

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

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EDWARD HEUER,

Plaintiff,

V.

STEVEN TETZLAFF,

Defendant.

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ORDER

11-cv-302-slc

Plaintiff, formerly a prisoner at the Fox Lake Correctional Institution, is proceeding in this case on his claim that defendant Steven Tetzlaff used excessive force in violation of the Eighth Amendment. On September 12, 2011, defendant Tetzlaff filed his answer. Now before the court is plaintiff's motion for appointment of counsel.

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.

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 not complied with this preliminary step.

Moreover, even if plaintiff had 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). In his motion, plaintiff says he has undergone extensive drug therapy and his memory has been affected because of the drug interactions. As difficult as that must be for plaintiff, at this stage of the proceedings it is simply too early to tell if plaintiff lacks the ability to litigate his case. So far, plaintiff's submissions have been coherent and well organized. It appears that plaintiff is capable of making clear, intelligible arguments in his pleadings. In addition, at the preliminary pretrial conference set for October 12, 2011, 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 discussed at the conference, which were written for the very purpose of helping pro se litigants understand how these matters work.

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 he is having difficulty litigating the 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's motion for appointment of counsel, dkt. 7, is DENIED without prejudice.

Entered this 27<sup>th</sup> day of September, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge