

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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|---------------------------------|---|-----------------------------|
| NIARA BURTON, a/k/a HERMAN |) | |
| BURTON, |) | CIVIL ACTION NO. 3:22-cv-94 |
| |) | |
| Plaintiff, |) | JUDGE KIM R. GIBSON |
| |) | |
| v. |) | |
| |) | |
| JOHN E. WETZEL, <i>et al.</i> , |) | |
| |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM ORDER

This matter is before Magistrate Judge Keith A. Pesto for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636, and Local Civil Rule 72.

By way of background, on May 31, 2022, Plaintiff filed a Complaint, asserting multiple constitutional claims against Defendants. (ECF No. 7). On August 17, 2022, Plaintiff filed a “Motion for Temporary Restraining Order & Preliminary Injunction[.]” (ECF No. 11). Specifically, Plaintiff asks the Court to enjoin Defendants from: (1) retaliating against Plaintiff, (2) coming into Plaintiff’s cell, and (3) masculinizing Plaintiff while Plaintiff is incarcerated in the Pennsylvania Department of Corrections. (*Id.* at 1).

On September 12, 2022, the Magistrate Judge issued a Report and Recommendation, recommending that the Court deny Plaintiff’s Motion for a Temporary Restraining Order or Preliminary Injunction. (ECF Nos. 12, 13). The Magistrate Judge informed the parties that, in accordance with 28 U.S.C. Section 636(b)(1), they had “fourteen days to file written objections to [the] Report and Recommendation.” (ECF No. 12 at 2; ECF No. 13 at 2). Further, the Magistrate

Judge noted that in the “absence of timely and specific objections, any appeal would be severely hampered or entirely defaulted.” (ECF No. 12 at 2; ECF No. 13 at 2).

After Plaintiff requested, and the Magistrate Judge granted, an extension of time to file objections to the Report and Recommendation, Plaintiff submitted Objections on September 25, 2022. (ECF No. 19). Plaintiff also filed a Declaration on October 4, 2022. (ECF No. 22).

The Court has reviewed Plaintiff’s Objections (ECF No. 19) and Declaration (ECF No. 22), and the Court finds that they do not undermine the recommendation of the Magistrate Judge.

Indeed, upon consideration of Plaintiff’s submissions to the Court (ECF Nos. 11, 19, 22), and particularly the responses to Plaintiff’s grievances, (ECF No. 22-1),¹ the Court holds that, at this juncture, Plaintiff has failed to make out a showing sufficient to warrant a grant of preliminary equitable relief. *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017) (holding that a “movant for preliminary equitable relief” must demonstrate “that it can win on the merits” and that it is “more likely than not to suffer irreparable harm in the absence of preliminary relief”); see also *Rivera v. Pennsylvania Dep’t of Corr.*, 346 F. App’x 749, 750 (3d Cir. 2009) (affirming district court’s denial of a motion for a preliminary injunction in case involving similar facts as those now before this Court).

Therefore, upon *de novo* review of the record in this matter, the Report and Recommendation, and Plaintiff’s Objections and Declaration, the following order is entered:

AND NOW, this 21st day of November, 2022, **IT IS HEREBY ORDERED** that Plaintiff’s Motion for a Temporary Restraining Order or a Preliminary Injunction (ECF No. 11) is **DENIED**

¹ By way of example, in one response, the Chief Grievance Officer indicated that Plaintiff’s “medical record was also reviewed[,] and it was determined that the medical care provided was reasonable and appropriate.” (ECF No. 22-1 at 25).

WITHOUT PREJUDICE as stated in the Report and Recommendation. The Court notes that it is not presently ruling on either Plaintiff's Motion for Preliminary Authority to Obtain Discovery Documents (ECF No. 16) or Plaintiff's Motion to be Transferred. (ECF No. 26). The Court will leave those matters for the Magistrate Judge to address in the first instance.

IT IS FURTHER ORDERED that the Court adopts the Report and Recommendation (ECF Nos. 12, 13) as the opinion of this Court.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kim R. Gibson", is written over a horizontal line.

KIM R. GIBSON
UNITED STATES DISTRICT JUDGE