

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

MICHAEL S. ZIEGLER,

Plaintiff,

v.

DR. JAMES LOVAS,

Defendant.

ORDER

13-cv-410-wmc

Plaintiff Michael Ziegler is currently subject to civil commitment at the Sand Ridge Secure Treatment Center pursuant to Wis. Stat. ch. 980. Ziegler filed this action under 42 U.S.C. § 1983, alleging that he has been denied adequate dental care in the form of properly fitting dentures or dental implants in violation of the Eighth Amendment. The court granted Ziegler leave to proceed on that claim against defendant James Lovas. (Dkt. #21.) Ziegler has now submitted a letter, advising the clerk of court that he has been unsuccessful in locating counsel to represent him in this case. (Dkt. # 31.)

Ziegler appears to 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 Ziegler has been found indigent previously in this case, the court will construe his letter as a motion 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 Ziegler 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. Ziegler indicates that he contacted the Wisconsin State Bar Association, a local community organization and a law firm that specializes in medical malpractice claims, but that each of his requests for assistance was turned down. Thus, it appears that Ziegler has met this initial, threshold requirement for recruiting counsel.

In addition, before deciding whether to recruit counsel for an indigent civil litigant, a court must consider "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, Ziegler contends that his ability to investigate the case is constrained by his lack of education and his lack of access to the internet or telephone. 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. Furthermore, much of Ziegler's Eighth Amendment case will depend on the facts surrounding the events forming the basis of his complaint -- events for which he was present and with which he should therefore be personally familiar.

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. The deadline for dispositive motions is months away (April 2015) and there are no other impending deadlines that require action on his part. Ziegler has received instructions, both orally and in writing, in connection with the preliminary pretrial conference, regarding how to proceed in this case. (Dkt. # 30.) Additionally, the law governing plaintiff's claim is well-established and was explained to him in the order granting him leave to proceed. Ziegler has done an able job representing himself thus far. His 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 Ziegler's capacity to litigate as a layperson.

Finally, although the court will deny Ziegler'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. Ziegler may renew his motion if circumstances change and it becomes clear that this case exceeds his capacity as a layperson to litigate. Ziegler 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 Ziegler is unable to continue litigating on his own behalf.

ORDER

IT IS ORDERED that plaintiff Michael Ziegler's motion for court assistance in recruiting volunteer counsel (dkt. #31) is DENIED without prejudice as to later reconsideration.

Entered this 15th day of October, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge