

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

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STEVEN GREEN,

OPINION AND ORDER

Plaintiff,

v.

12-cv-761-wmc

STEVEN T. CHVALA, JUSTIN L. GARCIS,  
BROOKE A. LOMAS, BRADLEY SCHROEDER,  
CITY OF MADISON POLICE DEPARTMENT  
and DANE COUNTY SHERIFF'S DEPARTMENT,

Defendants.

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Plaintiff Steven Green filed this civil action under 42 U.S.C. § 1983 against an officer employed by the Dane County Sheriff's Department and three City of Madison police officers, alleging that excessive force was used to effect his arrest in violation of the Fourth Amendment. After screening the complaint as required by the Prison Litigation Reform Act (the "PLRA"), 28 U.S.C. § 1915A, the court denied Green leave to proceed and dismissed the complaint. The Seventh Circuit has vacated that decision in part and remanded the case for further proceedings against two individual defendants. *See Green v. Chvala*, No. 13-3568 (7th Cir. June 30, 2014). In particular, the Seventh Circuit held that Green stated a viable claim under the Fourth Amendment against City of Madison Police Officer Steven T. Chvala and a Fourteenth Amendment claim against Dane County Sheriff's Deputy Bradley Schroeder.

Now pending before the court is plaintiff's motion for the "appointment" of counsel. (Dkt. #41.) For the reasons set forth below, the court will deny the motion at this time, without prejudice to later reconsideration.

First, plaintiff should be aware that 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 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. The court cannot, however, “appoint” counsel to represent an indigent civil litigant; it merely has the discretion to recruit a volunteer in an appropriate case.

Because plaintiff has been found indigent previously in this case, the court will construe his 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). This generally requires plaintiff to provide the names and addresses of at least three attorneys to whom he has written seeking *pro bono* representation, but have turned him down. Plaintiff has previously provided rejection letters from two different law firms, as well as the name and address of several other firms to which he has written. See Mot. for Appt. of Counsel Exh. (dkt. #7). Thus, it appears plaintiff has met the threshold requirement.

The next step is to determine “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). A court

may consider any or all of the following five factors when making this determination: (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.

Here, plaintiff alleges that it would be "in [his] best interest to be represented by counsel" because his claim is difficult. This may be true, but the law governing plaintiff's claim is well-established and was explained to plaintiff in the Seventh Circuit's decision in this case. Likewise, it appears that plaintiff's claims depend in large part on events for which he was present and about which he has personal knowledge. The factual detail found in his pleadings also supports an inference that this case will not require a substantial amount of investigation.

Additional factors also weigh against the need for counsel in this case. Most notably, it is too early to know whether plaintiff's claims are meritorious. The case recently had a preliminary pretrial conference, where plaintiff was provided with a lengthy set of written instructions. (Dkt. # 40). According to the scheduling order, dispositive motions are not due until April and there is nothing otherwise pending before the court that requires plaintiff to respond. Thus far, plaintiff has done a more-than-able job of representing himself, both in this court and in the Seventh Circuit. His pleadings and other submissions are neatly prepared, well-organized and demonstrate a working understanding of the Federal Rules of Civil Procedure. The complaint also includes citations to controlling case law relevant to plaintiff's Fourth Amendment claims. Based

on this record, it does not presently appear that the case exceeds plaintiff's capacity to litigate as a layperson.

Finally, although the court will deny plaintiff's motion for counsel at this time, the decision is without prejudice to reconsideration. In that respect, it is possible that the issues involved in this case are more complicated than they appear right now, or that more investigation and discovery than currently seems necessary will be required. Plaintiff may renew his motion if circumstances change and it becomes clear that this case exceeds his capacity as a layperson to litigate. Plaintiff should be aware, however, that the court receives many more requests for counsel than the small pool of available volunteers can accommodate. Only those cases presenting exceptional circumstances can be considered for court-assistance in recruiting a volunteer. Any future request for court assistance in locating a volunteer must include specific details explaining why counsel is needed or what counsel would be required to perform such that plaintiff is unable to continue litigating effectively on his own behalf.

ORDER

IT IS ORDERED that Steven Green's motion for appointment of counsel (dkt. # 41) is DENIED, without prejudice to reconsideration at a later date.

Entered this 28th day of October, 2014.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge