

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

SERGIO L. SHAW,

Plaintiff,

v.

BRIAN NEUMAIER,

Defendant.

ORDER

09-cv-747-bbc

In this case, plaintiff Sergio Shaw is proceeding on a claim that defendant Brian Neumaier failed to protect him from self harm in violation of the Eighth Amendment. Now before the court is plaintiff's motion for appointment of counsel.

As a starting point, this court would appoint a lawyer to almost every pro se plaintiff if lawyers were available to take these cases. Unfortunately, the majority of lawyers do not have the time, the experience or the willingness to take on such appointments. Therefore, the court appoints counsel only in cases in which there is a demonstrated need for appointment, using the appropriate legal test.

In deciding whether to appoint counsel, I must first 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. Plaintiff has made this showing by attaching copies of six letters from lawyers who have declined to represent him.

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.

In his motion, plaintiff says he has limited knowledge of the law, limited access to legal resources and that he requires the assistance of a lawyer because a lawyer would be able to better present the evidence at trial and cross examine witnesses. Plaintiff further states that he is unable to afford counsel and his imprisonment will greatly limit his ability to litigate his case. These are not good reasons to appoint counsel because these handicaps are universal among pro se litigants. The magistrate judge instructed plaintiff at the preliminary pretrial conference on March 9, 2010 about how to use discovery techniques available to all litigants so that he can gather the evidence he needs to prove his claim. In addition, plaintiff

was provided a copy of this court's procedures for filing or opposing dispositive motions and for calling witnesses, which were written for the very purpose of helping pro se litigants understand how these matters work.

With respect to the complexity of the case, the law governing plaintiff's claim is straightforward and was explained to him in the order granting him leave to proceed. As for the facts, plaintiff has personal knowledge of the circumstances surrounding the lawsuit and he should already possess or be able to obtain through discovery relevant documentation he needs to prove his claim. Although plaintiff is concerned with his ability to represent himself, he has done an adequate job so far in this case. Plaintiff has engaged in extensive discovery and has succeeded in obtaining a partial grant of a motion to compel discovery. His complaint and subsequent filings have been clearly written and appropriately directed. Plaintiff's inability to make frequent trips to the law library should not interfere with his ability to litigate his case; it is the factual evidence plaintiff gathers in discovery that will most important in determining the success or failure of his claims.

Finally, there is no way of knowing this at this early stage in plaintiff's case whether it 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 shown that he requires the assistance of counsel at this stage in the proceedings. Therefore, plaintiff's motion for appointment of counsel will be denied.

ORDER

IT IS ORDERED that plaintiff's motion for appointment of counsel, dkt. #40, is DENIED.

Entered this 15th day of June, 2010.

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