

NONPRECEDENTIAL DISPOSITION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 April 4, 2025*

Decided June 24, 2025

BeforeDIANE S. SYKES, *Chief Judge*CANDACE JACKSON-AKIWUMI, *Circuit Judge*JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1175

MIGUEL RICO,
*Plaintiff-Appellant,*Appeal from the United States District
Court for the Central District of Illinois.*v.*

No. 21-cv-1228

JOHN HOWE,
*Defendant-Appellee.*Joe Billy McDade,
*Judge.***ORDER**

Miguel Rico, an Illinois prisoner, sued John Howe, a correctional officer, for allegedly violating his rights under the Eighth Amendment. *See* 42 U.S.C. § 1983. Citing Rico's competence to litigate, the district judge twice denied Rico's requests to recruit counsel, and, after Rico repeatedly failed to comply with orders regarding Howe's discovery requests, the judge dismissed the suit with prejudice. Because the district

* 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).

No. 24-1175

Page 2

court failed to consider Rico's allegation that there was a material change in his ability when denying Rico's second motion to recruit counsel, and the lack of counsel prejudiced Rico, we reverse and remand for the district court to reconsider Rico's request for an attorney.

In 2021, Rico, a prisoner at Pontiac Correctional Center in Illinois, was on suicide watch. Rico alleges that Howe and another officer watched him cut his wrists with a metal object and refused to help him or to call a crisis team until a third officer intervened. Rico also alleges that when he returned to his cell after receiving medical care, Howe gave him shoes with laces and mocked Rico for not killing himself; Rico later attempted to hang himself in his cell with a shoelace.

After filing suit, Rico filed his first motion to recruit counsel. In that motion, Rico asked for recruitment of counsel because he was unable to afford an attorney, unsuccessfully attempted to obtain pro bono counsel through contacting law firms known to engage in pro bono efforts, had only an 8th grade education, was not fluent in English and could only submit his filings with the assistance of another inmate, and inmates were unable to access the law library due to COVID restrictions. The district judge found that Rico had reasonably tried to find counsel but denied the motion because Rico appeared competent to litigate the case himself. The judge acknowledged Rico's limited education and that English was not Rico's primary language, but the judge also found that Rico's claim was not complex relative to his education level and skills, and turned on facts of which he had personal knowledge. *See Pruitt v. Mote*, 503 F.3d 647, 649 (7th Cir. 2007) (en banc).

Discovery proceeded and was contentious. In April 2023, Howe filed a motion to compel, asserting that Rico had not served his initial disclosures, violating a scheduling order. The judge granted the motion and ordered Rico to comply. The next month, Howe filed a second motion to compel, arguing that Rico's responses to Howe's first set of discovery requests were incomplete and unresponsive. The judge granted the motion, ordering Rico to respond fully and to file a notice of compliance with the court.

Three weeks after the judge entered this order, Rico moved again for counsel. He argued that he was forced to take "heavy medication" that made him "unable to function to deal with any legal issues on his own." The judge denied this second motion for counsel "for the reasons stated in prior orders denying counsel" in a text order. The docket entry explained that Rico's "pleadings indicate that he is competent to respond to discovery" and that Rico "should answer [Howe's] questions as directly as he can.

That is all the Court expects.” Rico subsequently responded to the first set of discovery requests.

A few weeks later the judge warned Rico that his conduct risked dismissal. Howe had filed a third motion to compel, asserting that Rico was refusing to answer a second set of discovery requests. Before ruling, the judge noted Rico’s history: The judge had found it necessary to order Rico to comply with discovery requests “twice”; ordered Rico to file a notice of compliance (an order that remained unmet, “despite the Court’s urging”); and “had rejected [Rico’s] excuse for noncompliance,” “encourag[ing him] to put forth his best efforts ... , all to no avail.” The judge warned Rico that he could face “dismissal of this action” if he failed to comply with the judge’s prior orders before a hearing set for later that month to resolve the motion to compel.

The next hearing did not resolve the discovery dispute. The parties agreed that Rico had complied with the first set of discovery requests but disputed whether he had complied with the second set. In response, the judge scheduled a status conference for the next month, directed Howe to file his second set of discovery requests and Rico’s responses, and allowed Rico to file anything relevant to Howe’s motion to compel. Howe filed the documents that the judge requested; Rico filed nothing. At the follow-up status conference, Rico reiterated (under oath) that until recently he had been taking medicine that rendered him unable to respond to discovery requests and swore that he was now able to respond. The judge granted Howe leave to submit a supplemental interrogatory to Rico about the medication that he had taken.

After three months passed without any further filings from either party, the judge dismissed the case with prejudice as a discovery sanction. *See* FED. R. CIV. P. 37(b)(2)(A)(v). The judge found that Rico’s responses to Howe’s second request for documents were “sparse (at best)” and his responses (“unable to answer”) to Howe’s second set of interrogatories, were “entirely unacceptable.” The judge recounted that he previously ordered Rico to answer discovery “to the best of his ability,” which “is the lowest possible” obligation. But, the judge found, Rico’s “unwillingness” to give “even the most basic” responses, after the judge ordered him to “make an effort” or face dismissal, was not “inadvertent.” In deciding to dismiss the case with prejudice, the judge relied on the totality of Rico’s discovery noncompliance, explaining that his tardy responses to the first set of discovery requests, caused “serious inconvenience” to Howe and the court, and reflected “willfulness, bad faith, and fault.”

On appeal, Rico challenges the dismissal of his suit as a discovery sanction and the denial of his motions to recruit counsel. Because we deem it necessary to reverse the

ruling on Rico's second motion to recruit counsel, we do not reach the question of sanctions.

We review the denial of a motion to recruit counsel for abuse of discretion. *Pruitt*, 503 F.3d at 658. In doing so, we ask “(1) has the indigent plaintiff made reasonable efforts to retain counsel or been effectively precluded from making such efforts” and if so, “(2) given the difficulty of the case, did the plaintiff appear competent to litigate it himself, and (3) if not, would the presence of counsel have made a difference in the outcome.” *Id.* at 654 (cleaned up). In cases where there are multiple motions for recruitment of counsel, we have found abuse of discretion where the district judge failed to consider the changed circumstances of a prisoner's ability to litigate their case. *See Eagan v. Dempsey*, 987 F.3d 667, 684–87 (7th Cir. 2021) (abuse of discretion where district judge failed to consider changed circumstances of prisoner's ability to litigate case); *see also James v. Eli*, 889 F.3d 320, 328 (“A trial court can also abuse its discretion when it overlooks essential evidence or fails to consider relevant factors.”) (cleaned up). At the same time, we have noted that once a district judge resolves a recruitment of counsel motion, the judge need not revisit the issue in repetitive motions to recruit counsel that offer no additional grounds for relief. *See Thomas v. Anderson*, 912 F.3d 971, 978 (7th Cir. 2018). This simply acknowledges the commonsense notion that no litigant can expect a court to devote judicial resources to issues already disposed of, yet courts will consider changed circumstances where appropriate.

The district judge's ruling on Rico's first motion was entirely consistent with our case law. There, the district court noted—as we have previously—that finding an attorney to take cases without pay is difficult. *Olson v. Morgan*, 750 F.3d 708, 711 (7th Cir. 2014). To be sure, attorneys have an obligation to their profession and often take pro bono assignments. *Mallard v. U.S. Dist. Ct. for S. Dist. of Iowa*, 490 U.S. 296, 310 (1989) (Kennedy, J., concurring). However, courts can only *ask* attorneys to accept pro bono prisoner litigation. *Pruitt*, 503 F.3d at 654. In his first ruling, the judge explicitly and reasonably ruled that (1) Rico had satisfied his obligation to try to find an attorney himself, and (2) even though English was not his primary language and he had a limited education, Rico could still litigate his claim because it was simple and turned only on his personal knowledge. *See id.* at 654–56 (encouraging holistic review of *pro se* litigant's characteristics and complexity of case in determining need for counsel).

Regarding the second motion for counsel a year and a half later, Rico contends that the judge overlooked his argument that he was not able to litigate his case because of his “heavy medication.” We agree. In a text order, the district court denied Rico's

second motion “for the reasons stated in prior orders denying counsel.”¹ However, Rico made no mention of his medical difficulties in his first request for counsel, and, thus, the judge’s previous denial understandably never addressed that concern. While “[n]ot every cognitive limitation will require” recruitment of counsel, the district court “should have considered” how his heavy medication affected his ability to litigate the case. *Walker v. Price*, 900 F.3d 933, 940 (7th Cir. 2018) (Barrett, J.). Because the district court should have, but did not, analyze Rico’s medical condition in its second denial, we find the court acted outside of its discretion. *Eagan*, 987 F.3d at 684.

Moreover, the denial cannot be saved by the district court stating that Rico’s “pleadings indicate he is competent to respond to discovery” because Rico had previously alerted the court that a jailhouse lawyer assisted him with his filings. We have consistently held that when another inmate assists a *pro se* prisoner, the district court must assess the abilities of the plaintiff himself irrespective of the capabilities of an unlicensed inmate. *See, e.g., Henderson v. Ghosh*, 755 F.3d 559, 565 (7th Cir. 2014) (“First, the fact that an inmate receives assistance from a fellow prisoner should not factor into the decision whether to recruit counsel.”); *Walker*, 900 F.3d at 940–41 (finding abuse of discretion for failing to analyze litigant’s capacity apart from jailhouse lawyer). When a plaintiff’s “competency may not have been entirely his own ... courts must ‘specifically examine’ a plaintiff’s ‘personal ability to litigate the case, versus the ability of the jailhouse lawyer’ who assisted the plaintiff.” *McCaa v. Hamilton*, 893 F.3d 1027, 1033 (7th Cir. 2018) (quoting *Dewitt v. Corizon, Inc.*, 760 F.3d 654, 658 (7th Cir. 2014)).

Moving to prejudice, “there is a reasonable likelihood that the recruitment of counsel would have made a difference in the outcome of the litigation.” *Dewitt*, 760 F.3d at 657. Critically, the judge dismissed Rico’s case based on the totality of Rico’s noncompliance with discovery orders. Recall, the district court granted two motions to compel against Rico during the time Rico claims he was on tranquilizing medication. That previous noncompliance formed a core basis for the district court’s finding of “willfulness, bad faith, and fault,” which motivated dismissal. But had the district court recruited counsel in light of Rico’s medical difficulties, we think it reasonably likely Rico could have strengthened his case through discovery and “avoid[ed] common” pitfalls in responding to discovery that led to the ultimate sanction. *Pruitt*, 503 F.3d at 660 (discussing how unrepresented plaintiff was prejudiced because attorney would have assisted in how to answer deposition questions).

¹ Despite referring to “orders,” the docket reflects Rico only filed one previous request for counsel.

No. 24-1175

Page 6

To be sure, we do not hold that any *pro se* litigant who demonstrates a repeated and stubborn refusal to answer basic interrogatory requests can claim prejudice because an attorney would have persuaded him out of such fallacy. But that is not this case. First, despite Rico's claimed medical issues, it is undisputed that he did eventually respond to Howe's first set of interrogatories, setting Rico apart from the irredeemably contumacious litigant. Second, and more importantly, the lion's share of Rico's noncompliance occurred when he claims he was medically limited. We cannot say an attorney would be able to assist a litigant dead-set on defying discovery requests. But the same is not true for one whose significant medical difficulties account for much of the noncompliance. For a medically impaired litigant "unfamiliar with the requirements and techniques of discovery," an attorney may be the necessary lifeline. *Pruitt*, 503 F.3d at 660.

The district judge on remand will first consider the recruitment of counsel issue. After determining whether it is appropriate to recruit counsel, Howe may renew any motions and Rico can respond, either with or without counsel. We end with a reminder that we have not decided the issue of whether the district court must recruit counsel. That is a decision best left for the district judge, who can view Rico and assess the credibility of any new medical claims, among other issues.

REVERSED and REMANDED