

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

BRISTOUT BOURGUIGNON	:	
	:	PRISONER
v.	:	Case No. 3:01cv1151 (SRU)(WIG)
	:	
DETECTIVE ANTHONY P. GUINTA, JR.	:	
CAPTAIN DONALD A. BROWN	:	
TOWN OF WESTPORT	:	

**RULING ON MOTION FOR PRELIMINARY INJUNCTIVE RELIEF**

The plaintiff, Bristout Bourguignon (“Bourguignon”), brings this civil rights action pro se pursuant to 28 U.S.C. § 1915. He alleges that he was falsely arrested and imprisoned by the defendants in violation of his Fourth Amendment rights. In addition, he asserts state law claims of defamation and intentional infliction of emotional distress. Pending is Bourguignon’s motion for temporary restraining order and preliminary injunction. For the reasons that follow, Bourguignon’s motion is denied.

I. Standard of Review

“[I]nterim injunctive relief is an ‘extraordinary and drastic remedy which should not be routinely granted.’” Buffalo Forge Co. v. Ampco-Pittsburgh Corp., 638 F.2d 568, 569 (2d Cir. 1981) (quoting Medical Society of New York v. Toia, 560 F.2d 535, 538 (2d Cir. 1977)). In addition, a federal court should grant injunctive relief against a state or municipal official “only in situations of most compelling necessity.” Vorbeck v. McNeal, 407 F. Supp. 733, 739 (E.D. Mo.), aff’d, 426 U.S. 943

(1976).

In this circuit the standard for injunctive relief is well established. To warrant preliminary injunctive relief, the moving party “must demonstrate (1) that it will be irreparably harmed in the absence of an injunction, and (2) either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits of the case to make them a fair ground for litigation, and a balance of hardships tipping decidedly in its favor.” Brewer v. West Irondequoit Central Sch. Dist., 212 F.3d 738, 743-44 (2d Cir. 2000). Where the moving party seeks a mandatory injunction, *i.e.*, injunctive relief which changes the parties’ positions rather than maintains the status quo, or the injunction requested “will provide substantially all the relief sought, and that relief cannot be undone even if the defendant prevails at a trial on the merits,” the moving party must make a stronger showing of entitlement. Brewer, 212 F.3d at 744 (internal quotation marks and citation omitted). A mandatory injunction “should issue only upon a clear showing that the moving party is entitled to the relief requested” or where “extreme or very serious damage will result from a denial of preliminary relief.” Abdul Wali v. Coughlin, 754 F.2d 1015, 1025 (2d Cir. 1985) (citations omitted).

Although a showing that irreparable injury will be suffered before a decision on the merits may be reached is insufficient by itself to require the granting of a preliminary injunction, it is nevertheless the most significant condition that must be demonstrated. See Citibank, N.A. v. Citytrust, 756 F.2d 273, 275 (2d Cir. 1985). To demonstrate irreparable harm, plaintiff must show an “injury that is neither remote nor speculative, but actual and imminent and that cannot be remedied by an award of monetary damages.” Forest City Daly Housing, Inc. v. Town of North Hempstead, 175 F.3d 144, 153 (2d Cir. 1999) (quoting Rodriguez v. DeBuono, 162 F.3d 56, 61 (2d Cir. 1998)).

Although a hearing is generally required on a properly supported motion for preliminary injunction, oral argument and testimony are not required in all cases. See Drywall Tapers & Pointers Local 1974 v. Local 530, 954 F.2d 69, 76-77 (2d Cir. 1992). Where, as here, “the record before a district court permits it to conclude that there is no factual dispute which must be resolved by an evidentiary hearing, a preliminary injunction may be granted or denied without hearing oral testimony.” 7 James W. Moore, et al., Moore’s Federal Practice ¶ 65.04[3] (2d ed. 1995). Upon review of the record, the court determines that oral testimony and argument are not necessary in this case.

## II. Discussion

Bourguignon seeks preliminary injunctive relief in the form of examination of his back by an orthopedist, a treatment plan created by a qualified specialist and an order that the defendants carry out the treatment plan. The defendants object on the ground that they are not able to provide any of the requested relief.

All criminal charges against Bourguignon arising from the arrest that is the subject of this action were nolle before trial. Bourguignon currently is in the custody of the Connecticut Department of Correction following his conviction on charges stemming from a home invasion in Monroe, Connecticut. Because Bourguignon is not in the custody or care of the defendants, they cannot provide him the requested medical treatment.

Any medical treatment must be provided by the Connecticut Department of Correction. Before the court can order correctional officials to provide the requested medical care, the court must have in personam jurisdiction over at least one correctional official who can order the care. See Weitzman v. Stein, 897 F.2d 653, 658 (2d Cir. 1990); Visual Sciences, Inc. v. Integrated Communications, Inc.,

660 F.2d 56, 59 (2d Cir. 1981). See also, C. Wright & A. Miller, Federal Practice and Procedure § 2956, at 555 (1973) (“A court ordinarily does not have power to issue an order against a person who is not a party and over whom it has not acquired in personam jurisdiction.”). Because no correctional officials are defendants in this case, the court cannot order that Bourguignon receive the requested care.

In addition, preliminary injunctive relief is designed “to preserve the status quo and prevent irreparable harm until the court has an opportunity to rule on the lawsuit’s merits.” Devose v. Herrington, 42 F.3d 470, 471 (8<sup>th</sup> Cir. 1994) (per curiam). To prevail on a motion for preliminary injunctive relief, the moving party must establish a relationship between the injury claimed in the motion and the conduct giving rise to the complaint. See id.; see also Omega World Travel, Inc. v. Trans World Airlines, 111 F.3d 14, 16 (4<sup>th</sup> Cir. 1997) (reversing district court’s granting of motion for preliminary injunctive relief because injury sought to be prevented through preliminary injunction was unrelated and contrary to injury which gave rise to complaint).

Here, the complaint contains no reference to back pain or any back injury. Thus, the preliminary injunctive relief is unrelated to the claims in the complaint.

For all of these reasons, Bourguignon’s Motion for Temporary Restraining Order and Preliminary Injunction [**doc. #49-1, 49-2**] is **DENIED**.

**SO ORDERED** in Bridgeport, Connecticut, this \_\_\_\_ day of February 2003.

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Stefan R. Underhill  
United States District Judge