

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

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JAMES R. SCHULTZ,

Plaintiff,

v.

JEFFREY PUGH, *et al.*,

Defendants.

ORDER

10-cv-581-bbc

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This case was removed by the defendants from Chippewa County Circuit Court. Plaintiff's claims under the Wisconsin Constitution were remanded to the Circuit Court. Plaintiff was allowed to proceed in this court on the following claims: (1) defendants Johnson and Severson used excessive force against plaintiff, in violation of the Eighth Amendment; (2) defendants DeMars, Richardson and Kasten disciplined plaintiff for discussing Johnson's and Severson's use of force, in violation of the First Amendment; (3) defendants Kasten and Pugh ordered plaintiff to refrain from speaking about the use of force, in violation of the First Amendment; and defendant Richardson refused to allow plaintiff to use an ambulatory aid in violation of the Americans with Disabilities Act and the Eighth Amendment. Now before the court are plaintiff's motion for an order to allow discovery, dkt. #22, and motion for appointment of counsel, dkt. #23.

Plaintiff's motion for an order allowing discovery will be denied as moot. At the December 16, 2010 preliminary pretrial conference, the court explained the discovery process to plaintiff and no further order is necessary.

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. So the court only appoints counsel in cases where there is a demonstrated need, 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 not shown that he had made any effort to find a lawyer. Even had plaintiff made this showing, counsel is not warranted in this case.

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 states he is untrained in the law and that his imprisonment limits his ability to litigate the case. These are not good reasons to appoint counsel because these handicaps are universal among pro se litigants. The court instructed plaintiff at the preliminary pretrial conference on December 16, 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 successfully moved to remand some of his claims to state court.

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:

- (1) Plaintiff's motion for a court order to allow discovery, dkt. #22, is DENIED as moot.
- (2) Plaintiff's motion for appointment of counsel, dkt. #23, is DENIED.

Entered this 23<sup>rd</sup> day of December, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge