

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

DWAYNE ALMOND, #238829-A,

Plaintiff,

v.

WILLIAM POLLARD, RICHARD HEIDORN
and JEANANNA ZWIERS,

Defendants.

ORDER

09-cv-335-bbc

In a March 1, 2011 order, I granted a motion for summary judgment filed by defendants Richard Heidorn, Jeananna Zwiers and William Pollard on plaintiff Dwayne Almond's claims that defendants are denying him adequate treatment for his back ailments. Judgment was entered on March 7, 2011. Plaintiff then filed a notice of appeal. On April 15, 2011, I entered an order granting plaintiff leave to proceed in forma pauperis on his appeal. Now plaintiff has filed a "motion for emergency preliminary injunctive relief," in which he seeks immediate treatment for his back. Also, he has filed a motion seeking a ruling on the motion for emergency injunctive relief as well as a motion seeking return of some of his legal work. I will deny each of these motions.

I will construe plaintiff's motion for emergency injunctive relief as a motion for injunctive relief pending appeal under Federal Rule of Civil Procedure Rule 62(c). Rule

62(c) gives district courts the authority to grant an injunction pending appeal following entry of a final judgment denying injunctive relief. In deciding whether to issue an injunction pending appeal, I must consider the following factors: (1) whether the applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent an injunction; (3) whether issuance of the injunction will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. Hilton v. Braunskill, 481 U.S. 770, 776 (1987). The party seeking the injunction has the burden of proving that these factors warrant it. Id.

The Hilton standards that guide consideration of an injunction pending appeal generally mirror the factors that the trial court considers in deciding whether to issue a preliminary injunction, but with an important exception: “[i]n the context of [an injunction] pending appeal, where the applicant's arguments have already been evaluated on the success scale, the applicant must make a stronger threshold showing of likelihood of success to meet its burden.” Matter of Forty-Eight Insulations, Inc., 115 F.3d 1294, 1301 (7th Cir. 1997).

I conclude that plaintiff fails to meet this stronger threshold showing. I have already found that plaintiff failed to show a likelihood of success in issuing orders denying his previous motions for preliminary injunctive relief, dkt. #69, and granting defendants’ motion for summary judgment, dkt. #151. Plaintiff has not submitted any new evidence showing that he could succeed on the merits of his case. Accordingly, I will deny plaintiff’s Rule 62(c) motion. In addition, I will deny plaintiff’s motion for a ruling on his Rule 62(c) motion as moot.

Finally, plaintiff has filed a motion asking the court to order prison officials to return some of his legal materials. I note that plaintiff filed this motion in this case as well as in his other current case in this court, case no. 10-cv-621-bbc. In his motion, the only documents plaintiff states he is missing are reports from his previous doctors showing that he suffers from schizophrenia. These documents relate to case no. 10-cv-621-bbc and not to this case, so I will deny plaintiff's motion as it pertains to this case.

ORDER

IT IS ORDERED that

1. Plaintiff Dwayne Almond's motion for injunctive relief pending appeal pursuant to Federal Rule of Civil Procedure Rule 62(c), dkt. #162, is DENIED.
2. Plaintiff's motion for a ruling on his Rule 62(c) motion, dkt. #163, is DENIED.
3. Plaintiff's motion for the return of legal materials, dkt. #166, is DENIED.

Entered this 6th day of June, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge