IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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AARON A. KREILKAMP,

Plaintiff,

v.

ROUNDY'S, INC.,

Defendant.

ORDER

05-C-425-C

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In an order dated August 8, 2005, I granted plaintiff leave to proceed in forma pauperis in this civil action for injunctive and monetary relief brought under Title VII, 42 U.S.C. § 2000e 2(a)(1). In the same order, I directed plaintiff to submit no later than August 22, 2005, a completed marshals service form and two completed summonses so that his complaint could be served on the defendant. I told plaintiff that if he failed to submit the completed marshals service and summons forms before August 22, 2005, or explain why he could not do so, I would dismiss his complaint for his failure to prosecute. Now plaintiff has filed a letter dated August 11, 2005, which I construe as a motion for appointment of counsel. The motion will be denied without prejudice.

In deciding whether to appoint counsel, I must first find that plaintiff has made

reasonable efforts to find a lawyer on his own and has been unsuccessful or that he has been prevented from making such efforts. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). Plaintiff does not say that he has been prevented from trying to find a lawyer on his own. To prove that he has made reasonable efforts to find a lawyer, plaintiff must give the court the names and addresses of at least three lawyers that he asked to represent him in this case and who turned him down.

Plaintiff should be aware that even if he is unsuccessful in finding a lawyer on his own, that does not mean that one will be appointed for him. This court has statutory authority to appoint counsel for indigent litigants when "exceptional circumstances" justify such appointments. Farmer v. Haas, 990 F.2d 319, 322 (7th Cir. 1993)(quoting with approval Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991)). The Court of Appeals for the Seventh Circuit will find such an appointment reasonable where the plaintiff's likely success on the merits would be substantially impaired by an inability to articulate his claims in light of the complexity of the legal issues involved. Id. In other words, the test is, "given the difficulty of the case, [does] the plaintiff appear to be competent to try it himself and, if not, would the presence of counsel [make] a difference in the outcome?" Id. The test is not whether a good lawyer would do a better job than the pro se litigant. Id. at 323; see also Luttrell v. Nickel, 129 F.3d 933, 936 (7th Cir. 1997).

Plaintiff states that he had a stroke last year in September and that he has trouble

thinking and talking when he is "under pressure." He states that although he has the capacity to understand what he has to do, he is "at times unable to do what [he] knows [he has] to [do]." I do not understand plaintiff to be contending that having to complete a Marshals Service and summons forms is the kind of "pressure" that renders him unable to think. (If plaintiff is making such a contention, he had best make that clear to the court before his deadline for submitting completed forms expires on August 22.) Rather, I understand plaintiff to be contending that if his case were to go to trial, he will be unable to think or speak competently on his own behalf. Although it may be that as the case progresses it will become apparent that this is an exceptional case warranting the appointment of counsel, until plaintiff attempts to find a lawyer on his own and fails, and until his case has progressed sufficiently to allow an evaluation of his abilities and the likely outcome of the lawsuit, I will deny his motion for appointment of counsel without prejudice to his renewing his request at a later time.

ORDER

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

without prejudice.

Entered this 15th day of August, 2005.

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