

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

TOMMIE CARTER,

Plaintiff,

ORDER

v.

12-cv-350-wmc

TIMOTHY GILBERG and
JAMES REID,

Defendants.

Plaintiff Tommie L. Carter is currently incarcerated at Green Bay Correctional Institution. His complaint stems from events that occurred while Carter was incarcerated at the Wisconsin Secure Prison Facility (“WSPF”). Specifically, he alleges that two corrections officers violated his constitutional right to receive treatment for a serious medical need by denying him access to his inhaler during an asthma attack. Carter was granted leave to proceed with this claim. (Dkt. #15.) Before the court now is Carter’s “motion for the appointment of counsel.” (Dkt. #20.) For the reasons set forth below, the court will deny the motion at this time without prejudice to later reconsideration.

Civil litigants have no constitutional or statutory right to the appointment of counsel. *E.g.*, *Ray v. Wexford Health Sources, Inc.*, 706 F.3d 864, 866 (7th Cir. 2013); *Luttrell v. Nickel*, 129 F.3d 933, 936 (7th Cir. 1997). The court may, however, exercise its discretion in determining whether to recruit counsel *pro bono* to assist an eligible plaintiff who proceeds under the federal *in forma pauperis* statute. *See* 28 U.S.C. § 1915(e)(1) (“The court may request an attorney to represent an indigent civil litigant *pro bono publico*.”); *Luttrell*, 129 F.3d at 936. Thus, the court cannot “appoint” counsel to assist Carter; it merely has the discretion to recruit a volunteer in an appropriate case. This court will

construe Carter's motion to appoint counsel as one seeking the court's assistance in recruiting a volunteer under 28 U.S.C. § 1915(e)(1).

Before deciding whether it is necessary to recruit counsel, however, a court must find that the 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, 1072-73 (7th Cir. 1992). Although Carter indicates he has written to ten attorneys asking them to handle his case and has not heard from them, to prove the threshold "reasonable efforts" requirement, a *pro se* litigant must submit the names and addresses of three lawyers he has asked to represent him and who have turned him down. Carter indicates that he has yet to hear back from the attorneys, but does not provide addresses or state that his request has actually been refused.

Even if the court presumes that Carter has made reasonable efforts to recruit counsel and has been unsuccessful, it would still deny the motion because there is still the relevant question "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 answering that question, five factors need to be addressed: (1) the merits of the claim for relief; (2) the ability of plaintiff to investigate crucial facts unaided; (3) whether the nature of the evidence indicates the truth will more likely be exposed when both sides have counsel; (4) the indigent's capability to present the case; and (5) the complexity of the legal issues involved. *Jackson*, 953 F.2d at 1072.

Carter alleges that his claim is meritorious, but at this early stage (where only screening has been completed), that argument amounts to no more than a bare-bones

allegation of merit. He also suggests that significant discovery will be required and that he is unable to investigate the case on his own, but it appears from the pleadings that Carter's case depends largely on the facts surrounding his claims, many of which he should know personally and which are generally straightforward. In addition, his case involves just two defendants, both of whom he has already identified. Carter also argues that his case is complex because it may require expert medical testimony. At this early stage of the proceedings, however, the court is not convinced that this case "involve[es] complex medical evidence." *Santiago v. Walls*, 599 F.3d 749, 761 (7th Cir. 2010). On the contrary, it appears that his case will depend largely on the facts surrounding his claim. Additionally, the law on Eighth Amendment medical care claims is well-established and was explained to Carter in the order granting him leave to proceed. Since plaintiff has done an able job of representing himself thus far in spite of his mental illness, it would appear not to exceed his capabilities.

Finally, the court notes that the current denial is without prejudice as to later reconsideration of the motion should the issues involved in this case prove more complicated than they appear right now, or require more investigation and discovery than currently seems necessary. At this stage, however, no dispositive motions have been filed, and the defendants have not yet made clear their own theory of the case. The court, therefore, denies Carter's motion at this time. Carter may renew his motion if the circumstances change.

ORDER

IT IS ORDERED that plaintiff Tommie Carter's motion for counsel (dkt. #20) is DENIED without prejudice as to later reconsideration.

Entered this 4th day of November, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge