

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

LORENZO KYLES,

Plaintiff,

v.

LEHANAHA KRIZAN; RENEE ANDERSON;
R. STUVE; and JUDY BENTLY,

Defendants.

OPINION AND ORDER

17-cv-188-bbc

Pro se plaintiff Lorenzo Kyles is proceeding in this case on claims that defendants acted with deliberate indifference to his thumb injury, in violation of the Eighth Amendment. Now before the court is plaintiff's second motion for assistance in recruiting counsel. Dkt. #25. For the reasons below, I am denying the motion without prejudice.

OPINION

As plaintiff acknowledges in his motion, a pro se litigant does not have a right to counsel in a civil case, Olson v. Morgan, 750 F.3d 708, 711 (7th Cir. 2014), but a district court has discretion to assist pro se litigants in finding lawyers to represent them. Pruitt v. Mote, 503 F.3d 647, 649 (7th Cir. 2007). A party who wants assistance from the court in recruiting counsel must meet several requirements. Santiago v. Walls, 599 F.3d 749, 760-61 (7th Cir. 2010). First, he must show that he is unable to afford to hire his own lawyer. 28

U.S.C. § 1915(e)(1) (“The court may request an attorney to represent any person unable to afford counsel.”). Second, he must show that he made reasonable efforts on his own to find a lawyer to represent him. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). Finally, he must show that the legal and factual difficulty of the case exceeds his ability to prosecute it. Pruitt, 503 F.3d at 654-55.

In considering plaintiff’s first motion for assistance in recruiting counsel, I found that plaintiff had met only the first requirement because the court granted him leave to proceed in forma pauperis under 28 U.S.C. § 1915(e)(1), but I denied the motion because plaintiff had not shown that he made reasonable efforts on his own to find a lawyer to represent him and because it is the court’s general practice to defer decisions about counsel until after any issues about exhaustion of administrative remedies are resolved. Dkt. #10. Plaintiff has now submitted evidence that he contacted three lawyers about representing him in this case and none agreed to do so, dkt. #25, exhs. 1 and 3, and points out that defendants’ deadline for filing a motion to dismiss his case for failure to exhaust his administrative remedies has passed. Although plaintiff meets the first two requirements for receiving court assistance in recruiting counsel, I am denying plaintiff’s motion because he has not shown that the case is too difficult for him to litigate on his own.

Plaintiff is proceeding on claims related to the treatment and care of his thumb, which he injured playing basketball. Although plaintiff is concerned that his case is complex and involves legal and medical terms that he does not understand, his claims of deliberate indifference are relatively straightforward as compared with other types of medical care

claims and should require little discovery or investigation because plaintiff has personal knowledge of the most important facts and circumstances.

Although he argues that he will need an expert to provide the appropriate standard of care, it is too early to make that determination.

Plaintiff also states that another inmate has drafted all of his submissions in this case and that inmate is now too busy to help him. However, because plaintiff has not drafted or submitted anything on his own, I cannot assess his current writing or comprehension skills until plaintiff makes a good faith effort to litigate this case on his own.

At this stage, plaintiff's primary task should be obtaining the evidence he needs to prove his claims, including collecting medical and other prison records, declarations from witnesses and any other relevant documents or evidence. The Preliminary Pretrial Conference Order provides extensive information about how to conduct discovery and obtain evidence. Plaintiff should review that order again and, if he is confused about how to obtain evidence, he should write a letter to defendants' counsel explaining precisely which documents or other evidence he wants to obtain. If he is still confused after conferring with defendant's counsel, he should contact the court for help. Until plaintiff makes these efforts on his own, I will deny his request for assistance in recruiting counsel.

In sum, plaintiff's primary task in litigating this case will be to tell the court what happened, when, where and who was involved. Thus far, I have no basis for concluding that plaintiff is unable to do this. In deciding any future motion for summary judgment, the court will apply the appropriate law to the facts, even if plaintiff cannot find and provide the

law on his own or does not understand how the law applies to his facts. Until this case progresses further, I cannot conclude that plaintiff's case is so complex or that his skills are so poor that I should recruit a lawyer for him at this time. Accordingly, I am denying his motion without prejudice. If the issues involved in this case turn out to be more complicated than they appear right now, or if plaintiff is unable to proceed on his own as this case progresses, then plaintiff is free to renew his motion.

ORDER

IT IS ORDERED that plaintiff Lorenzo Kyles's motion for assistance in recruiting counsel, dkt. #25, is DENIED without prejudice.

Entered this 11th day of December, 2017.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge