

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

JUSTIN MICHAEL TRUCKEY,

Plaintiff,

v.

JANEL NICKEL, DYLOM RADTKE,
CAPTAIN BRANT, CAPTAIN ZANON,
SERGEANT TIMM and CO II BERRET,

Defendants.

ORDER

10-cv-414-bbc

Plaintiff Justin Michael Truckey, a prisoner at the Columbia Correctional Institution, is proceeding in this case on his claims that defendants Janel Nickel, Dylan Radtke, Captain Brant, Captain Zanon, Sergeant Timm and CO II Berret must be held liable for actions they took before or after plaintiff was sexually assaulted by another prisoner in 2009 and 2010. Now before the court is plaintiff's motion for appointment of counsel.

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. Plaintiff has complied with this preliminary step. Even though plaintiff has shown that he made a reasonable effort, this case has not progressed sufficiently to allow me to determine the complexity of the issues and plaintiff's competence to prosecute his case, Pruitt v. Mote, 503 F.3d 647, 655 (7th Cir. 2007), so I will deny his motion.

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 appoints counsel only in cases in which there is a demonstrated need, using the appropriate legal test.

In his motion, plaintiff says he requires the assistance of a lawyer. He says that he is limited in his ability to litigate this case because he is imprisoned and has a lack of legal understanding. At this stage of the proceedings it is simply too early to tell whether plaintiff lacks the ability to litigate his case. So far, plaintiff's submissions have been coherent and well organized. It appears that plaintiff is capable of following court instructions and making clear, intelligible arguments in his pleadings.

Further, plaintiff should know that he is in the same position as most other pro se litigants, almost none of which have legal training of any kind. 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 records to corroborate this information. In addition, at the preliminary pretrial conference set for October 7, 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.

In denying plaintiff's motion, I want to emphasize that the ruling reflects my assessment of plaintiff's ability to prosecute the case at this stage only. If at some point plaintiff finds himself in a situation that prevents him from litigating this case, he is free to write to the court for additional clarification about procedures or renew his motion for appointment of counsel.

ORDER

IT IS ORDERED that plaintiff Justin Michael Truckey's motion for appointment of counsel, dkt. #10, is DENIED without prejudice.

Entered this 22d day of September, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge