

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

LEIGHTON DWIGHT LINDSEY,

Plaintiff,

v.

GREGORY TRATTLES, JOSEPH CHICANOWICZ,
DYLAN RADTKE, CAPTAIN SALTZER and RYAN
ARMSON,

Defendants.

ORDER

10-cv-385-bbc

Plaintiff Leighton Lindsey was allowed to proceed on his claims that defendants Captain Saltzer, Ryan Armson and Joseph Chicanowicz violated his right to be free from cruel and unusual punishment under the Eighth Amendment by using excessive force against him and that defendant Dylan Radtke violated his right to adequate medical treatment under the Eighth Amendment by exhibiting deliberate indifference to his serious medical need. Now before the court is plaintiff's motion for appointment of counsel. Dkt. 25.

In determining whether to appoint counsel, I must find first 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, 1073 (7th Cir. 1992). To prove that he has made reasonable efforts to find a lawyer, plaintiff must give the court the names and addresses of at least three lawyers whom he asked to represent him in this case and who turned him down. Plaintiff has submitted proof that he has written to attorneys who have not responded.

As a starting point, this court would appoint a lawyer to almost every pro se plaintiff if lawyers were available to take these cases. But they are not. Most lawyers do not have the time, the background or the desire to represent pro se plaintiffs in a pro bono capacity, and this court

cannot make them. Congress has appropriated funds for court-appointed counsel in criminal cases but it has not appropriated any funds for court-appointed counsel in civil cases like this one. Lawyers who accept appointments to represent pro se plaintiffs in civil cases can obtain compensation for their services only if they are successful and even then, the compensation may fall short of their time and effort. So the court only appoints counsel in cases where there is a demonstrated need, using the appropriate legal test.

Next, a district court must consider both the complexity of the case and the pro se plaintiff's ability to litigate it himself. *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007). In his motion, plaintiff says he requires the assistance of a lawyer because he does not know how to respond to documents that he has received from defendants and that he has mental health issues. The only document sent to plaintiff by defendants is an answer. This document does not require a response from plaintiff. In addition, at the preliminary pretrial conference set for November 18, 2010, I will instruct plaintiff about how to use discovery techniques available to all litigants so that he can gather the evidence he needs to prove his claim. Plaintiff will have an opportunity to ask questions about this court's procedures and he will be sent a written copy of the procedures discussed at the conference, which were written for the very purpose of helping pro se litigants understand how these matters work.

Plaintiff's claims are not complex and the law concerning his claims was explained to him in the court's September 7, 2010 order. Plaintiff has personal knowledge of the incidents surrounding his claims and should be able to use discovery to obtain additional evidence he may need.

Although plaintiff alleges that he has mental health issues, at this stage of the proceedings it is simply too early to tell if plaintiff lacks the ability to litigate his case. So far, plaintiff's submissions have been and coherent and well organized and it appears that plaintiff is capable of following court instructions and making clear, intelligible arguments in his pleadings.

In denying plaintiff's motion, I stress that the rulings reflect my assessment of plaintiff's ability to prosecute the case at its current stage only; if at some point plaintiff's mental health issues keep him from litigating the case, he is free to renew his motion for appointment of counsel.

ORDER

IT IS ORDERED that plaintiff's motion for appointment of counsel, dkt. 25, is DENIED without prejudice.

Entered this 28th day of October, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge