiff’s filings have been articulate, thorough and well-reasoned. Moreover, plaintiff appears to have received at least some college education prior to his incarceration and has also had the assistance of

a jailhouse lawyer for some of his submissions. Although plaintiff's mental health evaluations indicate that some doctors have given him a diagnosis of mental illness, the evaluators also note that plaintiff has "frequently been viewed as manipulative and . . . malingering psychotic symptoms for a variety of purposes, including avoiding criminal consequences." In any event, even if plaintiff has bona fide mental illnesses, this has not interfered with his ability to litigate pretrial matters in this case so far.

Plaintiff next argues that he has been transferred to a different institution, which will prevent him from identifying witnesses and obtaining records that he needs to prove his claims. However, plaintiff's transfer only affects his ability to conduct an informal investigation; it does not materially limit his ability to conduct formal discovery. Plaintiff will have access to the same civil discovery tools that are available to every litigant and he has been provided information from the court on the use of these tools to obtain the information he has identified as necessary to prove his case. In particular, plaintiff should be able to identify witnesses and obtain his medical records, all incident reports and the officers' statements by issuing routine interrogatories and document requests. Olson, 750 F.3d at 712 ("Olson hasn't explained why the transfer affected his ability to litigate this case. . . . Olson didn't have to be at his old institution to file document requests and interrogatories.").

Finally, many of the hurdles plaintiff identifies are not unique to this case or his circumstances. For example, plaintiff states that he has requested a jury trial, "which requires much greater legal skill than [he] has or can develop." However, this is true for the vast

majority of prisoner litigants, and few are provided the assistance of a lawyer. In any event, it would be premature to recruit an attorney to assist plaintiff with trial when the case is not set for trial until the end of September 2016. Plaintiff's lack of legal training and his limited access to legal materials is also not an adequate reason for recruiting an attorney for plaintiff. Pruitt, 503 F.3d at 655 ("The question is not whether a lawyer would present the case more effectively than the pro se plaintiff; if that were the test, district judges would be required to request counsel for every indigent litigant.")(citations omitted).

#### ORDER

IT IS ORDERED that plaintiff David Czapiewski's motion for assistance in recruiting counsel, dkt. #27, is DENIED without prejudice.

Entered this 17th day of November, 2015.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge