

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

ROBERT STANLEY DuROSS,

Plaintiff,

v.

LINDA KENNEDY, DR. DASGUPTA
and RICK KALSON,

Defendants.

ORDER

05-C-79-C

In this civil action, plaintiff Robert DuRoss is proceeding on his claims that defendants Linda Kennedy and Dr. Dasgupta violated his Eighth Amendment rights by denying him prescribed pain medication, that defendants Kennedy, Dasgupta and Rick Kalson violated his Eighth Amendment rights by denying him a second mattress for his back and that defendant Kennedy retaliated against him for filing an inmate grievance by issuing him a conduct report in violation of his First Amendment rights. Recently, the complaint was served on the defendants and Assistant Attorney General William Ramsey has entered an appearance as defendants' lawyer. Now, plaintiff has filed a letter dated April 26, 2005, which I construe as a motion for appointment of counsel.

The first problem with plaintiff's motion is that there is no indication that he served a copy of it on Mr. Ramsey. In this court's April 18, 2005 order granting plaintiff leave to proceed on his claims against the defendants, I cautioned told him that for the remainder of this lawsuit, he was to send defendants a copy of every paper or document that he files with the court. I told him that once he learned what lawyer would be representing the defendants, he was to serve the lawyer directly rather than the defendants. Moreover, I told him that the court will disregard any documents he submitted unless he showed on the court's copy that he sent a copy to the defendants or to defendants' attorney. Apparently, plaintiff overlooked these instructions in the April 18 order. In this one instance, I will make a copy of plaintiff's letter and send it to defense counsel with a copy of this order. In the future, however, I will hold plaintiff to compliance with the service requirements described above and will disregard any submission that is not properly served on opposing counsel.

The second problem with plaintiff's motion is that it is premature. 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. 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). This case is simply too new to allow the court to evaluate plaintiff's abilities or the likely outcome of the lawsuit. Therefore, the motion will be denied without prejudice to plaintiff's renewing his request at a later time.

ORDER

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

Entered this 4th day of May, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge