

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

JOSEPH F. JILES,

Plaintiff,

ORDER

v.

08-cv-464-slc

MARTHA BREEN, SARAH COOPER, WILLIAM
POLLARD, PETE ERICKSEN, STEVEN
SCHMIDT, TODD HAMILTON, MARK
BAENEN and MARK LIMONICK,

Defendants,

On August 7, 2008, plaintiff filed this case seeking money damages for alleged violations of his constitutional rights. On August 29, 2008, I granted plaintiff leave to proceed *in forma pauperis* on his claims that the defendants Martha Breen, Sarah Cooper, William Pollard, Pete Eriksen, Steven Schmidt, Todd Hamilton, Mark Baenen and Mark Limonick deprived him of adequate clothes, a mattress, soap, tooth brush and all other hygiene items and required him to sleep on the concrete in front of a cool air vent for two weeks in August of 2007, in violation of his Eighth Amendment rights, and on his claim that the defendants deprived him of his due process rights under the Fourteenth Amendment when they placed him on a behavior modification plan without a hearing. On October 9, 2008, defendants answered plaintiff's complaint and a preliminary pretrial conference was scheduled for November 4, 2008. After the conference, the parties consented to my jurisdiction. However, on November 25, 2008, plaintiff moved to dismiss this case voluntarily and I granted his request on December 1,

2008, without prejudice and without costs. Now plaintiff has filed a motion to reopen the case and appoint counsel to represent him (Dkt. #24).

In support of his motion, plaintiff says that when he asked the court to close his case, he had been transferred out of the Green Bay Correctional Institution, where the claims in this case arose. The move also separated him from an inmate who was helping him with his legal matters. Now, however, plaintiff has been returned to Green Bay and fears being placed in the behavior modification program again. He believes as well that the inmate who had been helping him is no longer available to assist him, and that if his motion to reopen is granted, he will need the assistance of a lawyer to help him prosecute his claims. This is because he has been diagnosed as having “Axis I Adjustment Disorder” and “Axis II Antisocial Personality Disorder-Primary,” which includes symptoms of manic episodes, hearing voices and engaging in delusional thinking and self-harm, and has not been educated beyond the eighth grade.

Although plaintiff’s mental illness and limited formal education may make it harder for him to prosecute this case on his own, I am not convinced that appointment of counsel is appropriate at this time. Because plaintiff’s motion to reopen may have been conditioned on a grant of his motion for appointment of counsel, I will stay a decision whether to open this case pending confirmation from plaintiff that if his case is reopened, he is prepared to prosecute his claims on his own.

Turning first to plaintiff’s motion for appointment of counsel, plaintiff has made the prerequisite showing that he made reasonable efforts to find a lawyer on his own and that his efforts were unsuccessful. *Jackson v. County of McLean*, 953 F.2d 1070 (7th Cir. 1992). The next

question is whether the complexity of the issues raised in the case exceeds plaintiff's ability to litigate the action himself. *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007).

As noted above, plaintiff is contending in this case that the conditions of his confinement for a two-week period in August of 2007 exceeded contemporary standards of decency and that he should have received a due process hearing before being placed on a behavior modification program. Neither of these issues is factually or legally complicated. Plaintiff knows first-hand what the physical conditions of the observation cell in which he was confined in August 2007 were, and he knows what privileges he lost and what physical conditions were imposed upon him in an effort to modify his behavior in the behavior modification program. In other words, plaintiff does not have to engage in complicated discovery in order to learn the facts relating to his claims. The law governing his claims was explained in the August 29, 2008 order granting him leave to proceed against the defendants. The standard for deciding his Eighth Amendment claim has been established for decades. The standard for deciding his Fourteenth Amendment due process claim was set down more recently, but is clear. He will have to show that the hardships he endured in the behavior modification program were so significant and so atypical of ordinary prison life as to be unexpected in a prison setting.

Plaintiff's concerns about his legal skill are shared by all persons who file cases without the assistance of a lawyer. Although plaintiff admits that he has received assistance from other inmates in preparing his filings thus far, his complaint and subsequent submissions are clear and concise and contain information appropriate to the type of document filed. At the preliminary pretrial conference, plaintiff was given the opportunity to ask questions he had about litigating

his case and he was informed of procedures he would be expected to follow. (Those same procedures were provided to the parties in writing following the conference.) If the case were to go to trial, plaintiff would receive written instruction about the manner in which the trial would be conducted and what he will be expected to prove. In sum, as helpful as it might 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 his case or the issue raised is complex. Here, plaintiff appears capable of prosecuting this lawsuit of modest complexity. Therefore, his motion for appointment of counsel will be denied.

In light of the fact that I am denying plaintiff's motion for appointment of counsel, I will delay a decision on plaintiff's motion to reopen the case pending receipt of assurance from plaintiff that he is prepared to prosecute this case on his own without the assistance of counsel.

ORDER

IT IS ORDERED that

1. Plaintiff's motion for appointment of counsel is DENIED without prejudice.
2. A decision on plaintiff's motion to reopen this case is STAYED until February 17, 2009, by which date plaintiff must advise the court in writing whether he is prepared to prosecute this case on his own should his motion to reopen be granted. If, by February 17, 2009, plaintiff fails to confirm his intention to litigate his case without the assistance of counsel,

I will construe plaintiff's silence as a request to withdraw his motion to reopen and I will grant that motion. In that event, the case will remain closed.

Entered this 4th day of February, 2009.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge