IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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CHAD GOETSCH,

Plaintiff,

v.

DR. LAETITIA LEY,
DR. MIKE VANDENBROOK
and DR. RUBIN-ASH,

Defendants.

ORDER

09-cv-228-bbc

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Plaintiff is proceeding in this case on his Eighth Amendment claims that defendants Laetitia Ley and Mike Vandenbrook failed to protect him from self-harm or treat his mental illness and defendant Dr. Rubin-Ash provided only minimal mental health treatment to plaintiff following a suicide attempt. In an order entered November 20, 2009, I denied plaintiff's request for court-appointed counsel because he had not shown that he made a reasonable effort to obtain counsel on his own. Now before the court is plaintiff's second motion for appointment of counsel.

In deciding whether to appoint counsel, I must first find that plaintiff has made a reasonable effort to find a lawyer on his own and has been unsuccessful or that he has been

prevented from making such an effort. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). Now plaintiff has shown that he tried to contact lawyers at seven law firms and has received negative responses or no response at all. Therefore, I conclude that plaintiff has made a reasonable effort to find a lawyer on his own.

The next question is whether plaintiff meets the legal standard for appointment of counsel. Litigants in civil cases do not have a constitutional right to a lawyer; federal judges have discretion to determine whether appointment of counsel is appropriate in a particular case. Pruitt v. Mote, 503 F.3d 647, 654, 656 (7th Cir. 2007). They exercise that discretion by determining from the record whether the legal and factual difficulty of the case exceeds the plaintiff's demonstrated ability to prosecute it. Id. at 655.

As reasons for requesting appointment of counsel, plaintiff says that he goes into "lucid states" that prevent him from concentrating and doing legal work, and he does not believe he will be able to obtain expert witness testimony or cross examine witnesses at trial. In a November 20 order, I considered plaintiff's argument that he required the assistance of counsel because medications he is taking make it difficult for him to concentrate. I concluded that plaintiff appeared capable of following court instructions and making coherent arguments in his submissions. In the same order, I told plaintiff that he may ask the court to extend a deadline he is having difficulty meeting because of his concentration problems. Since the order was entered, plaintiff has continued to demonstrate that he is

capable of litigating this case. He has met the deadlines set by the court and communicates well. Therefore, I cannot find that plaintiff lacks the ability at this time to litigate this case on his own.

With respect to the complexity of the case, there is nothing in the record to suggest that this case is factually or legally difficult. Plaintiff has personal knowledge of the incidents surrounding his claims and the treatment he did or did not get. He should be able to obtain access to his own medical records to corroborate this information. In his motion, plaintiff says that he believes "the 3 defendants did not act according to accepted medical/psych. standards, but beyond that abstract understanding, [he] do[es]n't have a clue as to what those standards are . . . ." If the treatment plaintiff received and the injuries he suffered are not beyond a layperson's grasp, he will not need an expert witness. Gil v. Reed, 381 F.3d 649, 659 (7th Cir. 2004) (citing Ledford v. Sullivan, 105 F.3d 354, 360 (7th Cir. 1997)). Even if plaintiff were to require a medical expert, he suggests no reason why he could not seek out such a witness on his own.

At this point, plaintiff may seek information from the defendants regarding their decisions about his treatment through discovery. At the preliminary pretrial conference held on January 14, 2010, the magistrate judge explained to plaintiff how to use discovery techniques available to all litigants under the Federal Rules of Civil Procedure so that he can gather the evidence he needs to prove his claim. (Rules governing discovery may be found

in a book entitled "Federal Civil Judicial Procedure and Rules," and may be found in the prison's law library.) In addition, plaintiff received a copy of this court's procedures for filing or opposing dispositive motions and for calling witnesses, both of which were written for the very purpose of helping pro se litigants understand how these matters work. Going forward, if plaintiff has questions about conducting discovery or is having difficulty with other aspects of this lawsuit, he may write to the court to explain his situation.

Finally, there is no way of knowing yet if plaintiff's case will go to trial. Many cases are resolved before trial, either on dispositive motions or through settlement. If the case does go to trial, the court will issue an order about two months before the trial date describing how the court conducts a trial and explaining to the parties what written materials they are to submit before trial.

In sum, plaintiff has not show that he requires the assistance of counsel at this early stage of the proceedings. Therefore, the motion will be denied without prejudice to plaintiff's renewing his request at a later time.

ORDER

IT IS ORDERED that plaintiff's second motion for appointment of counsel, dkt.

#48, is DENIED without prejudice.

Entered this 24th day of June, 2010.

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