

Westlaw

Slip Copy
 Slip Copy, 2008 WL 650253 (E.D.Cal.)
 (Cite as: Slip Copy, 2008 WL 650253)

Page 1

H

Henderson v. Felker
 E.D.Cal.,2008.

Only the Westlaw citation is currently available.

United States District Court,E.D. California.

Darren HENDERSON, Plaintiff,

v.

T. FELKER, Warden, et al., Defendants.

No. CIV S-06-1325 FCD EFB P.

March 5, 2008.

Darren Henderson, Susanville, CA, pro se.
 Jessica R. Devencenzi, Attorney General's Office
 for the State of California, Sacramento, CA, for De-
 fendants.

ORDER

FRANK C. DAMRELL, JR., District Judge.

*1 Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On January 11, 2008, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty days. Neither party has filed objections to the findings and recommendations.

The court has reviewed the file and finds the findings and recommendations to be supported by the record and by the magistrate judge's analysis. Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed January 11, 2008 are adopted in full; and
2. Plaintiff's December 14, 2006, motion for a temporary restraining order and a preliminary injunction is denied.

FINDINGS AND RECOMMENDATIONS

EDMUND F. BRENNAN, United States Magistrate Judge.

Plaintiff is a state prisoner without counsel suing for alleged civil rights violations. See 42 U.S.C. § 1983. This action proceeds on the October 4, 2006, amended complaint in which plaintiff claims that defendants were deliberately indifferent to his serious medical needs related to his diabetic condition. On December 14, 2006, plaintiff filed a motion seeking a temporary restraining order and a preliminary injunction. In it, he requests an order directing defendants to allow him access to the law library for the purpose of making photocopies to comply with the court's order directing plaintiff to prepare and submit documents for service on defendants. On April 10, 2007, the court found that plaintiff had filed the required papers. For the reasons explained below, the court finds that plaintiff is not entitled to the relief he seeks.

A temporary restraining order is available to an applicant for a preliminary injunction when the applicant may suffer irreparable injury before the court can hear the application for a preliminary injunction. Fed.R.Civ.P. 65(b) (motion for preliminary injunction shall be set for hearing at earliest possible time after entry of temporary restraining order); *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70 of Alameda County*, 415 U.S. 423, 439, 94 S.Ct. 1113, 39 L.Ed.2d 435 (1974) (temporary restraining order issued in state court expired ten days after action was removed to federal court); Wright, Miller & Kane, *Federal Practice & Procedure*, § 2951 (2d ed.1995). The court addresses the need for an injunction herein and, accordingly, a temporary restraining order pending that ruling is unnecessary.

A preliminary injunction will not issue unless necessary because threatened injury would impair the court's ability to grant effective relief in a pending action. *Sierra On-Line, Inc. v. Phoenix Software*,

Inc., 739 F.2d 1415, 1422 (9th Cir.1984); *Gon v. First State Ins. Co.*, 871 F.2d 863 (9th Cir.1989). A preliminary injunction represents the exercise of a very far reaching power never to be indulged except in a case clearly warranting it. *Dymo Indus. v. Tapeprinter, Inc.*, 326 F.2d 141, 143 (9th Cir.1964). The Ninth Circuit standards for preliminary injunctive relief are well established:

*2 "The purpose of a preliminary injunction is to preserve rights pending resolution of the merits of the case by the trial." *Big Country Foods, Inc. v. Bd. of Educ.*, 868 F.2d 1085, 1087 (9th Cir.1989). A preliminary injunction is appropriate "where plaintiffs demonstrate either: (1) a likelihood of success on the merits and the possibility of irreparable injury; or (2) that serious questions going to the merits were raised and the balance of hardships tips sharply in their favor." *Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 918 (9th Cir.2003) (en banc) *Shelley*, 344 F.3d at 917 (internal quotation marks and citations omitted). "The irreducible minimum is that the moving party demonstrate a fair chance of success on the merits or questions serious enough to require litigation. No chance of success at all will not suffice." *Sports Form, Inc. v. United Press Int'l, Inc.*, 686 F.2d 750, 753 (9th Cir.1982) (internal punctuation and citations omitted).

E. & J. Gallo Winery v. Andina Licores S.A., 446 F.3d 984, 990 (9th Cir.2006). If the balance of harm tips decidedly toward the plaintiff, then the plaintiff need not show as robust a likelihood of success on the merits as when the balance tips less decidedly. *Benda v. Grand Lodge of the International Association of Machinists*, 584 F.2d 308, 315 (9th Cir.1978). The threatened injury must be immediate. *Los Angeles Memorial Coliseum Comm'n v. National Football League*, 634 F.2d 1197, 1201 (9th Cir.1980). And since the remedy is equitable in nature, there must be no adequate remedy at law. *Stanley v. University of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir.1994). If the relief sought is mandatory

rather than prohibitory, the balance must more clearly favor the applicant. *Dahl v. HEM Pharm. Corp.*, 7 F.3d 1399, 1403 (9th Cir.1993).

Because plaintiff has filed the required documents for service, he has not shown that the threatened injury would impair the court's ability to grant effective relief in this action. The fact that he has been able to file his papers shows a lack of irreparable harm.

Accordingly, it is hereby recommended that plaintiff's December 14, 2006, motion for a temporary restraining order and a preliminary injunction be denied.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections within the specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir.1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.1991).

E.D.Cal.,2008.

Henderson v. Felker

Slip Copy, 2008 WL 650253 (E.D.Cal.)

END OF DOCUMENT