IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JEREMY CLARK

Plaintiff,

v.

SECURITY DIRECTOR SWEENEY,
LT. SHANNON–SHARPE, NURSE GATES,
NURSE SUTTER, NURSE LUND, LORI ALSUM,
INMATE COMPLAINT EXAMINER BROWN,
NURSE HAMMER, UNIT MANAGER BROADBENT,
WELCOME ROSE and WARDEN GARY BOUGHTON,

Defendants.

OPINION and ORDER

15-cv-333-bbc

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Pro se prisoner Jeremy Clark has been granted leave to proceed on claims that defendants Boughton, Sweeney, Shannon-Sharpe, Alsum, Brown, Gates, Sutter, Lund, Hammer, Broadbent and Rose violated his Eighth Amendment rights by refusing to allow him to order certain medically-prescribed shoes from a vendor that was not approved by the prison. Plaintiff has filed a motion asking that the court assist him with recruiting counsel, which I am denying because plaintiff has not shown that this case is too complex for him to litigate on his own.

OPINION

A court can assist an indigent party with recruiting counsel when the party: (1) has

made a reasonable effort to find a lawyer on his own, but was either unsuccessful or prevented from making such an effort; and (2) the party is incapable of continuing to represent himself given the difficulty or complexity of his claims. Pruitt v. Mote, 503 F.3d 647, 655 (7th Cir. 2007). Plaintiff has submitted letters he has received from three law firms that have refused to represent him. Accordingly, I conclude that plaintiff has satisfied his initial burden of demonstrating that he has made a reasonable effort to find a lawyer. However, I am not convinced plaintiff is incapable of continuing to represent himself—at least at this stage of the proceedings.

Plaintiff argues that this case is "very complex" because it requires him to prove that defendants were deliberately indifferent, which involves the "difficult and subtle question" of defendants' state of mind. However, the mere fact that plaintiff is alleging deliberate indifference, and that such cases require proof of a defendant's state of mind, does not mean that he is automatically entitled to a lawyer. Olson v. Morgan, 750 F.3d 708, 711 (7th Cir. 2014) (writing in a deliberate indifference case, "[w]e reject [plaintiff's] argument that state-of-mind questions are categorically too difficult for pro se litigants.").

In any event, plaintiff has not shown that the case is too complex for him. Plaintiff argues that he suffers from mental illnesses, but he does not does not explain how these illnesses prevent him from litigating his claims. Thus far, plaintiff's filing have been well-written, based on appropriate authority and have focused on the legal issues that are relevant to his claims. Although plaintiff asserts that a fellow inmate has assisted him with the preparation of these filings, the Court of Appeals for the Seventh Circuit has held that "the

fact that an inmate receives assistance from a fellow prisoner should not factor into the decision whether to recruit counsel." Henderson v. Ghosh, 755 F.3d 559, 565 (7th Cir. 2014). In other words, the assistance plaintiff receives from another prisoner neither supports nor undermines a motion for assistance in recruiting counsel; it is simply irrelevant.

Plaintiff also argues that the court should assist him with recruiting an attorney because he has limited access to the law library, limited access to computer-assisted legal research and "very little knowledge of the law" relative to defendant's counsel. However, these constraints are common to almost all prisoners and plaintiff does not explain how they prevent him from continuing to represent himself. Furthermore, plaintiff is not entitled to a playing field that is level in all respects; the fact that the defendants he has decided to sue have retained an attorney does not mean that he is also entitled to one.

Finally, I note that plaintiff's motion comes at a relatively early stage in this case. Although the deadline for defendants to file motions for summary judgment on the ground of administrative exhaustion has passed, discovery is still ongoing and this case is more than a year away from trial. Romanelli v. Suliene, 615 F.3d 847, 852 (7th Cir. 2010) ("[T]he district court properly concluded that the case was still in its infancy, thereby making it impossible at that juncture to make any accurate determination regarding [the plaintiff's] abilities or the outcome of the lawsuit."). Courts are reluctant to assist prisoners with the recruitment of counsel until it appears that the prisoner has an imminent need for representation. To ensure the best use of the few lawyers willing and able to represent the "sea of people lacking counsel," Olson, 750 F.3d at 711, courts often refrain from recruiting

lawyers until a case progresses to such a stage that those lawyers' unique abilities are necessary.

For the reasons discussed above, plaintiff's motion will be denied. If at a later point in this case, it becomes apparent that the complexity of this case is beyond plaintiff's abilities, he may renew his motion for assistance with recruiting counsel. However, if plaintiff files such a motion, he should explain what has changed about the complexity of the case or his ability to represent himself that requires the assistance of counsel.

ORDER

IT IS ORDERED that plaintiff Jeremy Clark's motion for assistance with recruiting counsel, dkt. #17, is DENIED.

Entered this 3d day of December, 2015.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge