IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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GREGORY J. CARMODY,

ORDER

Plaintiff,

03-C-61-C

v.

PHIL KINGSTON, TIM DOUMAS,
GREG GRAMS, SGT. SCHNELLNER,
MR. TOMAX, DR. BRIDGEWATER and
MS. SIEDSCHLAG,

Defendants.

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Plaintiff is a prisoner presently confined at the Wisconsin Resource Center in Winnebago, Wisconsin. On March 10, 2003, he was granted leave to proceed in forma pauperis in this action for monetary damages on a claim that around April 1, 2002, defendants violated his Eighth Amendment right to be free from cruel and unusual punishment when their actions and policies caused him to suffer an insulin shock coma and to receive inadequate medical care following the incident. Presently before the court is plaintiff's motion for appointment of counsel.

In support of his motion, plaintiff states that he has little knowledge of the law, no

G.E.D. or high school diploma and a history of severe mental illness that impairs his perception of reality. He states that he cannot afford to pay a lawyer to help him with his case or to hire expert witnesses or arrange witness depositions. He contends that he presently has limited access to legal materials and expects great difficulty locating and interviewing inmate eyewitnesses, discovering documentary evidence, and cross-examining witnesses whose testimony he expects to be in sharp contrast to his own. Also, plaintiff has submitted copies of letters from three lawyers who have declined to represent him.

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)).

Despite plaintiff's contention that he lacks a high school diploma, has a mental illness, and lacks experience in the law, he has addressed every factor to be considered in deciding a motion for appointment of counsel and has relayed his factual information clearly and in proper legal form. He appears competent to read, express his thoughts in writing and follow directions generally. Plaintiff's concern about the procedures for calling witnesses at trial or obtaining documentary evidence is premature; as his case progresses, he will receive information from the magistrate judge during a telephone conference about how to prepare

his case for trial or otherwise move it to resolution. At that time, he can ask any questions he has about proper procedure.

Despite plaintiff's view to the contrary, neither the facts of this case nor the law governing plaintiff's claim is particularly complex. Indeed, 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's treatment or lack of treatment was uncivilized. See Estelle v. Gamble, 429 U.S. 97 (1976); Cooper v. Casey, 97 F.3d 914, 916 (7th Cir. 1996). Plaintiff does not need to gather or cite to additional legal precedent. His ability to succeed on his claim will rest primarily upon the facts presented on a motion for summary judgment or at trial.

Ordinarily, a claim like plaintiff's is the kind of claim that is likely to generate interest among members of the bar. However, 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.

Plaintiff has shown that he has asked three lawyers to take his case, but two of the three lawyers are from the same law firm. If he continues his search, 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 ask 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.

Finally, plaintiff has indicated in his motion that he will have a new address after April 15, 2003. The address he provides appears to be a private address. Plaintiff's release from prison should make it far less difficult for him to search for a lawyer who may be willing to help him with his case.

ORDER

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

Entered this 11th day of April, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge