

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

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ROBERT E. ADSIT,

Plaintiff,

v.

ORDER

05-C-579-C

DR. ROMAN KAPLAN, GLEN  
HEINZL, THOMAS EDWARDS,  
JUDY SMITH, CATHERINE FERRY,  
CANDICE WARNER, JAMES GREER,  
SHARON ZUNKER and MATTHEW FRANK,

Respondents.  
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Plaintiff Robert E. Adsit, an inmate at the New Lisbon Correctional Institution, has been allowed to proceed in this case against two defendants on claims arising under the Eighth Amendment of the United States Constitution. The first claim is that while plaintiff was incarcerated at the Oshkosh Correctional Institution, defendant Judy Smith took no action in response to a letter plaintiff wrote to her telling her about penile pain he was experiencing and a doctor's refusal to give him medication for the pain "or even check what was wrong." The second claim is that defendant Glen Heinzl refused to prescribe plaintiff pain medication for four months while plaintiff waited for an appointment with a specialist

and prescribed plaintiff post-surgical medication with the intent of making plaintiff sick.

At the time he filed his complaint, plaintiff asked that counsel be appointed to help him with the case. That motion was denied as premature in an order dated November 30, 2005, because the court lacked the information necessary to determine whether his complaint stated a claim of a violation of his constitutional rights against any of the named defendants. Plaintiff renewed his motion in a January 5, 2006 submission to the court. That motion was denied in the court's January 19, 2006 order screening plaintiff's complaint, because it was still too early to determine whether one or more of plaintiff's claims would have to be dismissed early for his failure to exhaust his administrative remedies. Subsequently defendants answered plaintiff's complaint and the magistrate judge held a preliminary pretrial conference order at which deadlines were set for moving the case to resolution.

Now plaintiff has filed a third motion for appointment of counsel, in which he states that he has received the magistrate judge's preliminary pretrial conference order and does not understand "the package information" that was sent to him. He states that he does not read well and that inmates who had been helping him are no long able to do so.

Because plaintiff had not been granted leave to proceed with this action at the time he filed his first motion, I did not tell plaintiff that before a district court can decide whether to appoint him counsel, it must first find that he 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). Unfortunately, when I denied plaintiff's second motion, I overlooked this important step. Therefore, I must deny plaintiff's motion once again, because it is still premature. 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. At that point, the court must consider whether plaintiff is able to represent himself given the legal difficulty of the case, and if he is not, whether having a lawyer 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).

#### ORDER

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

as premature.

Entered this 14th day of April, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge