

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

DOUGLAS BALSEWICZ,

Plaintiff,

v.

TAMMY MAASSEN, KENNETH ADLER,
KEVIN CLARK and DAVID HAGGLUND,

Defendants.

ORDER

12-cv-153-slc

Plaintiff Douglas Balsewicz was granted leave to proceed *in forma pauperis* in this case on his claims that defendants failed to provide him with adequate medical treatment for his foot and back injuries in violation of the Eighth Amendment and Wisconsin negligence law. Now plaintiff has filed a motion for appointment of counsel. *See* dkt. 14.

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. So the court only appoints counsel in cases where there is a demonstrated need, using the appropriate legal test.

In deciding whether to appoint counsel, I must first find that plaintiff has made a reasonable effort to find a lawyer on his own and has been unsuccessful or that he has been prevented from making such an effort. *Jackson v. County of McLean*, 953 F.2d 1070 (7th Cir. 1992). To prove that he has made a reasonable effort to find a lawyer, plaintiff must give the court the names and addresses of at least three lawyers that he asked to represent him on the issues on which he has been allowed to proceed and who turned him down. Plaintiff has provided copies of letters from five lawyers who have declined to represent him.

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, 654-55 (7th Cir. 2007). In his motion, plaintiff says he requires the assistance of a lawyer because this case is complex and he has been transferred to an institution other than the one giving rise to his claims in this lawsuit. Additionally, plaintiff says he lacks legal experience, and that a lawyer would be better able to present evidence at trial.

Although plaintiff may lack legal knowledge, he is in the same position as most 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. To help him, this court instructs pro se litigants at a preliminary pretrial conference, which is scheduled for September 11, 2012, about how to use discovery techniques available to all litigants so that he can gather the evidence he needs to prove his claim. In addition, plaintiff will be provided with 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 understand how these matters work.

As for the complexity of plaintiff's case, the law concerning plaintiff's claims was explained to him in this court's July 12, 2012 order. Plaintiff has personal knowledge of the circumstances surrounding his lawsuit. If he does not have copies of documents he needs to prove his claim, he can use discovery to obtain any additional information he needs to make his case.

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. Plaintiff has done an adequate job of representing himself to this point. His

submissions are well written and it appears that plaintiff is capable of following court instructions and making clear, intelligible arguments in his pleadings. In sum, I am not persuaded that plaintiff's case is so complex or his skills so lacking that appointment of counsel is warranted at this time. The motion will be denied without prejudice to plaintiff bringing it at a later stage in his lawsuit.

ORDER

IT IS ORDERED that plaintiff Douglas Balsewicz's motion for appointment of counsel, dkt. 14, is DENIED without prejudice.

Entered this 22nd day of August, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge