

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

THOMAS L. SCHROEDER,

Plaintiff,

v.

TONY GOTH,
MARK THOMPSON and
JON RYAN PETERSON,

Defendants.

ORDER

03-C-0299-C

Plaintiff is proceeding pro se and in forma pauperis in this action. Now plaintiff has filed a motion for appointment of counsel. Plaintiff explains that he wants appointed counsel because “there are complicated facts in dispute which are substantial.” He contends that he will be disadvantaged in prosecuting his case by his limited access to legal materials, lack of a legal education or experience in civil litigation. In addition, plaintiff argues that counsel could “limit litigation to potentially meritorious issues” and conduct discovery of “certain types of evidence and other items that plaintiff believes defendants currently have” in their possession.

Before I can consider whether counsel should be appointed, I first must determine whether plaintiff made reasonable efforts to retain counsel and was unsuccessful or whether

he was precluded effectively from making such efforts. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). A plaintiff is considered to have made reasonable efforts to secure counsel if the plaintiff provides the court with the names and addresses of at least three lawyers that he has asked to represent him and who have declined to take his case. Plaintiff has complied with this requirement. Nevertheless, his motion for appointment of counsel will be denied.

The question whether to appoint counsel in civil cases is resolved by determining whether a pro se plaintiff is competent to represent him or herself given the complexity of the case, and if he is not, whether the presence of counsel would make a difference in the outcome of his lawsuit. Zarnes v. Rhodes, 64 F.3d 285 (7th Cir. 1995), citing Farmer v. Haas, 990 F.2d 319, 322 (7th Cir. 1993).

Even assuming that plaintiff is unskilled in the law and has little understanding of court proceedings, he is in the same position as most other pro se litigants. In this court, persons who represent themselves are given an opportunity early on in the lawsuit to ask questions they may have about court procedure. After the defendants filed a response to plaintiff's complaint, the magistrate judge held a preliminary pretrial conference. At the conference, the magistrate judge set a trial date and scheduled deadlines for gathering evidence, naming witnesses and filing certain types of motions. Also, the magistrate judge made himself available to answer any questions about procedure that plaintiff had. In addition, he sent plaintiff written confirmation of the deadlines that he set and a written

copy of various procedures discussed at the conference.

The issue plaintiff raises in his case is not complex. Plaintiff has been allowed to proceed on a claim that on November 15, 1999, defendant Thompson used excessive force against him and defendants Goth and Peterson failed to intervene to protect him from physical injury. The law governing excessive force claims is well-settled. It is explained in this court's order of July 9, 2003, allowing plaintiff to proceed in forma pauperis. Plaintiff's ability to succeed on his claim will rest largely upon the evidence plaintiff is able to obtain to prove his claims. In this regard, plaintiff should have personal knowledge of the incidents giving rise to his claim and his medical records should show the extent of his injuries.

Finally, although it may be difficult for plaintiff to prove his claim given the likelihood that defendant will tell a version of the facts that may differ from plaintiff's version, I am not convinced that a lawyer would make a difference in the outcome of this case.

In summary, I believe that plaintiff has the ability to prosecute this case given its modest complexity and that a lawyer would not make a difference in the outcome of the case.

ORDER

IT IS ORDERED that plaintiff's motion for the appointment of counsel is DENIED.

Entered this 16th day of December, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge