

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

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GAIL KING,

Plaintiff,

v.

CITY OF MADISON,

Defendant.  
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ORDER

07-C-295-C

Plaintiff Gail King is proceeding pro se and in forma pauperis in this action on her claim that defendant City of Madison violated her rights under the Americans with Disabilities Act and the Rehabilitation Act by refusing to transfer her to a vacant position for which she was qualified when her disability rendered her unable to perform her prior job as a transit operator. At the time she filed her complaint, plaintiff moved for appointment of a lawyer to represent her. I denied her request in this court's July 11, 2007 order, because she had not made the prerequisite attempts to find a lawyer on her own. Now plaintiff has renewed her motion, which is accompanied by a showing that she has been unsuccessful in her attempts to locate a lawyer willing to represent her.

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 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, 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).

This is not a difficult case. Plaintiff admits in her complaint that her "uncontrolled diabetes" and "severe headaches and dizzy spells" prevented her from performing her job as a transit operator. That means that her only task is to prove that she was qualified for another position but that defendant refused failed to consider her for it. Plaintiff may have to undertake extensive discovery to gather the evidence to prove her claim. Nevertheless, plaintiff appears to be at least of ordinary intelligence. She has produced her own filings in this case to date, and they are clear and well-written. At the preliminary pretrial conference to be held in this case on August 28, 2007, plaintiff will be instructed in the use of discovery techniques available to her under the Federal Rules of Civil Procedure. There is no reason

to believe she will be unable to utilize them on her own.

In Gil v. Reed, 381 F.3d 649, 659 (7th Cir. 2004), the court of appeals reiterated a view it has held for at least 15 years that denying a request for appointment of counsel will constitute an abuse of discretion if it would result in fundamental unfairness infringing on the plaintiff's due process rights. It found such a fundamental unfairness to exist in Gil, because Gil's status as a Colombia national created serious language barrier problems for him that rendered him incapable of litigating his case in light of the complexities of applying state law and rules of evidence to his claims under the Federal Tort Claims Act and federal law and rules of evidence to his Eighth Amendment claim.

Plaintiff King is not similarly situated to Mr. Gil. Federal case law and evidentiary rules govern her claim. Plaintiff speaks, writes and understands English. She may find it difficult to gather the evidence she needs to prove her case, but the inherent difficulty in proving cases alleging violations of the Americans with Disabilities Act or the Rehabilitation Act is not sufficient by itself to require appointed counsel. If this were the case, there would be legal precedent mandating the appointment of counsel in all such cases. There is no such precedent, nor is there likely to be.

As helpful as it would be to plaintiff and to the court to have the assistance of counsel, I solicit such help only in rare instances in which the plaintiff is unusually handicapped in presenting her case or the issue raised is one of significance. Only a limited

number of lawyers are capable of representing indigent plaintiffs in civil cases and willing to do so without any compensation and without reimbursement for expenses. Federal courts and federal plaintiffs are not the only supplicants for help from this limited group.

According to the Wisconsin State Bar's website, <http://www.wisbar.org>, an estimated 467,943 Wisconsin residents are presently living below 100% of the federal poverty threshold. Approximately 220,000 of these persons need civil legal services each year. Approximately 63,800 of these individuals actually seek access to the legal system. 18,500 are assisted by legal services programs (a number that is dwindling because of budgetary cuts) and approximately 3,000 are assisted by Wisconsin lawyers participating in volunteer lawyer panels. The areas of need are multiple. Wisconsin's lawyers assume the costs of pro bono representation in civil cases raising claims of violations of the American's with Disability Act (especially employment discrimination, accessibility, specialized transportation, and right to community service) the Fair Housing Act, Medicaid and Medicare regulations, Social Security, Homestead Credit, and Title VII discrimination. They assist persons with claims of deinstitutionalization from mental health facilities; abuse and neglect in institutions, schools, and community settings; the right to free and appropriate education, access to Assistive Technology (communication devices, education aids); and insurance discrimination. They assist numerous others with claims relating to family law, child support, family preservation, subsidized housing, welfare, consumer

complaints, unemployment compensation and driver's license reinstatement. They litigate cases for persons living with HIV or AIDS on a variety of matters including, estate planning, guardianships, discrimination, bankruptcy and insurance disputes. They take on cases raising claims of unconstitutional conditions of confinement in Wisconsin's prisons and represent churches and other non-profit entities with their legal needs. Nevertheless, approximately 42,300 of those individuals seeking relief in Wisconsin's courts had to represent themselves. The Legal Services Corporation, which was created in 1974 to provide legal assistance to low-income Americans, estimates that four out of every five income-eligible people who apply for assistance are turned away because of the lack of resources to help them all. Legal Services Corporation, "Serving the Civil Legal Needs of Low-Income Americans: A Special Report to Congress" (2000). Simply put, there are not enough lawyers to meet the needs of all of the persons who want or need their help.

Plaintiff's case is not exceptional, nor are her circumstances. She is free to utilize the Wisconsin Self-Help Center at <http://www.wicourts.gov/services/public/selfhelp/info.htm> to obtain links to legal law libraries and federal law. In addition, she will be provided with this court's procedural rules to assist her in bringing or defending against a motion for summary judgment, and her motions and other papers will be construed generously by the court to determine whether they fit within the Federal Rules of Civil Procedure. If this case goes to trial, plaintiff will receive written instruction about the manner in which the trial will be

conducted and what she will be expected to prove. In sum, 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. Therefore, her motion for appointment of counsel will be denied.

ORDER

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

Entered this 27th day of August, 2007.

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