

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

CLAYTON MELLENDER,

Plaintiff,

ORDER

v.

06-C-547-C

DR. CHARLES LARSON and
RICHARD RAEMISCH,

Defendants.

This is a civil action for monetary relief. In his complaint, plaintiff alleges that while he was a prisoner at the Waupun Correctional Institution, defendant Dr. Larson was deliberately indifferent to his serious medical needs in violation of the Eighth Amendment when he reduced plaintiff's methadone without medical justification, took away his wheelchair, cane, lower bunk restriction, lower tier restriction, and extra blanket, an egg crate mattress and ice packs and failed to investigate the cause of plaintiff's seizures or treat them. Plaintiff alleges also that defendant Larson violated the Americans with Disabilities Act by refusing to provide him a cane and a wheelchair. Finally, plaintiff alleges that Richard Raemisch violated his Eighth Amendment right to medical care by failing to investigate

plaintiff's complaints about Dr. Larson. Since filing his lawsuit, plaintiff has been released from prison. Now before the court is plaintiff's "motion to stay all proceedings," which I construe to include a motion for appointment of counsel. Because it appears that plaintiff is not capable of defending against defendants' motion for summary judgment or otherwise presenting his case for a decision on the merits, I will grant plaintiff's motion.

Early in this case, plaintiff moved for a preliminary injunction seeking an order that defendants provide him an egg create mattress, wheelchair, ice pack, an increased dosage of methadone, a cane, an extra blanket, lower bunk and lower tier restrictions and a medical evaluation to determine the cause of his seizures. On the basis of the parties' evidentiary submissions, I concluded in an order dated December 6, 2006, that plaintiff had failed to show a likelihood of success on the merits of his claim that defendant Larson had violated his constitutional rights by refusing to increase the dosage of his methadone. However, as for the remaining claims, I found that there were significant factual disputes that could not be resolved without an evidentiary hearing. Such a hearing was scheduled initially for January 5, 2007 and later moved to January 9, 2007, at defendants' request.

Shortly before the evidentiary hearing was to be held, plaintiff moved the court for appointment of "standby" counsel to assist him at the hearing. He asserted that he had never before participated in or observed a civil hearing, that he suffered from memory problems and that he was ignorant of legal procedure. I denied plaintiff's motion on the

grounds that he would be assisted by the court in following appropriate procedures in presenting his evidence and that he had not shown that he was incapable of producing his own factual evidence. Following the evidentiary hearing, I ruled that plaintiff had not carried the burden of proof required to succeed on a preliminary injunction and I denied the motion.

On March 30, 2007, both parties moved for summary judgment. Defendants proposed 99 findings of fact in support of their motion and plaintiff offered 16 in support of his motion. On April 6, 2007, defendants filed a one-page, two-paragraph brief in opposition to plaintiff's motion that reads in its entirety:

The defendants, Dr. Charles Larson and Richard Raemisch, oppose the plaintiff's motion for summary judgment for the following reasons:

1. Plaintiff's motion does not conform to local rules.
2. For all the reasons and facts in support of the defendants' motion for summary judgment which is adopted and incorporated herein by reference in opposition to the plaintiff's motion for summary judgment.

Defendants did not file a response to plaintiff's proposed findings of fact as the court's procedures require. Plaintiff responded to defendants' submission on April 13, 2007, by filing a one-page reply stating,

1. Plaintiff's motion does not conform to local rules.

Defendants are obviously unfamiliar with the local rules for the Western District. Of the four local rules supplied by the court, none apply to plaintiff as he is proceeding pre-se. No rules specify format of motions either, although the Eastern District of Wisconsin does specify format, this court does not.

2. Will be addressed in plaintiff's response to defendants' motion for summary judgment.

In a separate document titled "Motion for Stay of all Proceeding," the document I have construed to include a motion for appointment of counsel, plaintiff declares under penalty of perjury that on April 8, 2007, he had a CAT scan of his brain that revealed he has a brain tumor. Doctors at the Veterans Hospital have scheduled him for multiple MRI's, neurological tests and consults over the next two months. Plaintiff believes that the results of these tests will arm him with additional evidence relevant to his claim that defendants Larson and Raemisch were deliberately indifferent to his serious medical needs when they failed to investigate his reports of seizures.

I understand plaintiff to be arguing that he cannot oppose defendants' motion for summary judgment or respond to the proposed findings of fact submitted by defendants because of the battery of testing he is scheduled to undergo and because the potential additional evidence he is likely to secure in the course of his post-incarceration treatment will alter the contours of his claim for damages and potentially increase his chances of proving deliberate indifference. I am persuaded that it will be difficult enough for plaintiff to attend to his own personal health needs over the next several weeks without taking on the task of

vigorously defending against defendants' motion for summary judgment and obtaining the evidence he needs to prove his case. I am persuaded that the parties and the court will benefit if plaintiff is represented by counsel. I note, however, that the court's record does not reveal a telephone number at which a lawyer might contact plaintiff and that plaintiff's recent submissions show his address to be "general delivery." Therefore, before I can engage in efforts to find a lawyer willing to represent plaintiff, plaintiff will have to advise the court where and how a lawyer might reach him. Once he does that, and the court succeeds in finding a lawyer willing to represent plaintiff, the case will be scheduled for a telephone conference with the magistrate judge to adjust the trial date and other deadlines, including plaintiff's deadline for opposing defendants' motion for summary judgment. In the meantime, all proceedings in this case will be stayed.

ORDER

IT IS ORDERED that plaintiff's motion for a stay of all proceedings, construed as a motion for appointment of counsel, is GRANTED.

Further, IT IS ORDERED that all proceedings in this case are STAYED until counsel has been appointed and another scheduling conference has been held to modify the trial date and other deadlines presently scheduled in the case.

Finally, IT IS ORDERED that plaintiff is to promptly provide the court with a telephone number or address at which he can be reached so that any lawyer appointed to represent him can consult with him in person.

Entered this 16th day of April, 2007.

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