

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

FREDERICK ROGERS,

Plaintiff,

v.

C.O. HERWIG,

Defendant.

ORDER

04-C-977-C

Although this case is only three months old, plaintiff has moved for summary judgment. In an order dated May 5, 2005, I advised plaintiff that he would have only one opportunity to move for summary judgment. I suggested that if he had not gathered all the evidence he needed to prove his case, he might not wish to proceed on the motion at this time. I gave plaintiff two weeks to advise the court whether he was ready to go forward on the motion he had filed.

Now plaintiff has written in response to the order. In his response, plaintiff states that he is missing evidence he cannot obtain in any event, such as "D.O.C. policies and procedures based on health care, [defendant's] work history and misconducts, ICE's written on [defendant] showing a pattern of misconduct and violations." However, he states

expressly that he “stands by this motion for summary judgment” and “hope[s] that [the court] will accept [his] summary judgment motion without all the discovery needed” and “order that the remaining confidential security material become “in camera.” Finally, plaintiff asks for the third time for appointment of counsel.

Plaintiff’s third motion for the appointment of counsel will be denied. As I told plaintiff when I denied his second motion, his claim arises out of a single incident involving one defendant. He contends that defendant deliberately refused to give him his prescribed inhaler for an asthma attack on April 27, 2003, causing him to pass out after struggling for air for three hours. I told plaintiff that he has personal knowledge of the incident and access to medical records to show the treatment he needed following the asthma attack. In addition, I noted plaintiff’s extensive litigation history in this court and his substantial experience in civil procedure, discovery matters and defending against motions for summary judgment. Nothing in plaintiff’s third motion for appointment of counsel convinces me that plaintiff is not competent to prosecute a case of minor complexity such as this.

Plaintiff’s speculation that if he conducts discovery, he will be denied Department of Corrections policies and procedures and information from defendant’s personnel file is not a reason to appoint counsel for him. Indeed, plaintiff recognizes that if he were to seek discovery that defendant objects to making available to plaintiff, he could move the court to compel production or, alternatively, provide the materials for in camera inspection. But

plaintiff has decided not to seek the discovery through available means. Instead, he has made the decision to proceed with his motion for summary judgment without regard to the response this court might make to his motion for appointment of counsel or his request for in camera inspection of documents. Therefore, I will schedule briefing on plaintiff's motion for summary judgment. As I noted in this court's order of May 5, 2005, if defendant is not prepared to respond to plaintiff's motion by the date set below, I will give him an extension that will allow him the time he needs to conduct discovery.

ORDER

IT IS ORDERED that

1. Plaintiff's third motion for appointment of counsel is DENIED;
 2. Plaintiff's request for in camera inspection of documents is DENIED as premature;
- and
3. Defendant may have until June 17, 2005, in which to oppose plaintiff's motion

for summary judgment. Plaintiff may have until June 27, 2005, in which to serve and file a reply.

Entered this 17th day of May, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge