

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES MILLER : CIVIL ACTION  
 :  
 v. :  
 :  
 STANLEY HOFFMAN, M.D., et al. : NO. 97-7987

**MEMORANDUM AND ORDER**

HUTTON, J.

March 25, 1998

Presently before this Court is the Motion by Plaintiff James Miller for Temporary Restraining Order and Preliminary Injunction (Docket No. 15). For the reasons stated below, the plaintiff's Motion is **DENIED**.

**I. BACKGROUND**

The plaintiff, James Miller ("Miller"), has alleged the following facts. Miller is currently an inmate at the Pennsylvania State Correctional Institution at Graterford ("Graterford"). Pl.'s Compl. ¶ 1. On April 16, 1997, Miller fell in the kitchen at Graterford, injuring his left elbow. Id. ¶ 11. On April 17, 1997, Miller's supervisor gave him a pass to the infirmary. Id. ¶ 13. On his way there, however, Graterford Officer James Davis ("Davis") stopped Miller and refused to let Miller proceed. Id. ¶ 14. When Miller objected, Davis falsely reported that Miller had threatened him. Id. ¶ 19. Davis's report caused Miller to be placed in disciplinary custody. Id. ¶

20. Further, a physician did not examine Miller until April 26, 1997. Id.

On May 2, 1997, Dr. Stanley Hoffman ("Hoffman"), the former medical director at Graterford, examined Miller. Id. ¶ 23. Hoffman injected steroids into Miller's elbow. Id. ¶ 24. This injection far exceeded the largest recommended dosage of steroids, and a few days later the wound began to leak pus, blood, and pieces of tissue. Id. ¶¶ 25, 28; Pl.'s Mot. ¶ 10. This condition lasted for three months. Pl.'s Compl. ¶ 29; Pl.'s Mot. ¶ 10. Although Miller requested permission to be seen by an orthopedic specialist or surgeon, Hoffman denied the request. Pl.'s Compl. ¶¶ 34-38.

On August 28, 1997, Dr. Stempler ("Stempler"), the visiting orthopedic specialist at Graterford, examined Miller. Id. ¶ 40. Stempler found that if Miller's elbow did not heal, surgery would be necessary. Id. On October 17, 1997, Miller was seen by another specialist, Dr. Ernest Rosato of Thomas Jefferson University Hospital. Id. ¶ 56; Pl.'s Mot. ¶ 14. Dr. Ernest Rosato also found that surgery would be required, and informed Hoffman that "we will schedule this as to the patient's availability." Pls.' Mem. Ex. A.

Miller continues to suffer from pain and immobility in his left arm and elbow. Pl.'s Mot. at 4. However, Miller has

not yet been granted permission to undergo the procedure recommended by Rosato and Stempler. Id.

Moreover, Davis has continued to harass Miller, even after Miller filed the instant suit. Pl.'s Mot. ¶¶ 26-28. In fact, Miller was transferred to Death Row at Graterford Prison, for no apparent reason. Id. ¶ 27. While on Death Row, Miller's personal items, including his elbow brace, were confiscated. Id. ¶ 30.

On February 18, 1998, the plaintiff filed the instant Motion for Temporary Restraining Order and Preliminary Injunction. The plaintiff requests that this Court issue an injunction ordering: 1) Graterford officials to arrange for Miller to receive the necessary medical treatment for his elbow; 2) Graterford officials to remove Miller from Death Row; and 3) Graterford officials and Davis to refrain from engaging in conduct constituting harassment. The plaintiff has since informed this Court that he has been removed from Death Row. Accordingly, the plaintiff concedes that this portion of his request is moot.

## **II. DISCUSSION**

In deciding whether to grant a preliminary injunction or temporary restraining order, "the court must balance 1) the plaintiff's likelihood of success on the merits, 2) whether plaintiff will suffer irreparable harm absent an injunction, 3)

whether other parties will be harmed if an injunction is granted and 4) the public's interests." Rogers v. Pennsylvania, No. CIV.A.97-6627, 1997 WL 793585, at \* 4 (E.D. Pa. Dec. 9, 1997). "All four factors should favor preliminary relief before injunction will issue." Wilson v. Wigen, No. CIV.A.96-620, 1996 WL 466897, at \* 1 (E.D. Pa. Aug. 16, 1996) (quoting S & R Corp. v. Jiffey Lube Int'l, Inc., 968 F.2d 371, 374 (3d Cir. 1992)). Given these considerations, this Court must deny the plaintiff's motion.

#### **1. Plaintiff's Medical Condition**

"In defining irreparable harm, it is not enough to establish a risk of irreparable harm, rather, there must be a clear showing of irreparable injury. . . . Nor is it enough for the harm to be serious or substantial, rather, it must be so peculiar in nature that money cannot compensate for the harm." Bieros v. Nicola, 857 F. Supp. 445, 446 (E.D. Pa. 1994) (citing ECRI v. McGraw-Hill, Inc., 809 F.2d 223, 226 (3d Cir. 1987)).

In the instant case, the plaintiff argues that he will suffer irreparable harm absent the requested relief because of "defendants' deliberate indifference to his serious medical needs," caused by Hoffman's refusal to allow Stempler or Rosato to perform surgery on Miller's elbow. Pl.'s Mem. at 9. The plaintiff states that "[t]here is a serious and well-founded threat that Mr. Miller may suffer permanent damage to his left

elbow and arm . . . . Each day that Mr. Miller is not granted the appropriate treatment, the threat of permanent damage grows greater." Id. at 10.

Although the plaintiff makes extremely broad assertions, it is clear that the plaintiff's continued discomfort caused by his current medical condition does not give rise to irreparable harm. Two specialists have examined the plaintiff in the last three and a half months, and both have found that the plaintiff's elbow has healed. Although the plaintiff may still experience pain, his condition does not require preliminary relief.

First, Dr. Francis Rosato ("Rosato") recently examined Miller and concluded that he no longer requires surgery. On December 5, 1997, Rosato stated:

I just saw Mr. Miller in the office today. At this moment the open lesion on his left elbow has completely resolved, totally epithelialized and appears healed.

I told him that it was best to hope that this situation would remain but that should it open again then the recommendation previously made should be followed mainly that it be operated on preferably by an orthopedic surgeon in recognition of the proximity of the lesion to the major nerve of the arm....  
. . . .

I have discharge him from our care effective today.

Defs.' Resp. Ex. B (emphasis added). Second, on February 19, 1998, Stempler, who had originally stated that surgery was

necessary, found that Miller's elbow had healed and stated that Miller was "medically cleared." Id. Ex. C. Accordingly, two doctors found that Miller's elbow has healed and currently does not require surgery. Thus, Miller has failed to make a clear showing of immediate and irreparable harm.

Furthermore, Miller asserts that this injury occurred on April 17, 1997. Pls.' Mot. ¶ 4. Since then, he's been examined by at least four doctors, including Hoffman, Rosato, Dr. Ernest Rosato, and Stempler. None of these doctors found that Miller's condition is growing increasingly and permanently worse without immediate treatment. Accordingly, the plaintiff has not alleged facts necessary to establish a threat of immediate and irreparable harm.

Finally, this Court finds that granting the plaintiff's motion would be against the public's interest. "Bureau of Prisons medical officials are better positioned to determine the medical needs of the plaintiff than this court. They have the expertise, resources and records necessary to make medical decisions in light of an inmate's condition, Bureau of Prisons resources and valid penological objectives." Berman v. Lamer, 874 F. Supp. 102, 105 (E.D. Pa. 1995). "Thus, absent a clear showing of irreparable harm, the public interest is better served by the Court deferring to the medical judgment of prison health care providers." Wilson, 1996 WL 466897, at \* 3. Because this

Court has found that the plaintiff has not made a clear showing of irreparable harm, the public interest is better served by denying the plaintiff's request. Accordingly, the plaintiff's Motion is denied with respect to the plaintiff's medical concerns.

## **2. Harassment**

As stated above, "[a] petitioner seeking injunctive relief must demonstrate both a likelihood of success on the merits and a probability of irreparable harm." Berman, 874 F. Supp. at 105 (citing Bradley v. Pittsburgh Bd. of Educ., 910 F.2d 1172, 1175 (3d Cir. 1990)). "It is well-settled that a prisoner seeking injunctive relief must exhaust his administrative remedies before filing suit in court." Wilson, 1996 WL 466897, at \* 2 (citing Veteto v. Miller, 794 F.2d 98, 100 (3d Cir. 1986)). While the plaintiff asserts that he has "fully exhausted his administrative remedies" with respect to his medical treatment, he does not contend that he has met this requirement with regard to Davis's harassment. Accordingly, the plaintiff's motion is denied with respect to Davis's harassment, because the "plaintiff must first seek relief from the Bureau of Prisons before turning to this court." Berman, 874 F. Supp. at 105 (citing Veteto, 794 F.2d at 100).

Moreover, the plaintiff has failed to make a "clear showing of irreparable harm" with respect to the alleged

harassment. Bieros, 857 F. Supp. at 446. Instead, he has only alleged a "risk of irreparable harm." Id. First, Miller asserts that if Davis's harassment of Miller "is not stopped, Mr. Miller will suffer irreparable harm." Pl.'s Mem. at 10. However, the plaintiff fails to explain how he reached this conclusion. The only alleged acts constituting harassment occurred in the past, and the plaintiff has failed to explain the basis for his belief that this conduct might continue.

Second, "even if this Court was to grant plaintiff the requested relief, it would be impossible to administer because plaintiff is seeking a restraining order against alleged future retaliation. Thus, he is asking this Court to prevent persons from doing something that is entirely speculative in nature." Bieros, 857 F. Supp. at 447. The plaintiff has therefore failed to make a "clear showing of immediate irreparable injury." Id. at 446. Thus, the Court must deny the plaintiff's request.

### III. CONCLUSION

The "applicable Federal Rule does not make a hearing a prerequisite for ruling on a preliminary injunction . . . when the movant has not presented a colorable factual basis to support the claim on the merits or the contention of irreparable harm." Bradley v. Pittsburgh Bd. of Educ., 910 F.2d 1172, 1175-76 (3d Cir. 1990). Moreover, a hearing is not necessary and a decision "may be based on affidavits and other documentary evidence if the

facts are undisputed and the relevant factual issues are resolved." Elliott v. Kieseewetter, 98 F.3d 47, 53-54 (3d Cir. 1996) (emphasis in original) (quoting Bradley, 910 F.2d at 1175-76). In the instant case, the plaintiff clearly cannot show irreparable harm. Moreover, the plaintiff has not presented a colorable factual basis to support his claim on the merits. Accordingly, the plaintiff's request is denied without a hearing.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES MILLER : CIVIL ACTION  
 :  
 v. :  
 :  
 STANLEY HOFFMAN, M.D., et al. : NO. 97-7987

O R D E R

AND NOW, this 25th day of March, 1998, upon consideration of the Motion by Plaintiff James Miller for Temporary Restraining Order and Preliminary Injunction (Docket No. 15), IT IS HEREBY ORDERED that Plaintiff's Motion is **DENIED**.

BY THE COURT:

---

HERBERT J. HUTTON, J.