

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

MICHAEL LEE RAUNIO,

Plaintiff,

v.

STEPHANIE HAHN,

Defendant.

ORDER

06-C-163-C

In this case, plaintiff is proceeding against defendant on a single claim: that defendant deliberately failed to insure that plaintiff's prescribed medications and lower bunk restriction were made known to officials at the Marathon County jail when plaintiff was placed there for ten days in October 2005. Dispositive motions are scheduled to be filed no later than December 15, 2006. Now plaintiff has filed a motion for appointment of counsel.

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 and he has not provided this court with the names and addresses of at least three lawyers he

asked to represent him in this case and who turned him down, which is necessary to show that he has made a reasonable effort to find a lawyer for himself. Even if plaintiff had made such a showing, however, I would deny his motion.

Federal district courts are authorized by statute to appoint counsel for an indigent litigant when "exceptional circumstances" justify such an appointment. 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 Seventh Circuit will find such an appointment reasonable where 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, however, 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).

In Hudson v. McHugh, 148 F.3d 859, 862 (7th Cir. 1998), the court of appeals declined to find that it was an abuse of the court's discretion to deny the prisoner plaintiff's request for a lawyer to represent him on his claim that he had been denied epilepsy medication for 11 days, precipitating a seizure. The court of appeals acknowledged that although prisoner cases raising Eighth Amendment claims of denial of medical care almost

always present “tricky issues of state of mind and medical causation,” it was reasonable for the court to evaluate the plaintiff to be as competent as any other average pro se litigant to present his case. Id. at n.1.

The challenges that plaintiff faces in proving the facts of his case are the same challenges faced by every other pro se litigant claiming deliberate indifference to a serious medical need. Like the plaintiff in Hudson, plaintiff will have to prove defendant Hahn’s state of mind and the medical causation for his injury, which he has alleged was pain and discomfort and labored breathing. Such proof may well be difficult to come by. But the fact that matters of state of mind and medical causation are tricky to prove is not sufficient reason by itself to find that plaintiff’s case presents exceptional circumstances warranting appointment of counsel. If it were, it would be established law that district courts are not free to decline to appoint counsel for pro se litigants raising claims of denial of medical care.

Plaintiff argues that he needs a lawyer to help him with his case because “the issues . . . are complex” and require “significant research and investigation” which plaintiff will have difficulty doing while in prison. In addition, plaintiff suggests that there will be “conflicting testimony” that counsel would be better suited to handle.

Contrary to plaintiff’s belief, his claim is not complex. It is a straightforward Eighth Amendment claim of denial of medical care. The law governing this type of claim has been settled since Estelle v. Gamble, 429 U.S. 97, 103 (1976), and was explained to plaintiff in

the order granting him leave to proceed.

Although plaintiff suggests that he will have difficulty investigating the facts of his case while he is in prison, I see no reason why this would be true. He does not allege any impairments, such as an inability to read or write. Indeed, his submissions reveal that he is at least as capable as the average pro se litigant to present his claims. His written submissions are clear and reflect his ability to understand what this court has said in its previous orders and to respond appropriately.

Plaintiff has available to him all of the discovery tools described in the Federal Rules of Civil Procedure and was instructed in their use at the preliminary pretrial conference held on August 15, 2006. In addition, plaintiff has personal knowledge of the prescriptions he was required to take in October 2005 and the symptoms he experienced when he did not get all of his medications. If plaintiff's injury was such that his symptoms are not beyond a layperson's grasp, he will not need an expert witness. Gil v. Reed, 381 F.3d 649, 659 (7th Cir. 2004) (citing Ledford v. Sullivan, 105 F.3d 354, 360 (7th Cir. 1997)). Even if plaintiff were to require a medical expert, he suggests no reason why he could not seek out such a professional witness on his own. If plaintiff is requesting counsel with the idea that he will be able to shift to the lawyer the cost of hiring an expert, he should understand that regardless whether he is represented by counsel, his indigent status does not do away with his obligation to pay the costs of deposing witnesses or hiring experts to testify on his behalf.

In summary, I believe that plaintiff is capable of prosecuting this lawsuit and that having appointed counsel will not make a difference in the case's outcome.

ORDER

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

Entered this 9th day of November, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge