

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

JERRY CHARLES,

Plaintiff,

v.

DICK VERHAGEN, JON LITSCHER,

Defendants.

ORDER

01-C-253-C

This is a civil action for declaratory, injunctive and monetary relief, brought pursuant to 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc, et seq. Plaintiff is a Wisconsin state prisoner presently confined at the Oshkosh Correctional Institution in Oshkosh, Wisconsin. Defendants Litscher and Verhagen are Secretary and Programs Director, respectively, of the Wisconsin Department of Corrections. Plaintiff contends that defendants are violating his rights under both the free exercise clause of the First Amendment and the Act by restricting his access to prayer oil and by preventing him from celebrating more than one annual religious feast. Now before the court is plaintiff's motion for a temporary restraining order or preliminary injunction. Because plaintiff has failed for a second time to comply with this court's "Procedures to be

Followed on Motions for Injunctive Relief,” his motion will be denied.

On August 3, 2001, plaintiff filed his first motion for a preliminary injunction or temporary restraining order with this court. I denied the motion without prejudice for two reasons. First, plaintiff’s motion requested an injunction covering matters upon which he had been denied leave to proceed when his complaint was screened pursuant to the Prison Litigation Reform Act. Second, I noted that plaintiff’s motion was not accompanied by proposed findings of fact and supporting evidentiary material. A copy of this court’s “Procedures to be Followed on Motions for Injunctive Relief” was attached to the order denying plaintiff’s first motion and plaintiff was specifically instructed that if he “intend[ed] to refile his motion, he should conform his submissions to comply with those procedures.” Order dated August 8, 2001, dkt. #22, at 3-4. The procedures require a party seeking an injunction to set forth in numbered paragraphs “no more and no less than the set of factual propositions that [the] movant considers necessary to a decision” in their favor, including those facts going to jurisdiction, the identity of the parties and the background of the dispute. Movants are told to include at the close of each numbered paragraph a reference to supporting evidentiary material, such as deposition transcripts, affidavits and exhibits and they are warned that motions for injunctive relief not substantially complying with these requirements may be denied summarily.

On September 21, 2001, plaintiff filed the motion for a temporary restraining order

or preliminary injunction presently before the court, along with an accompanying brief. Once again, plaintiff did not file proposed findings of fact. Instead, he filed a brief in support of his motion to which two “exhibits” were attached. One is a 1997 memorandum between two unidentified prison officials and the other is apparently a list of items for sale at the prison canteen. Defendants responded with a brief opposing injunctive relief and proposed findings of fact in compliance with this court’s procedures. Plaintiff responded, in turn, with a reply brief that, liberally construed, also contains a motion to strike affidavits supporting defendants’ proposed findings of fact. Plaintiff attached eight more “exhibits” to his reply brief, including excerpts from unidentified books on Islam, cases, and an inmate property handbook.

Because most of plaintiff’s “exhibits” were submitted for the first time in his reply brief, defendants have never had an opportunity to respond to them. The exhibits are not properly identified and the many factual assertions plaintiff makes throughout his briefs are generally unsupported by any citation to proper evidentiary material in the record. Because plaintiff did not follow the court’s injunctive relief procedures, defendants have not had a meaningful opportunity to respond to his numerous factual allegations. Accordingly, plaintiff’s motion for a temporary restraining order or preliminary injunction will be denied. See Hedrich v. Bd. of Regents of the University of Wis. System, No. 00-3395, slip op. at 3-4 (7th Cir. Dec. 19, 2001) (upholding district court’s refusal to consider evidence not set forth

in proposed findings of fact with proper citation in accordance with local procedures).

Finally, I emphasize that the denial of plaintiff's motion for a preliminary injunction does not reflect an assessment of the merits of his claims. Rather, plaintiff's motion is being denied because he has twice failed to comply with local procedures and because this failure has handicapped defendants in their efforts to respond to plaintiff's allegations. I note also that defendants have filed a motion for summary judgment, along with a supporting brief and proposed findings of fact and conclusions of law. Plaintiff will have to respond to defendants' motion for summary judgment. In responding, plaintiff must include a response to defendants' proposed findings of fact; a response to defendants' proposed conclusions of law; and a brief in opposition to the defendants' motion for summary judgment. In preparing these documents, plaintiff must follow this court's "Procedures to be Followed on Motions for Summary Judgment" by, for instance, citing to evidence such as affidavits when responding to defendants' proposed findings of fact. A copy of this court's summary judgment procedures was attached to the Preliminary Pretrial Conference Order entered by Magistrate Judge Crocker on August 7, 2001. However, I am including another copy of those procedures with this order for good measure.

ORDER

IT IS ORDERED that plaintiff's motion for a temporary restraining order and

preliminary injunction is DENIED with prejudice.

Entered this 28th day of January, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge