

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

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DAVIN ROLLINS,

Plaintiff,

v.

DENNIS MCKNIGHT and  
MICHAEL LEAHMAN,

Defendants.

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ORDER

12-cv-389-bbc

Plaintiff Davin Rollins, a prisoner at the Waupun Correctional Institution, is proceeding in this case on his claims that defendants Dennis McKnight and Michael Leahman violated his constitutional rights by using excessive force against him. Plaintiff requests that the court appoint counsel to represent him in this case. I am denying his motion without prejudice. Here's why:

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). Plaintiff says that he has written to many attorneys, and as proof, has submitted three negative responses to the court. Therefore, I conclude that plaintiff has made a reasonable effort to find a lawyer on his own.

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.

Although plaintiff states that he lacks legal knowledge and skill, 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 over 200 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 appointment of counsel to the cases in which it is clear, under the appropriate test, that the plaintiff must have the assistance of a lawyer. Plaintiff's case is factually and legally simple. In addition, 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. Therefore, I cannot find that plaintiff lacks the ability at this time to litigate this case on his own.

Shortly after the January 9, 2013 preliminary pretrial conference, plaintiff was sent the pretrial conference order, which included a copy of the court's procedures for filing or opposing dispositive motions. These procedures were written for the very purpose of helping pro se litigants understand how these matters work. Plaintiff must read over these documents, as well as the entire January 11, 2013 pretrial conference order, so that he understands how his case will proceed and what his responsibilities are. Going forward, if plaintiff has questions about aspects of this lawsuit, he may write to the court for clarification.

With respect to the complexity of the case, there is nothing in the record to suggest that this case is factually or legally difficult. The law concerning plaintiff's claim was explained to

him in the October 11, 2012 order granting him leave to proceed. Furthermore, plaintiff has personal knowledge of the circumstances surrounding his claim and he should already possess or be able to obtain through discovery relevant documentation he needs to prove his claim. In sum, I am not persuaded that appointment of counsel is warranted in this case.

#### ORDER

IT IS ORDERED that plaintiff Davin Rollins' request for appointment of counsel, dkt. 36, is DENIED without prejudice.

Entered this 25<sup>th</sup> day of January, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge