

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

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XAVIER HARDIN,

Plaintiff,

v.

ORDER

10-cv-22-slc

WILLIAM MCCREEDY, RICK HAEN,  
STEVE SCHUELER, KELLY SALINAS,  
LT. BERG, JAMES GREER,  
MICHAEL DITTMANN, JAMES LABELLE,  
WELCOME ROSE and ISMAEL OZANNE,

Defendants.

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On March 2, 2010, the court screened plaintiff Xavier Hardin's complaint and allowed him to proceed on his Eighth Amendment and state negligence claims against the defendants. A pretrial conference was held on May 20, 2010. 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 five 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 that he suffers from severe seizures, depression, psychosis and post-traumatic stress disorder and that he takes more than ten pills per day that make him drowsy and zombie-like. Plaintiff further states that he believes this to be a complex case and that he has limited knowledge of the law and relies on help from other inmates to assist him in legal procedures. Additionally, plaintiff believes that he requires the assistance of a lawyer because a lawyer would be able to depose witnesses and better present evidence at trial.

It is too early to determine whether plaintiff will require appointed counsel. At this stage of the litigation, it is not clear whether plaintiff's case will be decided on the merits or, for instance, whether a threshold procedural issue such as exhaustion of administrative remedies will be decisive. Although plaintiff argues that he has no legal knowledge and suffers from mental illness, plaintiff's complaint and subsequent filings have been clearly written and appropriately directed. There is nothing in the record to suggest that plaintiff's case is factually or legally difficult or that he is incapable of gathering and presenting evidence to prove his claims. Although plaintiff may be lacking in legal knowledge and skill, this handicap is almost universal among pro se litigants.

Regarding plaintiff's assertions that he relies on assistance from other inmates and his concern that the inmate who has been assisting him will be transferred, plaintiff was instructed at the preliminary pretrial conference on May 20, 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, both of which were written for the very purpose of helping pro se litigants understand how these matters work. Plaintiff's possible separation from his jailhouse lawyer is not an exceptional circumstances warranting appointment of counsel.

With respect to the complexity of the case, the law governing plaintiff's claim was explained to him in the order granting him leave to proceed. 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.

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 shown that he requires the assistance of counsel at this early stage in 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 motion for appointment of counsel, dkt. #16, is DENIED without prejudice.

Entered this 16<sup>th</sup> day of June, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge