

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

LARRY COCHRAN,

Plaintiff,

v.

JAMES GEIT, STEVE DUTTON,
STEVE ROBINSON, DERRICK ROGER and
CAROL HOLINKA,

Defendants.

ORDER

11-cv-134-wmc

In an order entered on October 16, 2012, I directed the United States Marshals Service to serve the summons and complaint in this case on defendants James Geit, Steve Dutton, Derrick Roger, Steve Robinson and Carol Holinka. The United States Marshals have served defendants Geit, Dutton, Robinson and Holinka, but have not served defendant Derrick Roger. According to the unexecuted Marshal service form, an individual with the name of Derrick Roger is not recognized as having ever been employed at the Oxford Correctional Institution.

Pursuant to *Sellers v. United States*, 902 F.2d 598, 602 (7th Cir. 1990), it is the plaintiff's responsibility to identify the defendants. If a defendant cannot be identified, he or she cannot be served with plaintiff's complaint. Unless the defendant has notice of the claims against him or her and an opportunity to defend against them, plaintiff cannot recover relief. Therefore, at this stage of the proceedings, I will treat defendant Derrick Roger as a Doe defendant whose name plaintiff will have to obtain through discovery. The matter of serving the Doe defendant will be taken up at the telephonic preliminary pretrial conference, which will be held after all of the defendants who have been served file a responsive pleading to the complaint. Ultimately, if plaintiff does not identify this defendant within the time set, plaintiff's claims against him will be dismissed without prejudice.

Next, plaintiff has filed a second motion for appointment of counsel. In deciding whether to appoint counsel, first the court must 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 who he has asked to represent him in this case and who turned him down.

Plaintiff has provided this information to the court. However, I must deny his request for an attorney at this point because it is too early to tell whether this case is too complex for plaintiff to handle it on his own. In his motion, plaintiff states that he does not possess a superior knowledge of the law, is currently incarcerated and that he has severe physical, mental and emotional limitations, all of which will hinder his ability to litigate his case.

Despite plaintiff's health challenges, his filings have been clear and appropriately directed. There is nothing in the record to suggest that plaintiff's is incapable of gathering and presenting evidence to prove his claims. And although plaintiff states that does not possess a superior knowledge of the law, this is true for almost every pro se litigant. 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 close to 300 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 appoint of counsel to the cases in which it is clear, under the appropriate test, that the plaintiff must have the assistance of a lawyer.

The court will try to make litigating this case as easy for plaintiff as possible. Shortly after defendants file their answer, the court will hold a preliminary pretrial conference at which the court will set a schedule and will provide information about how to use discovery techniques to gather the evidence he needs to prove his claims, how to prepare for summary judgment motions, and how to prepare for trial. Plaintiff is free to renew his motion for appointment of counsel at a later time if he feels incapable of representing himself as the case proceeds.

ORDER

IT IS ORDERED that

1. The parties treat defendant Derrick Roger as a Doe defendant until plaintiff can ascertain his true identity through discovery in accordance with a schedule to be set at the preliminary pretrial conference.

2. Plaintiff's second motion for appointment of counsel, dkt. 29, is DENIED without prejudice.

Entered this 12th day of December, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge