

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

JESSIE THOMAS # 263550,

Plaintiff,

v.

CORRECTIONS CORPORATION OF
AMERICA, PERCY PITZER,
OFFICER JOHN DOE #1,
OFFICER JOHN DOE #2 and
OFFICER JOHN DOE #3,

Defendants.

ORDER

03-C-44-C

On February 27, 2003, plaintiff was granted leave to proceed in forma pauperis on a claim that while he was an inmate at the Whiteville Correctional Facility in Whiteville, Tennessee, he was subjected to conditions of confinement that violated his Eighth Amendment rights. Now plaintiff has moved for appointment of counsel. The motion will be denied as premature.

Before the court can appoint counsel in a civil action such as this, it must find first that the plaintiff made a reasonable effort to retain counsel and was unsuccessful or that he was prevented from making such efforts. Jackson v. County of McLean, 953 F.2d 1070

(7th Cir. 1992). In this court, a plaintiff must list the names and addresses of at least three lawyers who declined to represent him before the court will find that he made reasonable efforts to secure counsel on his own. Plaintiff does not suggest that he has made an effort to find a lawyer on his own and that his efforts have failed.

Second, the court must consider 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). This case is too new to allow me to assess plaintiff's abilities. However, the potential outcome of the lawsuit is fairly apparent. Because plaintiff's Eighth Amendment claims arose in Tennessee and the defendants most likely reside there, this case appears highly vulnerable to early dismissal on a motion to dismiss for improper venue. The presence of counsel is not likely to make a difference to the outcome of such a motion. Therefore, plaintiff's motion will be denied without prejudice to plaintiff's renewing it at some later stage of the proceedings if the case survives a motion to dismiss.

ORDER

Plaintiff's motion for appointment of counsel is DENIED without prejudice to his

filing a new motion at a later stage of these proceedings.

Entered this 5th day of March, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge