

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

SCOTT ROBERT WILCOX,

Plaintiff,

v.

MARK KING, BRIAN FOSTER, and
RORY THELEN,

Defendants.

ORDER

12-cv-704-wmc

Plaintiff Scott Robert Wilcox claims that defendant Mark King sexually assaulted him while he was incarcerated at Kettle Moraine Correctional Institution, and then retaliated against him when he complained about the assault, as well as defendants Brian Foster and Rory Thelen failed to protect Wilcox from the assault and retaliation, all in violation of his constitutional and statutory rights. (Dkt. #17.) For the third time in this case Wilcox has requested assistance in recruiting legal counsel. (Dkt. #31.)

As previously explained, civil litigants have no constitutional or statutory right to the appointment of counsel. *See, 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). The court has previously found that Wilcox has met the preliminary requirement pursuant to *Jackson v. County of McLean*, 953 F.2d 1070 (7th Cir. 1992), that he has tried to find counsel on his own and has been unsuccessful. (Dkt. #6.)

Even though Wilcox meets this threshold requirement, his motion will again be denied due to the current state of this case. The relevant question in deciding whether to recruit counsel for an indigent civil litigant 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 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, Wilcox alleges that he has limited access to the law library and that he lacks a full knowledge of the law. This is true of nearly all incarcerated *pro se* litigants, however, and does not demonstrate that *this* case presents extraordinary circumstances

that would benefit from the assistance of trained legal counsel. Much of Wilcox's Eighth Amendment case will depend on the facts surrounding the events forming the basis of his complaint -- events for which Wilcox was present and with which he should therefore be familiar personally.

Additionally, the law governing Wilcox's claims is well-established and was explained to him at length in the order granting him leave to proceed. Wilcox argues that because this case has entered the discovery phase that it is too complex for him to handle on his own. However, Wilcox does not explain what difficulties he is having or if he has attempted to gather information through the discovery process. The court encourages Wilcox to re-read the pretrial conference order entered on January 17, 2014, which was written for the very purpose of helping *pro se* litigants understand how discovery works and how his case will proceed in this court. If at some point Wilcox does not understand something that is happening in this case, he may write to the court for clarification about procedures.

Other factors also weigh against the need for counsel at this time. It is too early in this case to know whether any of his claims are meritorious. Plaintiff has done an able job representing himself thus far and he does not suggest that he has any mental impairments that hinder his ability to pursue this case on his own. Wilcox's pleadings are legible, neatly organized and reflect at least some familiarity with the law underlying his claims. Based on this record, it does not presently appear that the case exceeds Wilcox's capacity to litigate as a layperson.

Finally, although the court will deny Wilcox's motion for counsel at this time, the decision remains 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. Wilcox 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 what function counsel would perform which Wilcox is unable to do on his own behalf.

ORDER

IT IS ORDERED that plaintiff Scott Wilcox's motion to appoint counsel (dkt. #31) is DENIED without prejudice as to later reconsideration.

Entered this 2nd day of October, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge