

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

MICHAEL B. KINGSLEY,

Plaintiff,

v.

LISA JOSVAI, PATRICIA FISH,
ROBERT CONROY, STAN HENDRICKSON,
FRITZ DEGNER and KARL BLANTON,

Defendant.

ORDER

10-cv-832-bbc

Plaintiff Michael Kingsley is proceeding in this case on his claims that defendants Robert Conroy, Stan Hendrickson, Fritz Degner and Karl Blanton violated his rights under the Fourteenth Amendment by using excessive force on him and committed the state tort of assault and battery and that defendants Josvai and Patricia Fish violated plaintiff's right to procedural due process under Fourteenth Amendment. Now before the court is plaintiff's motion for appointment of counsel. For the reasons stated below, I am denying plaintiff's 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. 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 a reasonable effort to find a lawyer on his own and has been unsuccessful or that he has been prevented from making such an effort. *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 attached to his motion two letters from attorneys who have declined to represent him and he avers that he has contacted numerous attorneys who have turned him down or not responded. Even if the court accepts that plaintiff has met this prerequisite, his motion will be denied.

In resolving a motion for appointment of counsel, 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 that he is unable to afford counsel and that his imprisonment will greatly limit his ability to litigate his case. Specifically, plaintiff states that he has only a high school education, limited access to the law library and very little knowledge of the law. Also plaintiff says that he requires the assistance of a lawyer because a lawyer would be able to better investigate the claims and present evidence at trial. These are not sufficient reasons to appoint counsel. These handicaps are universal among pro se litigants. On April 21, 2011, I held a preliminary pretrial conference in this case and I instructed plaintiff 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, I provided to plaintiff 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.

With respect to the complexity of the case, nothing in the record suggests that it is factually or legally difficult. The law concerning plaintiff's claim was explained to him in this court's January 31, 2011 order. Plaintiff has personal knowledge of the circumstances surrounding his lawsuit. If he does not have copies of documents he needs to prove his claim,

he can use discovery to obtain any additional information he needs to make his case.

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.

Plaintiff has done an adequate job of representing himself to this point. His submissions are coherent and well written and it appears that plaintiff is capable of following court instructions and making clear, intelligible arguments in his pleadings. In sum, I am not persuaded that plaintiff's case is so complex or his skills so lacking that appointment of counsel is warranted at this time. The motion will be denied without prejudice to plaintiff bringing it at a later stage in his lawsuit.

ORDER

IT IS ORDERED that plaintiff's motion for appointment of counsel, dkt. 14 is DENIED without prejudice.

Entered this 23rd day of May, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge