

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ANTHONY TORRES

v.

PRISONER
CASE NO. 3:03CV796 (SRU) (WIG)

JONATHAN VISCOMI, ET AL.

RULING ON PENDING MOTIONS

Pending are plaintiff's motions for injunctive relief and to preserve videotapes. For the reasons that follow, the motions are denied.

The plaintiff, is currently confined at Northern Correctional Institution in Somers, Connecticut. He seeks an order enjoining defendant Viscomi from taunting, harassing and stalking him and an order directing defendant Lantz to prevent any verbal communications between him and defendant Viscomi during the pendency of this case.

Interim injunctive relief is an "extraordinary and drastic remedy which should not be routinely granted." Medical Society of New York v. Toia, 560 F.2d 535, 538 (2d Cir. 1977). Moreover, 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 that 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.

The plaintiff filed his motion for injunctive relief in December 2003. Since the end of December 2003, the plaintiff has filed six declarations in support of the motion. The plaintiff alleges that defendant Viscomi has come to his cell and taunted and verbally harassed him on ten occasions from October 3, 2003 until February 20, 2004. He alleges that on three of the ten occasions, defendant Viscomi kicked or banged on his cell door. The plaintiff claims that on one of the ten occasions, defendant Viscomi encouraged an inmate in the cell adjacent to the plaintiff to taunt and verbally harass the plaintiff "by repeatedly disclosing DOC confidential, operational and security information pertaining to [the plaintiff's] custody at the NCI prison" and referring to the plaintiff as a child molester. Decl. Support Mot. Temp. Restraining Or. at 5. The plaintiff also claims that on February 26, 2004, defendant Viscomi came to the plaintiff's cell and spoke to him in a courteous manner. The plaintiff has not filed any declarations in support of his motion since March 11, 2004. The plaintiff contends that he cannot adequately litigate this case due to defendant Viscomi's verbal harassment.

Verbal harassment and name calling, absent physical injury, are not constitutional violations cognizable under section 1983. See Martin v. Sargent, 780 F.2d 1334, 1338 (8th Cir. 1985) ("Verbal threats are not constitutional violations cognizable under § 1983."); accord Purcell v. Coughlin, 790 F.2d 263, 265 (2d Cir. 1986); Cuoco v. U.S. Bureau of Prisons, No. 98 CIV. 9009(WHP), 2001 WL 167694, at *3 (S.D.N.Y. Feb. 16, 2001) (holding that, although abhorrent, verbal harassment and profanity do not violate an inmate's constitutional rights); Rivera v. Goord, 119 F. Supp. 2d 327, 342

(S.D.N.Y. 2000) (same); Ramirez v. Holmes, 921 F. Supp. 204, 210 (S.D.N.Y. 1996) (“Allegations of threats or verbal harassment, without any injury or damage, do not state a claim under 42 U.S.C. § 1983.”); Jeromosen v. Coughlin, 878 F. Supp. 444, 449 (N.D.N.Y. 1995) (“Although indefensible and unprofessional, verbal threats or abuse are not sufficient to state a constitutional violation cognizable under § 1983.”).

The realities of a maximum [security] . . . correctional institution are far removed from the peace of a judge's chambers . . . , and the court is fully aware that the exchange of verbal insults between inmates and guards is a constant, daily ritual observed in this nation's prisons. The court does not condone this; it merely recognizes that racial insults do not deprive prisoners of the minimal civilized measure of life's necessities, and thus do not constitute an eighth amendment violation.

Morgan v. Ward, 699 F. Supp. 1025, 1055 (N.D.N.Y. 1988) (citations omitted).

The plaintiff does not allege that defendant Viscomi has physically harmed him or that defendant Viscomi's alleged attempts to encourage other inmates to taunt and harass him have resulted in any physical injury or harm to him. Thus, the court concludes that the plaintiff has not demonstrated that he will suffer irreparable harm if his request for injunctive relief is not granted.

The plaintiff also alleges that he will not and cannot litigate this case because of defendant Viscomi's verbal taunting, threats and harassment. "It is well established that inmates have a constitutionally protected right of access to the courts." Smith v. Armstrong, 986 F. Supp. 40, 46 (D. Conn. 1996) (citing Bounds v. Smith, 430 U.S. 817, 822-25 (1977)). In Lewis v. Casey, 518 U.S. 343 (1996), the Supreme Court clarified what is encompassed in an inmate's right of access to the courts and what constitutes standing to bring a claim for the violation of that right. First, the Court held that to show a violation of his right of access to the courts, an inmate must allege an actual injury. Id. at 349. The fact

that an inmate may not be able to litigate effectively once his claim is brought before the court, is insufficient to demonstrate actual injury. Id. at 355. Rather, the inmate must show that he was unable to file the initial complaint or petition, or that the complaint he filed was so technically deficient that it was dismissed without a consideration of the merits of the claim. Id. at 351. In addition, the Court observed that "the injury requirement is not satisfied by just any type of frustrated legal claim." Id. at 354.

The plaintiff claims that he cannot effectively litigate this case because of defendant Viscomi's verbal harassment. The court notes, however, that since the filing of the motion for injunctive relief, the plaintiff has filed a notice of appeal of the court's prior ruling denying a motion for injunctive relief, a memorandum in support of the present motion for injunctive relief, six declarations in support of the present motion for injunctive relief, seven other motions, two reply memoranda and a writ of mandamus to the United States Court of Appeals for the Second Circuit. In addition, he has continued to litigate at least two other cases in this District. Thus, any claim that he may be unable to litigate this lawsuit in the future is speculative at best. The court concludes that the plaintiff has failed to allege that the actions and verbal harassment by defendant Viscomi have interfered with his access to courts. Absent allegations of actual and immediate harm, the plaintiff fails to satisfy the first requirement for the award of injunctive relief. Because there is no showing of irreparable harm, the court need not examine the other requirements for the issuance of injunctive relief. See Reuters Ltd. v. United Press Int'l, Inc., 903 F.2d 904, 907 (2d Cir. 1990) (party seeking injunctive relief must demonstrate irreparable harm "before other requirements for the issuance of an injunction will be considered").

The plaintiff's motion for temporary restraining order and preliminary injunction is denied. Because the court has denied the motion for injunctive relief, the plaintiff's motions for a court order directing the

defendants to preserve videotapes for an evidentiary hearing are denied as moot.

CONCLUSION

For the reasons stated above, the Motion for Temporary Restraining Order and Preliminary Injunction [doc.#31] is DENIED and the Motions for Order Directing the Defendants to Preserve and Produce Videotapes [docs. ## 41 and 46] are DENIED as moot.

SO ORDERED this 14th day of June 2004, at Bridgeport, Connecticut.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge