

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JUAN VERRETTE

CIVIL ACTION

VERSUS

NUMBER: 08-3156

SUSAN RATLIFF, ET AL.

SECTION: R

ORDER

Before the Court is plaintiff Juan Verrette's objection to Magistrate Judge Chalez's order denying plaintiff's Motion for Prospective Declarative and Injunctive Relief. For the following reasons, the Court APPROVES the magistrate judge's order.

I. BACKGROUND

Plaintiff Juan Verrette is a pre-trial detainee at the LaFourche Parish Detention Center ("LPDC") in Thibodaux, Louisiana. Richard Lay, not a party to this action, is an inmate at the B.B. "Sixty" Rayburn Correctional Center ("RCC") in Angie, Louisiana. On April 14, 2008, Verrette filed a complaint challenging the conditions of his confinement. He alleges that

officials at LPDC and RCC have been failing to deliver correspondence between him and Lay in violation of the First and Fourteenth Amendments. Before the defendants were served, Verrette filed a "Motion for Prospective Declarative and Injunctive Relief." The motion was referred to Magistrate Judge Chasez, who denied it. Verrette now appeals Judge Chasez's order.

II. DISCUSSION

The Court interprets plaintiff's motion to be asking for a preliminary injunction, summary judgment in his favor, or both. Because magistrate judges do not have jurisdiction to make final determinations on motions for injunctive relief and motions for summary judgment, see 28 U.S.C. § 636(b)(1)(A), the Court will treat Judge Chasez's order as a report and recommendation and Verrette's motion as an objection thereto. See 28 U.S.C. § 636(b)(1)(B); FED. R. CIV. P. 72(b). The Court thus reviews the magistrate's report *de novo*. See FED. R. CIV. P. 72(b)(3).

To obtain a preliminary injunction, a party must show: "(1) a substantial likelihood of success on the merits, (2) a substantial threat that plaintiffs will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury outweighs any damage that the injunction might cause the

defendant, and (4) that the injunction will not disserve the public interest." *Planned Parenthood of Houston & Se. Tex. v. Sanchez*, 403 F.3d 324, 329 (5th Cir. 2005). "A preliminary injunction is an extraordinary remedy and should only be granted if the plaintiffs have clearly carried the burden of persuasion on all four requirements." *Id.* (quoting *Karaha Bodas Co., L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357, 363 (5th Cir.2003)) (internal quotation marks omitted).

Even given the benefit of the "less stringent" standards applied to *pro se* litigants, *Haines v. Kerner*, 404 U.S. 519 (1972), Verrette has not carried his burden on any of the four requirements. Verrette's motion appears to be little more than an argument that he is ultimately entitled to relief. As such, his request for a preliminary injunction must be denied.

In addition, summary judgment is inappropriate at this point because the Court has withheld the issuance of summons pending statutory review for frivolousness. See 28 U.S.C. § 1915A; 42 U.S.C. § 1997e(c). Because the defendants have not yet been given an opportunity to respond to Verrette's allegations, the Court denies the motion for summary judgment as premature. See 10A WRIGHT, MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 2717 (3d. ed. 1998) (noting that courts are reluctant to grant a motion for summary judgment at a very early stage in the litigation).

III. CONCLUSION

The Court having considered the complaint, the record, the applicable law, and the plaintiff's objections, the Court hereby approves the Report and Recommendation of the United States Magistrate Judge.

Accordingly,

Defendant's Motion for Prospective Declarative and Injunctive Relief is DENIED.

New Orleans, Louisiana, this 15th day of September, 2008.

A handwritten signature in black ink that reads "Sarah S. Vance". The signature is written in a cursive style with a large initial "S".

SARAH S. VANCE
UNITED STATES DISTRICT JUDGE