

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

ROBERT G. HARKEY,

Plaintiff,

ORDER

v.

07-C-332-C

BECKY DRESSLER, Manager, SCI, HSU;
PATTY SCHERREIKS, Registered Nurse, SCI, HSU;
and EMILY BOWE, Sgt., SCI Security Staff,

Defendants.

In an order entered in this case on July 9, 2007, I granted plaintiff leave to proceed in forma pauperis on his Eighth Amendment claims that 1) defendant Emily Bowe required him to work with “dirty germ-filled laundry” immediately after he had surgery and when the incision from the surgery was covered only by a small piece of tape; 2) defendant Scherreiks refused to take action after plaintiff told her he was being forced to work with dirty laundry; 3) defendant Scherreiks failed to insure that plaintiff would receive medication for a serious infection; and 4) defendant Dressler ignored plaintiff’s request for dentures. In the same order, I considered in depth plaintiff’s motion for appointment of counsel. I denied the motion after concluding that plaintiff appeared capable of prosecuting this lawsuit and that having appointed counsel will not make a difference in the case’s outcome. Now plaintiff

has moved for reconsideration of the decision to deny his request for counsel. That motion will be denied.

In support of his motion, plaintiff says that he has been placed in administrative segregation for sixteen days and will not have access to another inmate who has been helping him with this case. He contends that he has no knowledge about how to research case law to support his claims. In addition, he says that when he was a small child, he had a brain tumor that was treated with radiation. Because of those treatments and additional medications plaintiff presently takes for depression, he is concerned that memory difficulties and attention deficits will prevent him from trying his case. Plaintiff's motion for reconsideration will be denied.

Plaintiff's temporary separation from the inmate who has been helping him in this action is not a ground for appointing plaintiff counsel. Moreover, the law governing plaintiff's claims was described in this court's July 9 order. It is long-standing and clear cut. Plaintiff does not need to conduct additional research. His job is to gather the evidence he needs to prove his claims. Plaintiff has suggested no reason he is incapable of doing that, even with a poor memory and attention deficit.

Even if I believed that plaintiff was incapable of prosecuting his case in light of its level of difficulty, I would not appoint counsel for plaintiff because I have no reason to believe at this early stage that having a lawyer will make a difference in the outcome of

plaintiff's case. As plaintiff is aware, the standard governing the sufficiency of pleadings is extremely generous. He has alleged only minimally sufficient facts to state his claims under the Eighth Amendment. However, I have serious doubts whether he will be able to succeed on any of his claims. It will be an uphill battle for plaintiff to prove that the defendants Bowe and Scherreiks deliberately exposed him to a serious risk of harm by requiring him to work in the laundry following his "umbilical hernia repair" surgery, that defendant Scherreiks intended him harm when she failed to insure he received his medication for his infection, and that his dental condition was so serious that defendant's Dressler's failure to provide him with dentures rises to the level of an Eighth Amendment violation. If evidence exists for plaintiff to prove his claims, I believe plaintiff is capable of gathering it. If it does not, having a lawyer will make no difference in the outcome of the case.

ORDER

IT IS ORDERED that plaintiff's motion for reconsideration of this court's decision

to deny his request for appointment of counsel is DENIED.

Entered this 27th day of August, 2007.

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