

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

DONALD MEANS,

Plaintiff,

v.

S. SEVERSON,

Defendant.

ORDER

11-cv-3-slc

Plaintiff Donald Means is proceeding in this action on his claim that defendant Severson prohibited him from attending a feast for Eid-ul-Fitr in violation of the free exercise clause of the United States Constitution. Defendant has answered and a pretrial conference is set to be held on May 13, 2011. Now before the court is plaintiff's second motion for appointment of counsel. Like plaintiff's first motion for appointment of counsel, this motion is premature and will be denied.

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 finds 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.

In the few weeks that have passed since plaintiff filed his first motion asking for a lawyer, not much has changed in this lawsuit. When Judge Crabb denied plaintiff's first motion, she

stated that it was too early to tell whether plaintiff's asserted mental health issues would prevent him from litigating this case, and that so far there was nothing in the record suggesting that the facts and law relevant to plaintiff's claims were so complicated that they exceeded plaintiff's demonstrated ability to prosecute those claims. *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007) . This situation has not changed. The facts of the case are within plaintiff's personal knowledge, and the law governing plaintiff's claims was explained to him in the February 10, 2011 order granting him leave to proceed. At the preliminary pretrial conference, we will talk about how plaintiff can gather any additional evidence he needs to prove his claims. Plaintiff will receive 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 keep their cases on track toward the best available outcome.

So far, plaintiff's submissions have been coherent and well organized. They do not show that plaintiff's asserted mental health problems have hindered his ability to prosecute this lawsuit. If at some point plaintiff does not understand something that is happening in this case, he is free to write to the court to ask for clarification.

Therefore, at this early stage of the case, I conclude that plaintiff has not shown that he is incapable of prosecuting this case on his own. This ruling reflects my assessment of plaintiff's ability at *this* stage; if at some point plaintiff's mental health issues actually keep him from litigating the case, then he is free to renew his motion for appointment of counsel.

ORDER

IT IS ORDERED that plaintiff's second motion for appointment of counsel, dkt. 19, is DENIED without prejudice.

Entered this 4th day of April, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge