

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

CHARLES BATTS,	:	
	:	
Plaintiff,	:	
	:	No. 3:04CV1191 (MRK)
v.	:	
	:	
TODD BOGDANOFF,	:	
	:	
Defendant.	:	

RULING AND ORDER

The Plaintiff, Charles Batts, filed this civil rights action *pro se* and *in forma pauperis*. Pending before the Court are Mr. Batts' Motion for Preliminary Injunction [**doc. #9**], Motion for Personal Service [**doc. #10**], Motion for Access to the General Prison Population [**doc. #14**], and Motion for Order [**doc. #19**]. Having considered the motions and parties' briefs, the Court enters the following rulings and orders:

1. The Court DENIES without prejudice Mr. Batts' Motion for Preliminary Injunction [**doc. #9**] and Motion for Access to General Prison Population [**doc. #14**]. In both these motions, Mr. Batts asks the Court for injunctive relief related to his prior confinement and medical health treatment at Garner Correctional Institution. At the time that he filed these motions, Mr. Batts was confined at Garner Correctional Institution ("Garner"), in Newtown Connecticut. By letter dated November 16, 2004, Mr. Batts informed the Court that he has been transferred to Cheshire Correctional Institution ("Cheshire"), which is a general population facility. Therefore, Mr. Batts' claims requesting a transfer out of Garner and requesting that his medical health classification score be lowered so that he may be housed in the general prison population appear to be moot. *See e.g., Mawhinney v. Henderson*, 542 F.2d 1, 2 (2d Cir. 1976) ("In view of the fact

that appellant is no longer incarcerated at Auburn, his request for an injunction restraining the officials at Auburn from violating his civil rights is moot."); *Hanton v. Savoie*, No. 3:03CV1643SRU, 2004 WL 1553613, at *2 (D. Conn. Jul. 8, 2004) ("The Second Circuit has held that requests for injunctive relief become moot when an inmate is released or transferred to a different correctional facility.").

The same is true of Mr. Batts' requests to enjoin and restrain prison officials from administering any mental health treatment or medications to him without his written permission, as Defendant has represented that Mr. Batts is not currently receiving any mental health treatment or medication. *See* Letter of 10/28/04, Ex. A [doc. #12]. *See also Martin-Trigona v. Shiff*, 702 F.2d 380, 386 (2d Cir. 1983) ("The hallmark of a moot case or controversy is that the relief sought can no longer be given or is no longer needed.").

Nevertheless, there is an exception to the mootness principle for claims that while technically moot, are "capable of repetition, yet evad[e] review." *Altman v. Bedford Cent. Sch. Dist.*, 245 F.3d 49, 71 (2d Cir. 2001) (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983) and *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975)). "The capable-of-repetition doctrine applies only in exceptional situations, where the following two circumstances are simultaneously present: (1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Commer v. District Council 37*, No. 94 Civ. 8462 (DAB), 2003 WL 21692816, at *5 (S.D.N.Y. Jul. 21, 2003) (quoting *Spencer v. Kemna*, 523 U.S. 1, 17 (1998)).

Mr. Batts alleges that "because the prisoner has previously been transferred to mental

health [facilities] twice then released, the state could ultimately at any given time arbitrarily transfer him out of [the] general prison population [,] classify mental health treatment and [administer] antipsychotic drugs." Pl.'s Reply to Obj. to Mot. for Prelim. Injunction [doc. #15]. However, Mr. Batts has not alleged or provided evidence that would show that he has a reasonable expectation that he will be transferred or subjected to mental health treatment again, or that any such actions would necessarily be too short in duration to be fully litigated before the harm that Mr. Batts fears occurs. In addition, Mr. Batts has named only Dr. Tod Bogdanoff, a physician at Garner, as a defendant in this case. As a result of Mr. Batts' transfer to Cheshire, Dr. Bogdanoff is not subject to the injunctive relief that Mr. Batts requests. *See Doctor's Assocs., Inc., v. Reinert & Duree, P.C.*, 191 F.3d 297, 302 (2d Cir. 1999). Therefore, the Court must at this time, DENY both Mr. Batts' motions requesting injunctive relief.

The Court will allow Mr. Batts to amend his complaint to name an appropriate defendant for the purposes of the injunctive relief that he seeks, and to renew his motions for injunctive relief by filing a renewed motion and an additional memorandum with the Court, showing why the his claims for injunctive relief are not moot. The Court advises Mr. Batts that the deadline for any amendments that he wishes to make and any renewed motion or additional memoranda that he wishes to file is **February 18, 2005**. Mr. Batts must serve also any new defendants that he may name in his amended complaint by filing USM-285, notice of lawsuit and summons forms for each defendant with the U.S. Marshal Service, no later than **February 18, 2005**.

2. The Court also DENIES Mr. Batts' Motion for Personal Service [**doc. #10**] and Motion for Order [**doc. #19**]. In these motions, Mr. Batts seeks an order from the Court directing Dr. Bogdanoff to comply with his waiver of service request and directing the U.S. Marshal

Service to serve Dr. Bogdanoff. These motions are moot as to service of Dr. Bogdanoff in his official capacity because Dr. Bogdanoff has already appeared through counsel in order to answer Mr. Batts' official capacity claims for injunctive relief. These motions are premature as to service of Dr. Bogdanoff in his individual capacity because Mr. Batts has only recently filled out the appropriate forms to allow the Marshal to effect service upon Dr. Bogdanoff. According to the record before the Court, these forms were delivered to the Marshal on November 18, 2004. In a previous order dated September 10, 2004 [doc. #8], the Court ordered the Marshal to effect service within sixty days of receiving the necessary forms from Mr. Batts. Therefore, there is still nearly a month remaining for service upon Dr. Bogdanoff in his individual capacity. The Court also denies Mr. Batts' request that Dr. Bogdanoff be required to pay the costs of service as Mr. Batts is proceeding *in forma pauperis* and accordingly has not incurred any such costs.

3. Finally the Court advises Mr. Batts that this ruling does not affect his claim for damages and that those claims still remain in the case at this stage. However, a government agent or official such as Dr. Bogdanoff may be sued for damages under 42 U.S.C. § 1983 only in his individual capacity. *See Ford v. Reynolds*, 316 F.3d 351, 354 (2d Cir. 2003). As noted above, Dr. Bogdanoff has not yet been served in his individual capacity.

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: December 22, 2004.