

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MUMIN ISRAFIL,

Plaintiff,

v.

BARBARA WOODS, et al.,

Defendant.

Case No. 1:09-cv-468

Spiegel, J.
Bowman, M.J.

MEMORANDUM ORDER

I. Background

Plaintiff initiated this suit more than four years ago while incarcerated at the Warren Correctional Institution (WCI) in Lebanon, Ohio. Plaintiff initially proceeded *pro se*, was appointed counsel *sua sponte* by this Court in November of 2009, but since August 2010, has again proceeded *pro se*. After Plaintiff's first appointed counsel withdrew, the Court denied Plaintiff's request to appoint new counsel. (See motion at Doc. 63, denied by Order at Doc. 66, objections overruled by Order at Doc. 152). In September 2012, Plaintiff again renewed his request for the appointment of counsel (Doc. 237); that motion was denied by the undersigned magistrate judge shortly thereafter. (Doc. 240).

On December 19, 2012, Plaintiff filed what he captioned as a "second" motion for the appointment of counsel. (Doc. 248). In addition to that motion, Plaintiff has filed a motion seeking relief from judgment in order to reopen discovery (Doc. 238). Both of these non-dispositive motions remain pending before the undersigned magistrate judge.

A motion for summary judgment, a prior Report and Recommendation on the same, and objections thereto (Docs. 234, 241, 246, 247) all remain pending before the presiding district judge. On January 17, 2013, Senior District Judge S. Arthur Spiegel held all of these pending motions in abeyance in light of Plaintiff's interlocutory appeal. (Doc. 249). Because Plaintiff's appeal was recently dismissed for want of prosecution (Doc. 262), it is now appropriate for this Court to resume jurisdiction and rule on the pending motions.

II. Pending Non-Dispositive Motions

For the convenience of this Court, the undersigned's September 2012 analysis of Plaintiff's request for the appointment of counsel is repeated verbatim.

A. Plaintiff's Motion for the Appointment of Counsel

Before reviewing Plaintiff's current request [Doc. 237], it is helpful to look back at the facts relating to the initial appointment of counsel, summarized in the Court's September 9, 2010 R&R:

In view of the serious nature of plaintiff's allegations [relating to his allegedly serious need for medical care], the Court requested the assistance of the attorneys from the Ohio Justice and Policy Center to represent plaintiff in this case. (Doc. 32). Counsel agreed to the appointment and filed an amended complaint and motion for temporary restraining order/preliminary injunction on plaintiff's behalf. (Docs. 42, 43).

A hearing on the motion was scheduled for June 28, 2010. In the meantime, counsel for plaintiff and defendants attempted to resolve the medical issues raised by the motion for temporary restraining order/preliminary injunction without Court intervention. This included an agreement to have plaintiff undergo an independent medical examination by Dr. Carole Miller, M.D., a neurosurgeon at the Ohio State University Medical Center, to determine the status of plaintiff's medical condition and recommendations for treatment. The undersigned traveled to the Warren Correctional Institution on June 10, 2010 to have a face-to-face meeting with Mr. Israfil and help facilitate communication

between Mr. Israfil, all counsel, and the Court in an effort to reach a speedy resolution of the medical issues raised by plaintiff's motion.

Thereafter, the parties agreed to stay the hearing on the motion pending the independent medical examination by Dr. Miller. (Doc. 57). The parties were ordered to advise the Court whether a hearing on the motion would be necessary following the examination by Dr. Miller. *Id.*

On July 29, 2010, Mr. Israfil underwent an examination by Dr. Miller at the Outpatient Clinic at the Ohio State University Hospital.

On August 18, 2010, Mr. Israfil filed a pro se motion for removal of his appointed attorneys based on fundamental disagreements about the course of representation in his case. He also moved for the appointment of successor counsel. (Doc. 63). Following a telephone conference with the Court at which pro se plaintiff Mumin Israfil, his counsel, and counsel for defendants were present, the Court granted Mr. Israfil's motion for removal of appointed attorney. (Doc. 66). However, the Court denied Mr. Israfil's request for successor counsel because it was apparent to the undersigned from Mr. Israfil's court filings and letters, as well as the Court's face-to-face meeting with Mr. Israfil, that he believes his approach to this litigation is the best one and that appointment of successor counsel would be futile. *Id.*

(Doc. 81 at 2-3).

.....

In his recent [September 2012] request for the appointment of counsel, Plaintiff argues that he requires the assistance of counsel to obtain additional discovery, and because this case is so "complex" that Plaintiff cannot litigate it without professional assistance. Of course, Plaintiff has in fact been litigating this case *pro se* for most of the three years it has been pending. Plaintiff's efforts have borne some fruit, insofar as two of his claims against Defendant Sexton have survived summary judgment. On the other hand, given the dismissal of all other claims and Defendants, this case is far less complex than it was at the time when counsel was first appointed on Plaintiff's behalf. Given these realities, and while acknowledging the presiding district judge's discretion to reach a different conclusion, I find no basis for the appointment of counsel at this time.

(Doc. 240 at 1-3).

No new information in Plaintiff's December 2012 motion alters the above analysis of Plaintiff's September 2012 motion for the appointment of counsel. The only change is that in his December 2012 renewed request, Plaintiff seeks counsel in order to participate in alternative dispute resolution proceedings, in hopes of extracting a settlement from Defendant Sexton prior to trial. Plaintiff has attached, as exhibits to his motion, copies of letters to attorneys from whom he has unsuccessfully sought representation in the past. However, the undersigned is reluctant to seek the representation of counsel even for the limited purpose of alternative dispute resolution proceedings in this Court, given the lengthy history of this case, Plaintiff's demonstrated difficulty working with appointed counsel, and the fact that the case is now ready for trial before Judge Spiegel.

B. Motion to Reopen Discovery

Presumably in part because of the pending appeal, as well as perhaps because of changes in defense counsel (see Docs. 245, 259, 263), Defendants filed no response to Plaintiff's separate motion requesting the reopening of discovery and an evidentiary hearing concerning Plaintiff's sole remaining claims against Defendant Sexton (Doc. 238).

Defendant Sexton was added as a defendant during the period of time when Plaintiff was represented by counsel. If the undersigned's last R&R is adopted (Doc. 241), the only claims that will remain in this litigation concern Plaintiff's allegations that Defendant Sexton is liable in his individual capacity for demonstrating retaliatory conduct and using excessive force against Plaintiff on or about June 12, 2009, while

transporting Plaintiff to an off-site facility for a neurology appointment. Discovery against Sexton closed more than two years ago. In his pending motion, Plaintiff asserts that he timely served Defendant Sexton written discovery requests early in this case, but that Defendant Sexton has “evade[d]” fully responding to prior requests. (Doc. 238 at 2).

Given the 263 docket entries in this case to date, and the fact that it has been pending for more than four years, to state that Plaintiff has engaged in an active motion practice would be an understatement. The record reflects numerous discovery disputes, the vast majority of which have been resolved against Plaintiff. Despite Plaintiff’s general plea for more discovery from Defendant Sexton, Plaintiff fails to identify any specific written request concerning his claim against Sexton to which Defendant Sexton previously failed to respond.¹ For that reason, as well as the lack of timeliness of Plaintiff’s motion, the motion to reopen discovery will be denied.

III. Conclusion and Order

Accordingly, **IT IS ORDERED THAT:**

1. Plaintiff’s motion to reopen discovery against Defendant Sexton and/or for an evidentiary hearing on his discovery request (Doc. 238) is **DENIED**;
2. Plaintiff’s last motion for the appointment of counsel for the purpose of conducting alternative dispute resolution proceedings (Doc. 248) is likewise **DENIED** at

¹In an exhibit to his renewed request for the appointment of counsel, Plaintiff alludes to Requests for Interrogatories directed to Defendant Sexton wherein Plaintiff allegedly sought proof that Sexton attempted to “defraud the federal court by initially falsely claiming that he had not been served the complaint & summons.” (Doc. 248-1 at 4). Plaintiff allegedly seeks the referenced “interrogatory responses for impeachment purposes.” (*Id.*, emphasis original). To the extent that Plaintiff’s motion to reopen discovery seeks to compel such responses, the undersigned would deny the motion on grounds of timeliness, and because the requested discovery is not relevant.

this time. Of course, the trial judge retains the discretion to appoint counsel to the extent that he deems it advisable, or to refer the matter to the magistrate judge for participation in the Court's Pro Se Mediation Program;

3. All pretrial matters having been fully resolved before the undersigned magistrate judge, the pending motion for summary judgment, Report and Recommendation, and objections thereto shall be recommitted to the presiding district judge for resolution. Plaintiff's lone remaining claim(s) against Defendant Sexton may be set for trial at the discretion of Judge Spiegel.

s/ Stephanie K. Bowman
Stephanie K. Bowman
United States Magistrate Judge