

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

DEC - 8 2010

GREGORY C. LANGHAM  
CLERK

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Civil Action No. 10-cv-02711-BNB

KEITH FRAZIER,

Plaintiff,

v.

ARISTEDES ZAVARAS, Executive Director, CDOC,  
REED BERNT, Mental Health Employee, KCCC,  
SANDRA BROWN, Mailroom Employee, BCCF,  
R. PRATHER, Mailroom Employee, BCCF,  
ELINA ACEVES, Mailroom Employee, BCCF,  
SUE BINDER, Facility Reading Material Committee/Mental Health, BCCF,  
BARBRA MONROE, Facility Reading Material Committee/Mental Health, BCCF,  
TIM KELLY, Facility Reading Material Committee/Mental Health, BCCF,  
JUAN RAMIREZ, Facility Reading Material Committee/"STG" Coordinator, BCCF,  
STEVEN BROWN, SR., Facility Reading Material Committee/Investigator, BCCF,  
JAN BRYANT, Facility Reading Material Committee Chair/Assistant Warden, BCCF,  
BRIGHAM SLOAN, Warden, BCCF,  
STEVEN BROWN, JR., Assistant Warden, BCCF,  
COSMOS GALLEGOS, Warden Designee, BCCF,  
TERESA REYNOLDS, Central Reading Committee Chair/Office of Correctional Legal  
Services, CDOC,  
BURL McCULLAR, Central Reading Committee/"SOTMP," CDOC,  
KIM BIECKER, Central Reading Committee/"Faith and Citizens," CDOC,  
JOHN BRADBURN, Central Reading Committee/"IG Office," CDOC,  
GEORGE DUNBAR, Central Reading Committee/Warden, CDOC,  
SUSAN JONES, Central Reading Committee/Warden, CDOC,  
STEVE HAGER, Central Reading Committee/Warden, CDOC,  
ANNA COOPER, Central Reading Committee/Legal Services' Designee, CDOC,  
JOHN McGILL, Central Reading Committee/"SOTMP" Designee, CDOC,  
RICHARD LINS, Central Reading Committee/"SOTMP" Designee, CDOC,  
CHARLES SANCHEZ, Central Reading Committee/"Faith and Citizens" Designee,  
CDOC,  
DAVE ZUPAN, Central Reading Committee/Warden Designee, CDOC,  
KEVIN MILYARD, Central Reading Committee/Warden Designee, CDOC,  
DIRECTOR OF PRISONS, CDOC,  
JOSIE LOPEZ, Mailroom Employee, BCCF,  
JANA GARCIA, Mailroom Employee, BCCF,  
M. MASTER, Mailroom Employee, BCCF,  
CHIEF OF CLINICAL SERVICES, CDOC,

SERGIO LOPEZ, Case Manager, BCCF, and  
LARRY COX, Chief of Security, BCCF,

Defendants.

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ORDER

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Plaintiff, Keith Frazier, is a prisoner in the custody of the Colorado Department of Corrections. This matter is before the Court on "Plaintiff's Motion for a Temporary Restraining Order and an Order to Show Cause for a Preliminary Injunction" (Doc. #4) and "Declaration/Memorandum of Law" (Doc. #3) in support of the motion, filed *pro se* on November 4, 2010. The Court must construe the motion liberally because Mr. Frazier is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10<sup>th</sup> Cir. 1991). However, the Court should not be an advocate for a *pro se* litigant. *See Hall*, 935 F.2d at 1110. For the reasons stated below, the motion will be denied.

The Court may not issue a temporary restraining order unless Mr. Frazier shows, among other things, "that immediate and irreparable injury, loss, or damage will result . . . before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1)(A). Mr. Frazier seeks a temporary restraining order directing certain of the named Defendants to return to him personal property that was confiscated during a search of his cell on September 17, 2010. The personal property Plaintiff seeks consists of:

[T]hree irreplaceable commemorative issues of "Billboard" music magazine dating to 2003-2005 (the 2003 and 2004 "year-end" issues, and a weekly issue from the Summer of 2005), and four valuable out-of-print rock music-related books (the "Rolling Stone Top 500 Greatest Albums of All Time,"

“Rolling Stones: Rip this Joint,” “Goldmine Standard Catalog of American Records, 2<sup>nd</sup> Edition,” and “Goldmine Heavy Metal Record Price Guide”).

(Doc. #3 at p.1, ¶2.) Plaintiff alleges that he is on a wait-list to be transferred and that a transfer “would result in his loss forever of the aforementioned cherished and irreplaceable items.” (Doc. #3 at p.1, ¶3.)

The Court finds that Mr. Frazier has not made the necessary showing that he will suffer immediate and irreparable injury. Although he alleges that his pending transfer will result in a permanent loss of the personal property in question, Mr. Frazier also alleges that he has been told he can mail the items to someone outside of prison. As a result, he fails to demonstrate any irreparable injury. “While an inmate’s ownership of property is a protected property interest that may not be infringed without due process, there is a difference between the right to own property and the right to possess property while in prison.” *Hatten v. White*, 275 F.3d 1208, 1210 (10<sup>th</sup> Cir. 2002). The fact that Mr. Frazier would prefer to maintain possession of the property in prison does not alter the Court’s conclusion. Therefore, the motion for a temporary restraining order will be denied. Accordingly, it is

ORDERED that “Plaintiff’s Motion for a Temporary Restraining Order and an Order to Show Cause for a Preliminary Injunction” (Doc. #4) is denied.

DATED at Denver, Colorado, this 8<sup>th</sup> day of December, 2010.

BY THE COURT:

s/Lewis T. Babcock  
LEWIS T. BABCOCK, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO


**CERTIFICATE OF MAILING**

Civil Action No. 10-cv-02711-BNB

Keith Frazier  
Prisoner No. 114542  
Bent County Correctional Facility  
11560 Road FF.75  
Las Animas, CO 81054-9573

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on December 8, 2010.

GREGORY C. LANGHAM, CLERK

By:  \_\_\_\_\_  
Deputy Clerk