IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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DENNIS STRONG,

Plaintiff,

v.

STATE OF WISCONSIN, FRED SIGGELKOW,
GREG VAN RYBROEK, DAVID POLLOCK and
KELLY VITENSE,

Defendants.

ORDER

07-cv-86-bbc

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Plaintiff has moved for appointment of a guardian ad litem under Fed. R. Civ. P. 17(c), which requires courts to "appoint a guardian ad litem – or issue another appropriate order – to protect a minor or incompetent person who is unrepresented in an action." In support of his motion, plaintiff submitted his own affidavit and the affidavit of his lawyer, Paul Kinne. Plaintiff states in his affidavit that he "told" his lawyer that he does not "feel" competent "to consistently make decisions about my case" and that he "need[s]" someone to "help [him] make decisions." Kinne states that plaintiff "has a history of mental illness" and was involuntarily committed at the Mendota Mental Health Institute on multiple occasions.

As an initial matter, it is not clear what purpose plaintiff believes a guardian ad litem would serve. Plaintiff submitted with his motion a document dated April 16, 2008 in which he gave Richard Bollenbeck power of attorney with respect to all legal decisions. Thus, it appears that plaintiff already has someone to "help [him] make decisions," at least with respect to this lawsuit. Appointing Bollenbeck as a guardian would change little except to require the court to pay for Bollenbeck's services, which is not an adequate ground for appointment.

In any event, Rule 17(c) does not apply because plaintiff is represented by counsel and there has been no suggestion that his representation is inadequate. Matter of Chicago, Rock Island and Pacific Rail Co., 788 F.2d 1280, 1282 (7th Cir. 1986) ("If he is a party and represented, the appointment of a guardian is not required, provided the representation is adequate.") Even more important, plaintiff has made no showing that he is actually incompetent. Plaintiff has not been declared incompetent by the state; he has not submitted the opinion of an expert that a guardian is necessary; and he has adduced no evidence that would show that his need for a guardian would be apparent even to a lay person. An averment that plaintiff told his lawyer he doubts his ability to make decisions is simply not enough to trigger the extraordinary measure of appointing a guardian.

ORDER

IT IS ORDERED that plaintiff Dennis Strong's motion for appointment of a guardian

ad litem is DENIED.

Entered this 21st day of April, 2008.

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