IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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TODD A. LODHOLZ,

Plaintiff,

v.

ORDER

03-C-350-C

WISCONSIN DEPARTMENT OF CORRECTIONS, STEPHEN M. PUCKETT, CORRECTIONS CORPORATION OF AMERICA, KAY HIGGINS, JOHN DOE(S),

Defendants.

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Plaintiff has moved the court for reconsideration of its decision to decline to exercise supplemental jurisdiction over his claim that defendant Corrections Corporation of America violated his rights under Oklahoma state law by accepting him as a prisoner in the Oklahoma facility. Nothing in plaintiff's motion for reconsideration persuades me that I erred in declining to exercise supplemental jurisdiction over plaintiff's state law claim. Accordingly, that motion will be denied.

Plaintiff requests also that the court appoint counsel to represent him in this matter. Before the court can consider a pro se plaintiff's motion for appointment of counsel, the

plaintiff must make a showing that he has made reasonable efforts to find a lawyer on his own. See Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). Plaintiff has not done that. However, his motion would have to be denied in any event.

The determination whether to appoint counsel is to be made by considering whether the plaintiff is competent to represent himself 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)).

Plaintiff appears fully competent to read, express his thoughts in writing and follow directions generally. He notes that he is unskilled in the law and has no understanding of court proceedings, but most pro se litigants are similarly disadvantaged. In this court, pro se litigants are provided written procedures to be followed if a motion for summary judgment is filed as well as procedures for calling witnesses to trial if the case goes to trial. In addition, a preliminary pretrial conference before the magistrate judge is held early on in the case at which time the pro se litigant can ask and have answered questions about procedure that the litigant might have.

Plaintiff's case is not particularly complex. He has been granted leave to proceed on his claim that defendants Puckett and Higgins and numerous John or Jane Doe defendants at the Corrections Corporation facility in Oklahoma failed to respond to his requests for

treatment to ameliorate pain caused by a pinched nerve. The law governing Eighth Amendment claims relating to medical treatment of prisoners is well settled. The question to be resolved is whether defendants were deliberately indifferent to plaintiff's serious medical needs or whether plaintiff was suffering such significant pain that the failure to treat him was uncivilized. See Estelle v. Gamble, 429 U.S. 97 (1976); Cooper v. Casey, 97 F.3d 914, 916 (7th Cir. 1996). Because the law is settled, plaintiff's ability to succeed on his claim will rest entirely upon the facts presented on a motion for summary judgment or at trial.

Plaintiff's case is the kind of case that may generate interest among members of the bar so it is important for plaintiff to try to find counsel on his own. Because the cost of medical experts is so great, most individuals suing for medical mistreatment of the serious nature required to state a claim under the Eighth Amendment seek out a lawyer who would be willing to take the case on a contingent fee basis. This means that if the plaintiff wins, the cost of the experts will be recovered and the lawyer will be paid for his or her time and expenses in pursuing the case. The contingent fee system serves as a reality check for litigants. If no lawyer with a background in medical mistreatment cases is willing to take plaintiff's case, chances are high that the case is one the lawyers have assessed either as not likely to succeed or as not likely to result in a damage award large enough to recoup the expense of prosecuting the case.

As noted earlier, plaintiff has not indicated that he has asked any lawyer to take his case. Once he begins this process, he will either find a lawyer willing to take the case or he will discover that no lawyer is willing to do so. It is difficult for lawyers to decline to take a case when the court asks them to do so. Therefore, in an ordinary medical care case such as this one, it is inappropriate for a court to select a lawyer to take the case without regard for his or her assessment of the risks of incurring the expense of the lawsuit against the probability of succeeding on the merits of the case. If plaintiff is to be represented by counsel, he will have to find counsel on his own. If he wishes, he may contact the Wisconsin State Bar Lawyer Referral and Information Service at P.O. Box 7158, Madison, Wisconsin, 53707, 1-800-362-8096, to obtain the names and phone numbers or addresses of lawyers whose practices include medical malpractice or Eighth Amendment cases. Plaintiff's motion for the appointment of counsel will be denied.

ORDER

IT IS ORDERED that plaintiff's motion for reconsideration of the July 16, 2003 decision to decline to exercise supplemental jurisdiction over his state law claim is DENIED.

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

Entered this 1st day of August, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge