

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

DARRIN A. GRUENBERG,

Plaintiff,

v.

DUSTIN KINGSLAND and
STEVEN MUELLER,

Defendants.

ORDER

11-cv-574-slc

Plaintiff Darrin Gruenberg is proceeding to trial on January 22, 2013 on his Eighth Amendment claim that defendants used excessive force against plaintiff, causing him to suffer a laceration on his nose and injuries to his wrist and chest. Plaintiff has filed a renewed motion for appointment of counsel. *See* dkt. 73. Plaintiff's motion will be denied.

Unlike indigent criminal defendants, civil litigants have no automatic right to court-appointed counsel. *Luttrell v. Nickel*, 129 F.3d 933, 936 (7th Cir. 1997). The test for determining whether to appoint counsel is two-fold: "[T]he question is whether the difficulty of the case – factually and legally – exceeds the particular plaintiff's capacity as a layperson to coherently present it to the judge or jury himself." *Pruitt v. Mote*, 503 F.3d 647, 655 (7th Cir. 2007). In other words, given the complexity of the case, does this plaintiff appear to be competent to try the case on his own? *See Santiago v. Walls*, 599 F.3d 749, 761 (7th Cir. 2010) (citing *Pruitt*, 503 F.3d at 654). In this case, plaintiff has presented no new factual or legal arguments that persuade me that he is entitled to appointment of counsel.

Plaintiff continues to be doing a capable job of representing himself. His submissions reveal that plaintiff is at least as capable, and perhaps more-so, than the average pro se litigant to present his claims at trial. Furthermore, there is no complicated legal preparation necessary in this case. The issues for trial are straightforward and relate purely to credibility. Plaintiff

alleges that defendants Kingsland and Mueller used excessive force against him. The defendants deny the allegations. The jury will listen to the testimony and decide whom it believes.

In addition, granting this last-minute motion for appointment of counsel would force this court to move the trial date back in order to give new counsel time to prepare, resulting in undue delay. Because trial is nearing, plaintiff should carefully read the November 20, 2012 order to guide his trial preparations.

ORDER

IT IS ORDERED that plaintiff Darrin Gruenberg's renewed motion for appointment of counsel, dkt. 73, is DENIED.

Entered this 8th day of January, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge