

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

---

DANIEL RYAN CURRY,

Plaintiff,

ORDER

v.

SGT. TREFZ and CAPTAIN GARDNER,

11-cv-223-slc

Defendants.

---

Plaintiff Daniel Curry, a prisoner at the Wisconsin Resource Center in Winnebago, Wisconsin, is proceeding in this case on his Eighth Amendment claim against defendant Sgt. Trefz and on his retaliation claim against defendant Gardner. Now before the court is plaintiff's motion for appointment of counsel, *see* dkt. 13.

In determining whether to appoint counsel, I must find first 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, 1073 (7th Cir. 1992). To prove that he has made reasonable efforts to find a lawyer, plaintiff must give the court the names and addresses of at least three lawyers whom he asked to represent him in this case and who turned him down. Plaintiff has complied with this preliminary step. Even though plaintiff has shown that he made a reasonable effort, this case has not progressed sufficiently to allow me to determine the complexity of the issues and plaintiff's competence to prosecute his case, *Pruitt v. Mote*, 503 F.3d 647, 655 (7th Cir. 2007), so I will deny his 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. Congress has appropriated funds 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.

The next question is whether plaintiff meets the legal standard for appointment of counsel. 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 says his imprisonment will greatly limit his ability to litigate his case and that the issues in this case are complex, and will require significant research and investigation. Plaintiff further states that a lawyer would be able to better present the evidence at trial and cross examine witnesses. These are not good reasons to appoint counsel because these handicaps are universal among pro se litigants. Plaintiff should know that he is in the same position as other pro se litigants, almost none of which have legal training of any kind. As this case progresses, plaintiff will improve his knowledge of court procedure.

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. In addition, at the telephone preliminary pretrial conference, which will be

scheduled after defendants have filed their answer, I will instruct plaintiff about how to use discovery techniques available to all litigants so that he can gather the evidence he needs to prove his claim. Plaintiff will have an opportunity to ask questions about this court's procedures and he will be sent a written copy of the procedures that will be discussed at the conference, which were written for the very purpose of helping pro se litigants understand how these matters work.

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.

In denying plaintiff's motion, I stress that the rulings reflect my assessment of plaintiff's ability to prosecute the case at its current stage only. If at some point, plaintiff doesn't understand what to do in this case, he is free to write to the court for additional clarification about procedures or renew his motion for appointment of counsel.

#### ORDER

IT IS ORDERED that plaintiff Daniel Curry's motion for appointment of counsel, dkt. 13, is DENIED without prejudice.

Entered this 28<sup>th</sup> day of October, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge