

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
AT ERIE

DEMETRIUS BAILEY,
Plaintiff,
v.
MICHAEL OVERMYER, et al.,
Defendants.
Civil Action No. 16-86
ORDER

ORDER ADOPTING REPORT AND RECOMMENDATION AND DENYING
PRELIMINARY INJUNCTION

Before the Court is the Report and Recommendation ("R&R") of the Honorable Susan Paradise Baxter, United States Magistrate Judge, recommending that the Court deny Plaintiff's motion for a preliminary injunction. Dkt. 58 at 11-13. Specifically, the R&R states that Plaintiff, in his motion, alleges that the state prison in which he is house has denied him contact visits and proper medical treatment, including mental health care. Id. at 11 (citing Dkt. 44). These allegations, the R&R states, largely mirror those contained in Plaintiff's Complaint. Id. (citing Dkt. 3). Therefore, the R&R finds, these claims do not properly form the basis of a motion for a preliminary injunction. Id. at 12. Moreover, the R&R states, the record demonstrates that Plaintiff is "now in line for contacts visits;" has been tested and treated for his various alleged ailments; and has seen a psychologist. Id. at 12. Thus, the R&R finds, Plaintiff has not demonstrated irreparable injury, as required to succeed on a motion for a preliminary injunction. Id. (citing Bimbo Bakeries USA, Inc. v. Botticella, 613 F.3d 102, 109 (3d Cir. 2010)). Plaintiff filed objections to the R&R. Dkt. 61. When a party objects to an R&R, the district court must review

de novo those portions of the R&R to which objection is made. *See United States v. Raddatz*, 447 U.S. 667, 673 (1980); Fed. R. Civ. P. 72(b). However, to obtain *de novo* review, a party must clearly and specifically identify those portions of the R&R to which it objects. *Goney v. Clark*, 749 F.2d 5, 6-7 (3d Cir. 1984). The district court may accept, reject, or modify, in whole or in part, the findings and recommendations made by the Magistrate Judge. *Raddatz*, 447 U.S. at 673-74.

Here, Plaintiff's objections largely restate the allegations he put forth in his motion for a preliminary injunction—which, in turn, largely restates the allegations in his Complaint. *Compare* Pl's. Objs., Dkt. 61 *with* Pl's. Mot., Dkt. 44 *and* Pl's. Compl., Dkt. 3. Accordingly, Plaintiff's objections do not trigger *de novo* review. *See Goney*, 749 F.2d at 6-7. In any event, the R&R is correct that a preliminary injunction is “an extraordinary remedy that should be granted only if: (1) the plaintiff is likely to succeed on the merits; (2) denial will result in irreparable harm to the plaintiff; (3) granting the injunction will not result in irreparable harm to the defendant; and (4) granting the injunction is in the public interest.” *Rush v. Corr. Med. Servs., Inc.*, 287 F. App'x 142, 144 (3d Cir. 2008) (internal quotation omitted). Moreover, in the prison context, a request for injunctive relief must be “viewed with considerable caution” because of the “intractable problems of prison administration.” *Id.* Here, for the reasons stated in the R&R, Plaintiff has not established any of the required criteria in his motion for a preliminary injunction. *See* R&R, Dkt. 58, Pl's. Mot., Dkt. 44; *see also Rivera v. Pennsylvania Dep't of Corr.*, 346 F. App'x 749, 751 (3d Cir. 2009); *Rush*, 287 F. App'x at 144. Accordingly, the Court **HEREBY ORDERS**:

- (1) The Court **ADOPTS** the Report and Recommendation [Dkt. 58];
- (2) Defendants' Motion for a Preliminary Injunction [Dkt. 44] is **DENIED**;
- (3) The clerk shall send copies of this Order to the parties.

IT IS SO ORDERED.

DATED this 10th day of April, 2017.

A handwritten signature in cursive script that reads "Barbara J. Rothstein".

BARBARA J. ROTHSTEIN
UNITED STATES DISTRICT JUDGE