

STATE OF MAINE  
CUMBERLAND, ss.

SUPERIOR COURT  
Docket No. CV-12-0394

*JAW - CUM - 6/3/2013*

LARRY COLLINS,

Petitioner

v.

**ORDER ON MOTION FOR  
PRELIMINARY INJUNCTION**

STATE OF MAINE THROUGH  
MAINE CORRECTIONAL CENTER

Defendant

STATE OF MAINE  
Cumberland ss. Clerk's Office  
JUN 03 2013  
**RECEIVED**

**BACKGROUND**

Petitioner Larry Collins ("Collins"), filed a complaint against the Maine Correctional Center through the State of Maine ("State"), labeled a "Petition" dated September 24, 2012. In his complaint, Collins complained about the medical care and eye care provided to him at the Maine Correctional Center in Windham, where he currently resides, and at the Maine State Prison, where he was previously treated. Collins seeks, (1) injunctive relief in the form of an order from this Court to the Maine Correctional Center to transport him to an off facility provider, and (2) to transport him to "competent eye care professionals" and follow any recommendations that they make. Collins has also filed a motion for preliminary injunctive relief dated October 3, 2012 detailing similar complaints about his treatment and seeking similar relief.

## DISCUSSION AND ORDER

### I. Standard for Preliminary Injunction

In ruling on a preliminary injunction, the court must ordinarily consider four factors: (1) whether the plaintiffs will suffer irreparable injury in the absence of a preliminary injunction; (2) whether that injury outweighs any harm which granting injunctive relief would inflict on the defendant, (3) whether plaintiffs have demonstrated a likelihood of success on the merits (at most, a probability; at least, a substantial possibility); and (4) whether the public interest would be adversely affected by granting the injunction. *Ingraham v. University of Maine*, 441 A.2d 691, 693 (Me.1982). These four criteria “are not to be applied woodenly or in isolation from each other; rather, the court of equity should weigh all of these factors together in determining whether injunctive relief is proper in the specific circumstances of each case.” *Dep't of Envtl. Prot. v. Emerson*, 563 A.2d 762, 768 (Me. 1989). For example, if the evidence of success on the merits is strong, the showing of irreparable harm may be subject to less stringent requirements. *Id.* (citation omitted).

### II. Irreparable Injury

Although the plaintiff has provided the court with his own sworn affidavit in support of his motion, he has failed to establish any irreparable injury if he is not taken to an outside doctor for medical treatment. Collins describes in his affidavit his medical conditions such as “black spots” on his “privates”, diabetes, hernias, and vision problems but does not establish what, if anything, an outside doctor could do differently than those who currently treat him. In contrast, the State has submitted two expert affidavits, one from Collins’ medical provider and one from his optometrist. While the affidavit of Robert Clinton, M.D., agrees that Collins has medical issues, it is his opinion that “none of the medical issues . . . is serious in nature[.]” and believes that “. . .

Mr. Collins' complaints largely originate from a somatization disorder (what is commonly referred to as being psychosomatic)." (Clinton Aff. ¶¶ 6-7.)

### III. Balancing of Harms

While the Court recognizes that the transportation and treatment of prisoners to outside providers places an additional financial burden on the Department of Corrections, a prisoners rights and health trump the State's fiscal concerns.

Therefore, in this instance, the health of Collins must take precedent over the financial burden on the State. It may be the case that Collins' ailments are properly diagnosed and the treatments being provided are appropriate, but as the State's own affidavits make clear Collins likely suffers from a somatization disorder that makes proper diagnosis more difficult. (*See* Roush Aff. ¶¶ 4-13 ("subjective eye exam results are inconsistent, do not fit any known pattern, and cannot be explained on either an anatomic or physiological basis"; Clinton Aff. ¶ 4 (I [Dr. Robert Clinton] am . . . of the opinion that while Mr. Collins does have some actual medical conditions, his subjective complaints about them do not match the objective evidence").)

### IV. Likelihood of Success

A "likelihood of success on the merits" is "at most, a probability; at least, a substantial possibility." *Bangor Historic Track, Inc. v. Dep't of Agric.*, 2003 ME 140, ¶ 9, 837 A.2d 129. This court is not convinced that petitioner has reached either of these benchmarks. Although the State must provide medical treatment for it prisoners Maine has determined that the only right that a prisoner has is to adequate care as determined necessary by the facility-treating provider. 34-A M.R.S. §3031(2) (2012).<sup>1</sup>

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<sup>1</sup> 34-A M.R.S. §3031(2) (2012) states in part that,

Any person residing in a correctional or detention facility has a right to:

As the State correctly points out, it has been the law in Maine that when a fact is such that it cannot be proven by testimony lying within a layperson's knowledge, then a plaintiff is required to produce expert testimony. *See Maravell v. R.J. Grondin & Sons*, 2007 ME 1, ¶ 11, 914 A.2d 709. 712. Here, Collins has failed to file an affidavit from any expert regarding the care that he has received or what an outside provider may offer differently than what the prison has already offered. In contrast, the State has provided the court with two expert affidavits, one concerning Collins' medical care and one concerning his eye care, as well as records supporting the affidavits. Additionally, Collins has failed to provide the court with any legal basis for his supposition that a prisoner has the right to outside medical providers. Therefore based on the legal and factual submissions before the court at this time, there is no likelihood of success on the merits. *See Bangor Historic Track, Inc.*, 2003 ME 140, ¶ 9, 837 A.2d 129, 132.

V. Harm to Defendants and Public Interest Issues

The Court accepts the State's argument that transporting prisoners to outside providers is a financial burden on taxpayers and a threat to public safety. As the State points out, transporting prisoners to community providers spends taxpayers' monies for the transport itself; for the correctional officers doing the transport; and for payment of services rendered by the outside providers. As for public safety, the State argues that every officer transporting a prisoner in the community is an officer not on the facility grounds to deal with prisoners there, and every time a prisoner is taken out of a facility and into the community, there is an increased risk of escape and

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...

**2. Medical care.** Adequate professional medical care and adequate professional mental health care, which do not include medical treatment or mental health treatment requested by the client *that the facility's treating physician or treating psychiatrist or psychologist determines unnecessary*. (Emphasis added).

harm to the public. Collins has failed to submit any legal memorandum in support of his motion and to rebut the State's arguments.

Accordingly, the Court denies Collins' request for a preliminary injunction having failed to establish the four factors required for a preliminary injunction. *See Ingraham v. University of Maine*, 441 A.2d 691 (Me.1982).

#### VI. Physical Examination

Although Collins is not entitled to a preliminary injunction, there remains the issue whether he may be entitled to some form of relief if he prevails on his "petition." Collins is represented by counsel. Counsel should confer with counsel for the State to determine whether a Rule 35(a) order should be entered.

Under Maine Rule of Civil Procedure 35(a) when the mental or physical condition of a party is in controversy the court may order the party to submit to a physical or mental examination.<sup>2</sup> Here Collins' physical and mental conditions are clearly at the heart of this matter. Collins alleges that without proper outside medical care he fears that "he will die or go blind[.]" (Compl. ¶ 11.) Although Collins has failed to provide the court with an affidavit from an expert in support of his motion, the court recognizes the limited resources and opportunities available to an incarcerated plaintiff to obtain affidavits that support his claim. The court also recognizes that treatment by outside providers can stress the limited financial and staff resources of the

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<sup>2</sup> M.R. Civ. P. 35 states in pertinent part:

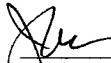
(a) Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a licensed physician or a mental examination by a licensed psychologist, or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

Department of Correction. While neither party to this action has explicitly filed a motion for an independent medical exam pursuant to Rule 35(a), the court would consider such a request unless the treating providers or the prison determine an outside evaluation unnecessary. Without the opportunity to be examined by a physician outside those who have already treated Collins, he will forever remain at a strategic disadvantage throughout the litigation and likely never be given an opportunity to meet the burdens required by law. However, the Court is limited by 34-A M.R.S. § 3031(2)(2012).

The entry is:

1. Petitioner's Motion for Preliminary Injunction is DENIED.
2. Pursuant to M.R. Civ. P. 16A(b)(5), the Court orders counsel for all parties to participate in a status conference with the court in the next forty-five days to outline further proceedings.

DATED: May 31, 2013

  
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Joyce A. Wheeler  
Superior Court Justice

LARRY COLLINS VS MAINE CORRECTIONAL CENTER  
UTN:AOCSSr -2012-0093111

CASE #:PORSC-CV-2012-00394

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<u>T</u>	<u>LARRY COLLINS</u>	<u>PL</u>	<u>W/DRWN 12/28/2012</u>
<u>F</u>	<u>MAINE CORRECTIONAL CENTER</u>	<u>DEF</u>	<u>RTND 12/28/2012</u>

02 0000009251 ROBINSON, RANDY L  
PO BOX 10653 PORTLAND ME 04104

<u>F</u>	<u>LARRY COLLINS</u>	<u>PL</u>	<u>RTND 09/24/2012</u>
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