NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted January 19, 2023*
Decided January 20, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-1632

TIMOTHY W. ELKINS, JR., *Plaintiff-Appellant*,	Appeal from the United States District Court for the Southern District of Illinois.
v.	No. 3:19-CV-55-MAB
LEVI QUINN, et al., *Defendants-Appellees*.	Mark A. Beatty, *Magistrate Judge*.

O R D E R

Timothy Elkins, Jr., a former Illinois prisoner, challenges the district court's repeated refusals to recruit counsel for him in his suit under the First and Eighth Amendments against prison officials. Because the district court did not abuse its discretion, we affirm.

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* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C)

Elkins says that he was subjected to verbal harassment by a prison guard, Levi Quinn, while being transported from prison to a court appearance. Elkins's unrebutted deposition testimony highlighted the following remarks: (1) while preparing to leave the prison, Quinn told another guard—who had just told Elkins to bend over—that Elkins would do whatever he was told; (2) on the drive to the courthouse, Quinn asked Elkins whether his lawyer was attractive; (3) at the courthouse, Quinn commented on the appearance and promiscuity of two women there; (4) on the drive back to the prison, Quinn said that a sign reading "Bushy Mound" referred to a vagina, asked whether Elkins would agree to give sexual favors to five men in exchange for being released, and asked whether Elkins might try to escape prison by jumping a fence.

A month after the courthouse trip, Elkins was transferred to a new prison, Southwestern Illinois Correctional Center in East St. Louis, Illinois. A Southwestern mental-health counselor, who reported that she had treated Elkins's family at a prior job, declined to have direct contact with Elkins based on her ethical duties as a licensed counselor. Because of these "staff familiarity issues," Southwestern's warden, Ronald Vitale, gave approval for Elkins to be transferred to Sheridan Correctional Center in Sheridan, Illinois. Before the transfer, Elkins filed an internal grievance that complained of Quinn's conduct during the transport and invoked the Prison Rape Elimination Act. (The prison's internal-affairs department investigated Elkins's complaint and concluded there was insufficient evidence that Elkins's rights had been violated.)

While imprisoned at Sheridan, Elkins sued Quinn and Vitale under 42 U.S.C. § 1983 over these events. He also moved for recruitment of counsel, asserting that he had tried but failed to hire a lawyer and could not represent himself given his limited legal knowledge and lack of access to legal materials while incarcerated.

At screening, *see* 28 U.S.C. § 1915A, the district judge allowed Elkins to proceed on two claims: (1) an Eighth Amendment claim that Quinn's comments during the transport amounted to cruel and unusual punishment; and (2) a First Amendment retaliation claim against Vitale for transferring him to Sheridan. The judge denied Elkins's request for counsel on grounds that he had not shown a reasonable effort to hire a lawyer and his pleadings demonstrated—at this stage of the proceedings—he could litigate his case on his own.

During discovery, Elkins again moved for recruited counsel, this time listing those lawyers who he tried but failed to hire. The judge found his proof insufficient and told Elkins to submit letters from at least three attorneys declining to take his case.

As discovery progressed, Elkins filed three more motions for recruitment of counsel, each a month apart. He repeated prior arguments and submitted a letter from the American Civil Liberties Union declining to take his case. In a single order, a magistrate judge—now presiding with the parties' consent—denied all three motions because Elkins had not submitted rejection letters from three attorneys.

Shortly afterwards, Elkins moved a sixth time for counsel, asserting that he had sent letters to lawyers but without response. The magistrate judge denied the motion because Elkins again had not submitted three rejection letters.

A few days later, Elkins filed a seventh motion and, after a month passed without a ruling, an eighth. In both motions, he reiterated that he lacked sufficient legal knowledge and access to legal materials to represent himself, and he attached three rejection letters from attorneys. In an order addressing both motions, the magistrate judge found Elkins's attempt to hire a lawyer reasonable but declined to recruit counsel because Elkins was competent to litigate his own case. According to the magistrate judge, the harassment and retaliation claims were relatively simple; Elkins's pleadings, motions, and discovery requests showed his familiarity with the Federal Rules of Civil Procedure; and his filings reflected a strong ability to reason, write, and conduct legal research.

About two months later, near the close of discovery, Elkins filed a ninth motion, mentioning for the first time that his anxiety and depression—for which he took medication—interfered with his daily activities and decisions. When no ruling was forthcoming, Elkins filed his tenth motion, emphasizing his lack of legal knowledge and access to legal materials. The magistrate judge denied both motions, again stating that Elkins's filings showed he could manage his own case. The judge did not address Elkins's contention about his mental illnesses.

The defendants subsequently filed a motion for summary judgment, which the magistrate judge granted. On the Eighth Amendment claim, the magistrate judge ruled a reasonable jury could not find that Quinn's harassment was sufficiently extreme to be cruel and unusual punishment: Quinn had not incited other inmates to harm Elkins, exploited Elkins's vulnerabilities, or caused Elkins severe psychological harm. As for the First Amendment claim, the magistrate judge concluded that a reasonable jury could not find that Elkins's transfer, on its own, was an adverse action that could constitute retaliation, even if motivated by Elkins's complaint.

On appeal, Elkins generally challenges the magistrate judge's summary-judgment ruling but does not engage with his reasoning. Although we are mindful of Elkins's pro se status, he still must comply with Rule 28(a)(8) of the Federal Rules of Appellate Procedure, and "an appellate brief that does not even *try* to engage the reasons the appellant lost has no prospect of success." *Klein v. O'Brien*, 884 F.3d 754, 757 (7th Cir. 2018). But we will touch on one cogent argument we can discern—that the magistrate judge abused his discretion in denying Elkins's requests for counsel by not mentioning his mental illness. Elkins relies on *Thomas v. Wardell*, 951 F.3d 854, 861 (7th Cir. 2020), where we concluded that an indigent prisoner was prejudiced by the district court's decision not to recruit counsel without considering whether the prisoner, who had a history of mental illness, was competent to litigate his case.

But the magistrate judge needed to address only those points in Elkins's motions bearing directly on his competency to litigate the case, not every point those motions raised, *see McCaa v. Hamilton*, 893 F.3d 1027, 1032 (7th Cir. 2018), and Elkins did not explain how his mental illness affected his ability to litigate. He stated in passing that his depression and anxiety interfered with his activities and decision-making, but he made no effort to explain how those ailments meant he could not represent himself despite his capable litigation thus far and his admission that he was taking medication.

As for Elkins's reliance on *Thomas*, we think his case is distinguishable. In *Thomas*, the district court erred by not weighing the complexity of the plaintiff's claims against his competency to litigate those claims. *See Thomas*, 951 F.3d at 861–62 (citing *Pruitt v. Mote*, 503 F.3d 647, 655 (7th Cir. 2007) (en banc)). In deciding whether to recruit counsel for a pro se litigant, the district court must ask whether the case's factual and legal difficulty "exceeds the particular plaintiff's capacity as a layperson to coherently present it," *Pruitt*, 503 F.3d at 655, and the magistrate judge here reasonably concluded that Elkins was competent to litigate his own case. The judge noted that Elkins's claims—for harassment and retaliation—did not involve notably difficult issues, such as medical evidence or a complex state-of-mind showing like deliberate indifference. *See Pennewell v. Parish*, 923 F.3d 486, 491 (7th Cir. 2019). And the magistrate judge, in more than one ruling, noted Elkins's competence in litigating his case—singling out, among other things, his well-written motion for a preliminary injunction, his ability to serve interrogatories on the defendants, and his submission of filings that demonstrated above-average reasoning, research, and writing skills.

We have considered Elkins's remaining arguments, but none has merit.

AFFIRMED