IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

GARRY A. BORZYCH,

ORDER

Plaintiff,

03-C-0575-C

v.

MATTHEW J. FRANK, Secretary of Wisconsin Department of Corrections (DOC);
STEVE CASPERSON, Administrator of Wisconsin's Department of Adult Institutions (DAI);
CINDY O'DONNELL, Office of the Secretary (OOS);
SANDRA HAUTAMAKI, Corrections Complaint Examiner;
DANIEL BERTRAND, Warden of Green Bay Corr. Inst.;
PETE ERICKSON, Security Director of G.B.C.I.;
LT. WAYNE NATZKE, Lieutenant at G.B.C.I.;
GLEN RIPLEY, Inmate Complaint Examiner (ICE); and
KATHLEEN BIERKE, Reviewer of Rejected Complaints,

Defendants.

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

In an order dated January 5, 2004, I allowed plaintiff to proceed on several claims, including claims that while plaintiff was confined at the Green Bay Correctional Institution, defendants Frank, Casperson and Bertrand, among others, violated plaintiff's rights under the First Amendment, the Religious Land Use and Institutionalized Persons Act, the equal protection clause of the Fourteenth Amendment and several state laws when they enforced

a policy that deprived him of his copies of "Temple of Wotan" and "Creed of Iron." Now plaintiff has filed a motion for a temporary restraining order, which I construe as a motion for a preliminary injunction pursuant to Fed. R. Civ. P. 65(a). In his motion, plaintiff asks that this court enjoin defendant Frank and Warden Berge, the warden of the Wisconsin Secure Program Facility where plaintiff is currently in custody, from preventing him from having in his possession copies of "Temple of Wotan" and "Creed of Iron."

The standard applied to determine whether plaintiff is entitled to preliminary injunctive relief is well established.

> A district court must consider four factors in deciding whether a preliminary injunction should be granted. These factors are: 1) whether the plaintiff has a reasonable likelihood of success on the merits; 2) whether the plaintiff will have an adequate remedy at law or will be irreparably harmed if the injunction does not issue; 3) whether the threatened injury to the plaintiff outweighs the threatened harm an injunction may inflict on defendant; and 4) whether the granting of a preliminary injunction will disserve the public interest.

Pelfresne v. Village of Williams Bay, 865 F.2d 877, 883 (7th Cir. 1989). At the threshold, a plaintiff must show some likelihood of success on the merits and that irreparable harm will result if the requested relief is denied. If plaintiff makes both showings, the court then moves on to balance the relative harms and public interest, considering all four factors under a "sliding scale" approach. See In re Forty-Eight Insulations, Inc., 115 F.3d 1294, 1300 (7th Cir. 1997).

This court requires that a party seeking emergency injunctive relief follow specific

procedures for obtaining such relief. Those procedures are described in a document titled Procedure To Be Followed On Motions For Injunctive Relief, a copy of which is included with this order. Plaintiff should pay particular attention to those parts of the procedure that require him to submit proposed findings of fact in support of his motion and point to admissible evidence in the record to support each factual proposition.

In support of his motion for a preliminary injunction, plaintiff has filed only a brief and an affidavit in which he avers that he was denied copies of "Temple of Wotan" and "Creed of Iron" while he was confined in the segregation unit at the Green Bay Correctional Institution. Also, plaintiff makes bald assertions in his affidavit that without these texts, he cannot practice his Odinist religion and that defendants are wrong when they say that these texts advocate racism and promote hatred or violence.

To obtain a preliminary injunction, a moving party must meet an exacting standard. See Abbott Labs. v. Mead Johnson & Co., 971 F.2d 6, 11 (7th Cir. 1992). Plaintiff has not met that standard. First, he has provided no evidence to show what Department of Corrections policy or practice prevents him from obtaining a copy of the publications he wants. Plaintiff cannot receive an injunction against Warden Berge, because Berge is not a defendant in this action. Indeed, if plaintiff cannot prove that it is a department policy that is responsible for his inability to obtain his alleged religious texts, his claims for injunctive and declaratory relief may be subject to dismissal on the ground they are moot.

Second, plaintiff has provided no evidence to demonstrate a likelihood of success on the merits of his claim. For example, he has not put in evidence to prove how the texts he wants are related to his ability to practice his religion or even what the tenets of his religion are.

Third, plaintiff has not put in evidence to prove that the balance of harms if the injunction is not granted weighs more heavily against him than the harm defendants will suffer if the injunction is granted. Plaintiff asserts generally in his affidavit that defendants are wrong when they claim that the texts advocate racism and promote hatred or violence. However, he has put in no evidence to show that he will suffer irreparable harm if he does not receive the texts before a final ruling in this action can be rendered.

Because plaintiff has neither followed the procedures for preliminary injunctive relief nor made the necessary showing of entitlement to such relief, his motion will be denied without prejudice.

ORDER

IT IS ORDERED that plaintiff's motion for a preliminary injunction is DENIED without prejudice.

Entered this 16th day of March, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge