

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

SHAHEED TAALIB'DIN MADYUN,

ORDER

Petitioner,

08-cv-32-bbc

v.

KIRBY LINJER,

Respondent.

This case is proceeding on plaintiff Shaheed Madyun's claim that defendant Kirby Linjer violated plaintiff's Eighth Amendment rights by prolonging his exposure to smoke from a fire another prisoner set in plaintiff's unit. Trial is scheduled for October 22, 2008. Now plaintiff has moved for appointment of standby counsel to assist him at trial. I will deny this motion for the reasons stated below.

Plaintiff's motion must be denied because it fails with regard to several issues. First, in deciding whether to appoint counsel, I must 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). To show that he has made reasonable efforts to find a lawyer, plaintiff must give the court the names and addresses of at least three lawyers that he has asked to represent him in this case and who turned him down. This is not the first time plaintiff has moved for appointment of counsel. Earlier in this

litigation, before this case was severed from plaintiff's original oversized complaint, plaintiff's motion for appointment of counsel was denied in part because he failed to show he made reasonable efforts to find a lawyer. In the over 14 months since that order, although plaintiff claims he has "previously on two occasions demonstrated that he has sought out over 25 attorneys," he has still failed to give the court the names and addresses of at least three lawyers that he has asked to represent him in this case and who turned him down.

Next, although this case has been severed from the original complaint for over eight months, plaintiff did not move for appointment of counsel in this case until 12 days before trial. Granting this last-minute motion would surely force this court to move the trial date back in order to give new counsel time to prepare, resulting in undue delay.

Finally, even had plaintiff filed his motion for appointment of counsel well in advance of trial and had submitted the names of three lawyers he has asked to represent him and who turned him down, I would still deny his motion for appointment of counsel. The test for determining whether to appoint counsel is two-fold. "[T]he question is whether the difficulty of the case—factually and legally—exceeds the particular plaintiff's capacity as a layperson to coherently present it to the judge or jury himself. *Pruitt v. Mote*, 503 F.3d 647, 655 (7th Cir. 2007). In his motion, plaintiff lists the following reasons counsel should be appointed: the seriousness of the claim, the necessity to present a medical expert witness or to cross-examine defendant's medical witnesses, the complexity of the case, and the difficulty of plaintiff to prosecute the case because defendant violated discovery rules and the court incorrectly ruled on

discovery issues.

Regarding the seriousness and complexity of the claim, as well as the necessity of medical expert witness testimony, I conclude appointed counsel is not necessary because 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. Although it is true that prisoner cases raising Eighth Amendment claims of denial of medical care almost always present “tricky issues of state of mind and medical causation,” *Hudson v. McHugh*, 148 F.3d 859, 862, n.1 (7th Cir. 1998), this is not sufficient reason by itself to find that plaintiff’s case presents exceptional circumstances warranting appointment of counsel. Plaintiff’s claim is a straightforward Eighth Amendment claim that defendant was deliberately indifferent to his serious medical need. Like the plaintiff in *Hudson*, plaintiff will have to prove defendants’ state of mind and the medical causation for the injuries he suffered, if any. 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 by itself an exceptional circumstance warranting appointment of counsel. If this obstacle alone were enough to require appointed counsel, then counsel would be mandated in such cases under the law. They are not. In *Pruitt*, the court of appeals emphasized that there are no “categorical rules regarding recruitment of counsel in particular types of cases.” 503 F.3d at 656. A judge has unfettered discretion to deny counsel if, in the opinion of the judge, the plaintiff has demonstrated that he is capable of litigating his case on his own. In this case, plaintiff has demonstrated he is capable of litigating his case. While plaintiff has made things

more difficult for this court by continually filing multi-captioned documents, plaintiff's submissions have generally been well written and easy to understand, and they have indicated he has an understanding of the issues present in an Eighth Amendment deliberate indifference case. Plaintiff's argument regarding the discovery process is also unpersuasive. Plaintiff's disagreements with the court's rulings on discovery motions is irrelevant to his need for counsel at trial. While plaintiff appears to argue that he needs an attorney to assist him with ongoing discovery, as stated above, this case is scheduled for trial on October 22, 2008, and the time for discovery has passed. Even if I appointed counsel in this case, standby counsel at trial would not resolve any of plaintiff's complaints regarding the already-finished discovery process. Therefore I conclude plaintiff's motion for appointment of counsel should be denied.

As a final issue, I note that petitioner continues to refer to the trial date as being October 23, 2008. To insure that there is no confusion, I am restating to both parties that the trial is set for Wednesday, October 22, 2008.

ORDER

IT IS ORDERED that plaintiff Shaheed Madyun's motion for appointment of standby

counsel, dkt. #95, is DENIED.

Entered this 16th day of October, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge