

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

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DANE MARCUS BONNER,

Plaintiff,

v.

ST. CROIX COUNTY ADMINISTRATION,

Defendant.  
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ORDER

03-C-662-C

Plaintiff has moved for the appointment of counsel to represent him in this action. The motion will be denied.

First, 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 is capable of reading, expressing his thoughts in writing and following directions generally. Plaintiff notes that he is unskilled in the law. However, most pro se litigants are similarly disadvantaged. Plaintiff was recently sent a number of written procedures with the magistrate judge's preliminary pretrial conference order, and had an opportunity at that conference to ask questions about this court's practices and procedures. He remains free to write the court for additional clarification about procedures should the need arise.

Contrary to plaintiff's belief, his case is not particularly complex. He was allowed to proceed on two claims: 1) that he suffered serious skin problems after he was forced to use Nair to remove his facial hair; and 2) that he received constitutionally inadequate medical care for his injuries. These are straightforward claims. In his motion for appointment of counsel, plaintiff states that "the prevention of immediate medical care and access to the grievance procedure, once injured, by a large number of other inmates as well as the plaintiff makes this a factually complex case." However, this case is not about what happened to other inmates. It concerns plaintiff only, and the sole questions whether defendants were deliberately indifferent to his health and safety when they required him to use Nair on his face and refused to treat his injuries.

Plaintiff argues also that he wants an appointed lawyer because he needs to call a dermatology expert to testify about his need for medical care. However, plaintiff does not

explain why he cannot secure an expert on his own. Perhaps plaintiff cannot afford to pay an expert witness to testify on his behalf, but his poverty alone is not a reason justifying appointment of counsel. Plaintiff's case may well be the kind of case that is likely to 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 made reasonable efforts to find a lawyer on his own. 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 Eighth Amendment cases. Plaintiff's motion for the appointment of counsel will be denied.

ORDER

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

Entered this 26th day of April, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge