

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

ROBERT GANT,

Plaintiff,

v.

MICHAEL MEISNER, *et al.*,

Defendants.

ORDER

12-cv-258-wmc

Plaintiff Robert Gant is presently incarcerated by the Wisconsin Department of Corrections at the Columbia Correctional Institution in Portage. Gant has been granted leave to proceed *in forma pauperis* with claims that five correctional officers violated his rights under the Eighth Amendment by failing to protect him from his own acts of self-harm. Now pending before the court is Gant’s “motion for the appointment of counsel.” (Dkt. # 16). This motion will be denied for reasons set forth briefly below.

Civil litigants have no constitutional or statutory right to the appointment of counsel. *See Luttrell v. Nickel*, 129 F.3d 933, 936 (7th Cir. 1997); *see also Ray v. Wexford Health Sources, Inc.*, 706 F.3d 864, 866-67 (7th Cir. 2013). The most a court can do is recruit counsel to assist an eligible plaintiff *pro bono* 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 any person unable to afford counsel.”); *Pruitt v. Mote*, 503 F.3d 647, 653-54 (7th Cir. 2007) (en banc) (noting that, at most, the federal IFP statute confers discretion “to recruit a lawyer to represent an indigent civil litigant *pro bono publico*”). In other words, a reviewing court only has discretion to recruit a volunteer. *Ray*, 706 F.3d at 867.

Before deciding whether it is necessary to recruit counsel, 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). To show that he has made reasonable efforts to find a lawyer, a plaintiff must give the court the names and addresses of at least three lawyers that he has asked to represent him in this case and who turned him down. *Id.* Gant has supplied letters from several attorneys who have declined his request for *pro bono* representation, meeting this threshold requirement.

The next 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*, 503 F.3d at 655. In other words, does this plaintiff appear to be competent to try the case on his own given its complexity? *See Santiago v. Walls*, 599 F.3d 749, 761 (7th Cir. 2010) (citing *Pruitt*, 503 F.3d at 654).

With regard to the difficulty of Gant’s claim, the complaint has been narrowed to an Eighth Amendment claim that several correctional officers were deliberately indifferent to his need for protection from self-harm. The law governing this type of claim has been in place since *Estelle v. Gamble*, 529 U.S. 97 (1976), and was explained to him in the court’s screening order. (Dkt. # 9). Although it is true that prisoner cases raising Eighth Amendment claims of deliberate indifference almost always present “tricky issues of state of mind,” *Hudson v. McHugh*, 148 F.3d 859, 862, n.1 (7th Cir. 1998), this

is not sufficient by itself to find that a case presents exceptional circumstances of the sort requiring the aid of volunteer counsel.

Nevertheless Gant maintains that his case is “complex” and he requires the assistance of a trained attorney, particularly because he has been unable to correspond with the inmate who has been assisting him (Christopher Goodvine). Gant further acknowledges that Goodvine helped him prepare the pending motion and supporting declaration, requesting the court’s assistance in locating counsel. Even assuming that Goodvine becomes unavailable to help, Gant does not demonstrate that he is unable to litigate on his own.

In support of his request for counsel, Gant alleges that he is unable to represent himself because he suffers from Attention Deficit Hyperactivity Disorder, an “impulse control disorder,” and an unspecified learning disability. Gant also points out that he did not complete high school and reads at only a sixth or seventh-grade level. Even so, records provided by Gant do not necessarily support his claim that he is incapable of representing his own interests. A treatment note shows that Gant was examined by a psychiatrist on April 25, 2013, in response to a request for medication. The psychiatrist found Gant to be “alert, attentive, focused, very goal oriented, and wanting his medication.” The psychiatrist also reinstated Gant’s prescription for an anti-depressant (bupropion), which Gant had previously elected to stop taking on his own. The psychiatrist observed “no evidence of [a] speech or thought disorder” during the interview and noted that Gant’s ADHD was “in remission.”

From this court's review of the record to date, Gant has adequately represented himself in this case and appears capable of continuing to do so. His pleadings are neatly handwritten, articulate and supported with documentation. It is also evident that Gant understands the factual and legal issues, which were outlined more fully for him in the court's screening order. (Dkt. # 9). Other than referencing his status as an indigent inmate with a limited education, Gant does not include specific facts explaining why counsel is needed to present his case. In particular, he does not demonstrate that his case is more difficult than any other action pursued by a *pro se* prisoner litigant. Accordingly, Gant's motion for assistance in locating a volunteer attorney will be denied.

ORDER

IT IS ORDERED that plaintiff's motion for counsel (Dkt. # 16) is DENIED without prejudice at this time.

Entered this 23rd day of December, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge