

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

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FREDDIE GIEBEL,

Plaintiff,

v.

SARA KROPP, SANDY HABECK,  
TIMOTHY LUNDQUIST, TOM GOZINSKE,  
MORGAN BAILEY, GEORGE SALDARIS,  
THERESA MURPHY and DR. MARY SAUVEY,

Defendants.

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ORDER

10-cv-645-wmc

Plaintiff Freddie Giebel is proceeding in this case on his Eight Amendment claim that defendants were deliberately indifferent to his need for a medical diet, and that he continues to suffer adverse consequences. Plaintiff's brief in opposition to defendants' motion for summary judgment is due on January 9, 2012. Now before the court is plaintiff's motion for an extension of time to submit his brief in opposition and a request for appointment of counsel, *see* dkt. 48.

In his motion for extension of time, plaintiff requests an additional 45 days to submit his response to defendants' motion for summary judgment because the prison's law library will be closed through the holidays. I won't give plaintiff 45 days, but I will give him two more weeks, until January 24, 2012 in which to file his brief in opposition to defendants' motion for summary judgment. Defendants may have until February 2, 2012 to file their reply. As an additional note, plaintiff should be aware that his inability to visit the law library should not interfere with his ability to litigate his case. This is because it is the *factual evidence* that will be most important in determining the success or failure of his claims.

Next is plaintiff's renewed request for appointment of counsel. The court recognizes that a lawyer could do a better job for plaintiff than he can do for himself, but we don't have nearly enough lawyers available to handle all of the prisoner cases filed in this district. If we had

enough lawyers, we would appoint an attorney in almost every case, but we get over 200 new pro se lawsuits every year, and we only have about 10 to 15 lawyers who are willing and qualified to accept a pro bono assignment to a prisoner civil rights lawsuit. As a result, the court has no choice but to limit appointment of counsel to the cases in which it is clear, under the appropriate test, that the plaintiff must have the assistance of a lawyer.

In his motion, plaintiff doesn't provide additional information to support his request for an attorney. Nevertheless, plaintiff is advised that the law governing his claim is straightforward and was explained to him in the order granting him leave to proceed. In addition, plaintiff has personal knowledge of the facts and circumstances surrounding the lawsuit and he should already possess, or be able to obtain through discovery, the relevant documentation that he needs to prove his claim. In this lawsuit, plaintiff is capable of narrating what happened (or didn't happen), when, where and who was involved. He should be able to obtain to his own records to corroborate this information, and he can request other relevant documents, such as staff reports.

Put another way and to repeat what I said above, plaintiff's case depends on the facts. This court can and will apply the appropriate law to these facts, even if plaintiff cannot provide the law on his own or does not understand how the law applies to his facts. The court's procedures were explained to him in the May 19, 2011 pretrial conference order. I urge plaintiff to consult the pretrial conference order. If at some point, he does not understand something that is happening in this case, he may write the court for additional clarification about procedures.

In denying plaintiff's motion for an attorney, this decision reflects my assessment of plaintiff's ability to prosecute the case at this stage. If at some point plaintiff's circumstances change, and he no longer can adequately litigate the case, then he is free to write to the court for additional clarification about procedures or to renew his motion for appointment of counsel, and the court will look at his situation again.

#### ORDER

IT IS ORDERED that

1. Plaintiff Freddie Giebel's motion for an extension of time to respond to defendants' motion for summary judgment, dkt. 48, is GRANTED IN PART: plaintiff's summary judgment response deadline is moved to January 24, 2012. Defendants may have until February 2, 2012 in which to serve and file a reply.

2. Plaintiff's renewed motion for appointment of counsel, dkt. 48, is DENIED without prejudice.

Entered this 29<sup>th</sup> day of December, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge