

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

FRANK E. VOTH,

Plaintiff,

v.

DON MILLS,

Defendant.

HAGGERTY, District Judge.

CV. 09-423-HA

ORDER

This prisoner civil rights action comes before the court on plaintiff's Motion for Temporary Restraining Order [71], which the court converts to a Motion for Preliminary Injunction on the basis that defendants were given notice and an opportunity to respond to the Motion. Plaintiff alleges that he has been the subject of threats from fellow inmates who work in the law library after Janell Rochester, the Law Librarian at the Two Rivers Correctional Institution ("TRCI"), required those inmates to perform extra duties because plaintiff has filed complaints against her.

Plaintiff asks the court to restrain Rochester from instigating threats or assaults against him.

A preliminary injunction is appropriate if the moving party demonstrates either: (1) a combination of probable success on the merits and the possibility of irreparable harm; or (2) that serious questions are raised and the balance of hardships tips in its favor. *LGS Architects, Inc. v. Concordia Homes of Nevada*, 434 F.3d 1150, 1155 (9th Cir. 2006). These two formulations represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases. *Id.* A request for a mandatory injunction seeking relief well beyond the status quo is disfavored and shall not be granted unless the facts and law clearly favor the moving party. *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319-20 (9th Cir. 1994).

The claim at issue in plaintiff's Motion for Preliminary Injunction is not at issue in his Complaint, thus he has no chance of prevailing on it. As a result, preliminary injunctive relief is not appropriate. *Winter v. Natural Res. Def. Council, Inc.*, 129 S.Ct. 365, 374 (2008) (plaintiff seeking preliminary injunction must demonstrate that he is likely to succeed on the merits); *LGS Architects, Inc. v. Concordia Homes of Nevada*, 434 F.3d 1150, 1155 (9th Cir. 2006) (requiring at least some chance of success on the merits to justify a preliminary injunction).

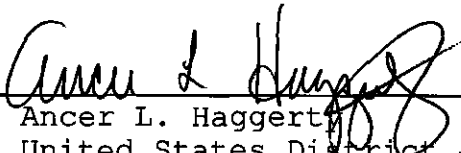
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CONCLUSION

The court converts plaintiff's Motion for Temporary Restraining Order [71] into a Motion for Preliminary Injunction and DENIES relief on the Motion.

IT IS SO ORDERED.

DATED this 19 day of April, 2010.



Ancer L. Haggerty
United States District Judge