

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

ARSENIO R. AKINS,

Plaintiff,

v.

CHARLES RIBBKE,

Defendant.

ORDER

15-cv-118-bbc

Plaintiff Arsenio R. Akins is proceeding on a single claim that defendant Charles Ribbke violated his First Amendment rights by refusing to provide him medical treatment in retaliation for plaintiff filing various inmate complaints against defendant and other prison guards. The case is set for trial on October 17, 2016. Plaintiff has filed a motion in which he requests that (1) his deposition be delayed so that he can review documents relevant to his case and (2) the court assist him in recruitment of counsel. I am denying both of these requests.

OPINION

First, it appears that plaintiff's request that his deposition be continued is moot. Plaintiff states that the deposition was scheduled for September 13, 2016. However, I did not receive his motion until September 15, 2016. I am therefore assuming that the deposition went forward as planned. In the event that the deposition has not already taken

place, I would still deny plaintiff's motion. Trial in this case is less than one month from now and defendants are entitled to depose plaintiff regarding his claims. There is not sufficient time to delay plaintiff's deposition so that he can prepare.

I am denying plaintiff's latest request for assistance in recruiting counsel as well. Although plaintiff has now shown that he has made an adequate effort to obtain counsel on his own, I am still not convinced that he is incapable of litigating this case without a lawyer. Plaintiff is proceeding on a single claim that defendant Ribbke denied him medical assistance on July 7, 2014 in retaliation for plaintiff's filing complaints against him and other prison guards. This is a narrow and straightforward claim that plaintiff should be capable of litigating on his own without an attorney. Plaintiff will need to prove that Ribbke denied his request for medical care and that he was motivated by the fact that plaintiff had filed complaints against him and other guards. Plaintiff can do this by testifying on his own behalf, calling witnesses that overheard the parties' July 7 conversation or by cross-examining defendant Ribbke. At the conclusion of the trial, the jury will decide whether they believe plaintiff's story or defendant's story.

In support of his motion, plaintiff argues as he has before that he has done almost nothing in this case; according to him, all filings, including the complaint, have been prepared and submitted by fellow inmates on his behalf. As I have noted in previous orders, however, the fact that fellow inmates have prepared most of his filings for him does not give rise to an inference that plaintiff is incapable of representing himself at trial. By eliciting the help of fellow inmates and using them to litigate all aspects of his case, plaintiff has

effectively prevented the court from making a decision regarding plaintiff's abilities. Without some insight into plaintiff's abilities, I cannot conclude that plaintiff is incapable of representing himself at trial. On the basis of the few filings for which plaintiff must have been responsible, such as his declarations and the numerous inmate complaints he filed against his prison guards, plaintiff does not come across as incapable of presenting his claim to a jury.

Finally, plaintiff asserts that he has "learning disorders," "ADHD" and a "low TABE reading score." However, despite having submitted at least six motions for assistance in recruiting counsel, he has not submitted any medical records or other evidence demonstrating that he suffers from these conditions. In fact, the medical records submitted by defendants in connection with their motion for summary judgment suggest otherwise. For example, plaintiff's psychiatrist's include treatment notes state that plaintiff has "no signs of adult ADHD." Health Service Records, dkt. #36-1, at 001. Moreover, even if plaintiff did suffer from these conditions, that alone would not mean he is entitled to assistance with the recruitment of counsel unless there was also some evidence that these conditions were so debilitating that he was incapable of presenting his case to the court on his own.

ORDER

IT IS ORDERED that plaintiff Arsenio R. Akins's motion to delay deposition and for

assistance in recruiting counsel, dkt. #83, is DENIED.

Entered this 21st day of September, 2016.

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