

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

DAVID W. WATTS,

Plaintiff,

OPINION AND ORDER

v.

21-cv-708-wmc

JACOB CIRIAN, MARK KARTMAN,
GARY BOUGHTON, PAMELA STOUTD,
MICHAEL FERAN, MR. BIRD, MS. PARISH,
CHIEF OF POLICE JOHN DOE, DET. LORI
ROM, DET. MICK CHEMICK, and SPECIAL
AGENT JOHN DOE,

Defendants.

Pro se plaintiff David Watts, who is currently incarcerated at the Wisconsin Secure Program Facility (“WSPF”), filed this and two other lawsuits, Case Nos. 21-cv-717-wmc, and 21-cv-718-wmc, claiming that WSPF officials placed him at risk by outing him as an informant and sexual harassment complainant. Watts further claims that WSPF officials subsequently took measures to prevent him from filing lawsuits to challenge their actions. At the court’s suggestion, Watts withdrew his two other lawsuits and indicated an intent to file an amended complaint to include all of his related claims in one lawsuit. Since he has yet to submit an amended complaint, the court closes this opinion by establishing a deadline for him to do so.

More pressing, Watts further filed emergency motions for a temporary restraining order or preliminary injunction out of concern that WSPF inmates are now threatening his life at the behest of WSPF officials, and asking that this court direct his transfer to a facility not operated by Wisconsin Department of Corrections (“DOC”) employees. In response,

the court directed service of Watts' complaints and motions on the Wisconsin Attorney General's Office, and set this matter for a hearing. (Dkt. #11.)

On December 3, 2021, Magistrate Judge Stephen Crocker held a telephonic hearing with Watts proceeding *pro se* and Assistant Attorney General Brandon Flugaur, appearing in a limited capacity on behalf of WSPF staff, to assess whether court intervention was necessary to ensure Watts' safety while his motions are pending, and to set this matter for further briefing. (Dkt. #15.) Since Watts represented that he was in restrictive housing and felt safe there, Judge Crocker was satisfied that no immediate relief was necessary, set Watts' motions for orderly briefing, and instructed Watts to file an amended motion for preliminary injunction supported by verified allegations about the threats he allegedly faces. Additionally, since Watts claimed that he had received a new, written threat from an inmate with the last name of Long that morning, Judge Crocker further ordered that Watts be allowed to submit a copy of that threat through (1) WSPF's litigation coordinator and (2) a staff member that Watts trusts, Lieutenant Scullion.

Both sides having since briefed their respective positions, including Watts' additional claims that WSPF officials and AAG Flugaur violated Judge Crocker's order and lied to the court, Watts' motions for injunctive relief will be denied. While the court agrees WSPF officials did not follow all Judge Crocker's directives, neither their misstep nor anything else in the record supports entering the extraordinary, preliminary relief Watts is requesting.

OPINION

I. Production of Long Note

As a preliminary matter, Watts asserts that WSPF staff violated Judge Crocker's order that *only* WSPF's Litigation Coordinator Ellen Ray or Scullion should try to obtain and preserve a copy of the threat Watts allegedly received on December 3 from the inmate Long. However, the court sees no basis to find bad faith, much less conclude that WSPF staff are conspiring against Watts. Specifically, Watts claims that on December 6, 2021, WSPF's Security Director Mark Kartman and Unit Manager Heidi Brown asked him for inmate Long's letter, which Watts refused to supply under his then apparent belief that *he* needed to send it directly to the court, and that Kartman and Brown have since been harassing and threatening him in concert with AAG Flugaur, who has also been intimidating him in an effort to get him to withdraw his civil lawsuit. In response, however, Kartman submitted a declaration explaining that Brown's and his attempts to meet with Watts about threats by other inmates has been unavailing. (Dkt. #27.) Kartman also maintains that Brown and he met with Watts in a room that ensured privacy, and that they asked Watts to provide the threatening note that he received from inmate Long consistent with Judge Crocker's order, so that they could make a copy of the threat to preserve it.

The one point on which Kartman and Watts appear to agree is that Watts refused to provide the note and accused them of violating the court's order that Watts should only meet with WSPF Litigation Coordinator Ray. However, when Ray attempted to meet with Watts at his cell front later that day, Kartman avers that Watts again refused to provide

the letter, even just for the purpose of Ray making a copy.

Watts maintains that this conduct alone is reason enough alone to grant his motions, but the court disagrees. Certainly, the court is disappointed that WSPF officials failed to follow Judge Crocker's specific directive as to how to ensure the court's receipt of the Long note, but there appears to be confusion on this matter by both sides, and there is no basis to infer that Kartman's and Brown's attempt to meet with Watts was an effort to purposefully defy Judge Crocker's order, much less to intimate Watts into withdrawing this lawsuit. Indeed, Watts has not detailed what Kartman or Brown said in an effort to intimidate him, and as security director and unit manager, it was a reasonable exercise of their responsibilities to investigate Watts' claim that Long had sent him a written threat. Moreover, Watts himself provides no justification for failing to provide the note to Litigation Coordinator Ray as Judge Crocker had expressly directed, or even if confused at that point, has not provided it directly to the court along with his reply brief seeking preliminary injunction. Regardless, Kartman's and Brown's meeting with Watts is still not an independent reason to grant Watts the preliminary relief he seeks and so, the court turns instead to the merit of Watts' motions.

II. Motions for TRO and PI

Since the establishment of an orderly briefing schedule on his motions for preliminary relief effectively constituted the denial of a TRO, the court will focus its discussion on his request for a preliminary injunction. To prevail, plaintiff must show: (1) a likelihood of success on the merits of his case; (2) a lack of an adequate remedy at law; and (3) an irreparable harm that will result if the injunction is not granted. *Lambert v. Buss*,

498 F.3d 446, 451 (7th Cir. 2007). Furthermore, the Prison Litigation Reform Act (“PLRA”), which governs this lawsuit, narrows the available relief to an even greater extent in cases involving prison conditions. Specifically, the PLRA states that any injunctive relief to remedy prison conditions must be “narrowly drawn to extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm.” 18 U.S.C. § 3626(a)(2); *see also Westefer v. Neal*, 682 F.3d 679, 681 (7th Cir. 2012) (vacating overbroad injunction related to the procedures for transferring prisoners to a supermax prison).

Under this exacting standard, Watts’ motions for extraordinary emergency relief must be denied. To start, Watts has yet to verify his allegations against WSPF staff and AAG Flugaur under penalty of perjury, despite Judge Crocker’s express directive that Watts do so as part of filing an amended motion for a preliminary injunction in which Watts narrowed his requests for relief to relate *only* to his current safety concerns. Unfortunately, in his amended motion, Watts did not follow Judge Crocker’s orders; instead, he opted to raise new, still unverified concerns that *WSPF staff* did not follow Judge Crocker’s order. In contrast, in response to Watts’ assertions, AAG Flugaur has provided details about Watts’ placement and his ability to seek protection in response to any inmates lodging credible threats against him. In the declaration of Security Director Kartman, he personally attests in particular that Watts currently is housed in the Restrictive Housing Unit (“RHU”), where he is not in physical contact with other inmates. Kartman further explains that Watts is in the RHU because of an ongoing investigation, and the outcome of that investigation will determine whether Watts remains in the RHU or is released to

WSPF's general population. Kartman attests that if Watts is released to general population and believes he is being threatened, he may submit a Request for Separation/Special Placement request or for Protective Confinement, along with copies of threatening notes or other evidence of threats to his safety. Kartman further attests that WSPF staff are *still* not aware of any threats made against Watts by other inmates, including Caleb Miller, George Taylor and Jerome Long, the inmates who Watts initially alleges threatened him. Kartman also attests more broadly that staff are unaware of *any* threats to Watts' safety. Finally, Kartman states that there is *no* record that Watts has submitted a Request for Separation/Special Placement form *or* a request for Protective Confinement form.

Even in reply, Watts has not come forward with actual evidence suggesting that he currently faces a substantial risk of harm. Instead, Watts insists that WSPF staff are lying about the threats to his safety for four reasons. First, he reiterates the details of the threats outlined in his complaint, which he claims to have received from inmate Taylor on November 8, inmate Taylor on November 14, and inmate Miller on both November 14 and 17, 2021. (Dkt. #31, at 4-5.) Second, Watts points out that WSPF staff are aware that after he was revealed to be a confidential informant, he was attacked by an inmate for being a snitch, because WSPF staff (Dr. Hoem, Ms. Mink, Ms. Adams, and Ms. Kinyon) examined him in the Health Services Unit ("HSU") on September 7, 2021, after one attack and saw bruises. (*Id.* at 6.) Third, Watts again insists that Kartman, Brown and Ray attempted to intimidate him when they met with him about inmate Long's alleged threat, with no intention of actually providing a copy of Long's threat to the court. Fourth, Watts claims that Kartman's representation that he has not submitted requests for separation or

a special placement is also a lie, insisting that he “begged” Kartman for request forms on five occasions -- November 8, November 14, November 21, November 28, and December 4, of 2021, and he never heard back from Kartman. (Dkt. #31, at 14.) Watts further claims to have submitted the same requests to Unit Manager Brown, who also did not respond. As evidence of those efforts, Watts submits what he claims are copies of “Interview/Information Request” forms, in which he raised concerns about his safety and either asked to be placed in protective custody or for the forms to make such a request on the dates listed above. (Dkt. #31, at 28-37.)

For various reasons, Watts’ efforts to create a factual dispute related to his motions for preliminary relief fall short. As an initial matter, the court has serious concerns about the veracity of Watts’ assertions that he has been requesting protective custody and separation forms from Kartman and Brown since November of 2021. Before his reply brief, Watts had not even suggested that he submitted written communications to Kartman or Brown on the subject, much less that either thwarted his requests to complain formally, and his statements in his brief remain unverified despite Judge Crocker reminding him of the obligation to do so to make a record of the basis for his motions. Furthermore, the “Interview/Information Request” forms Watts filed as evidence that he has been raising safety concerns with WSPF staff are questionable: although these forms do indeed show that Watts asked for separation forms and raised concerns about his safety as he insists, there is nothing on these forms indicating that they were received by WSPF staff, nor that Watts followed the appropriate protocols to ensure that Kartman or Brown received them. Even assuming that Watts *did* submit those forms in November and early December *and*

that Kartman and Brown received them and failed to respond, the question before the court at this stage is not whether Kartman and Brown failed to respond appropriately when they received those communications. The question for purposes of granting preliminary relief is whether evidence before the court suggests that WSPF staff *currently* are failing to properly address a credible threat to Watts' safety.

At present, the court has no legitimate basis to discredit Kartman's assessment that Watts is still being threatened or still cannot reach out to staff to communicate his concerns about his safety. As importantly, Watts remains in RHU, where he does not have physical access to any other inmates *and* where Watts himself represented to Judge Crocker that he feels safe from physical harm. Although Watts is free to include allegations of past mishandling of his safety by amending his complaint, Watts has failed to support his pending emergency motions with evidence that WSPF staff are responding to a risk of harm with deliberate indifference, or that he would suffer irreparable harm absent court intervention. Therefore, Watts is not entitled to the extraordinary relief of a preliminary injunction.

Although the court is denying Watts' emergency motions for a preliminary injunction, this lawsuit remains pending. Watts has indicated that he wishes to file an amended complaint that includes all of the claims and parties that he raised in this and his two dismissed lawsuits (Case Nos. 21-cv-717-wmc and 21-cv-718-wmc). Watts remains free to file his amended complaint, provided that he does so on or before **January 31**,

2022. If he files an amended complaint by that deadline, the court will take it under advisement for screening as required by 28 U.S.C. §§ 1915(e)(2), 1915A.

ORDER

IT IS ORDERED that:

1. Plaintiff David Watts' motions for emergency injunctive relief (dkt. ##8, 9, 10, 18, 20-25) are DENIED.
2. Plaintiff's motions for service (dkt. ##13, 14) are DENIED as moot.
3. Plaintiff has until **January 31, 2022**, to file an amended complaint.
4. Attorney Flugaur is directed as an officer of this court to arrange for advance notice of *any* movement of Watts out of segregated status back to the general population *or* to another DOC facility, *and* he is also directed to notify the court promptly should such a move even be contemplated by his clients.

Entered this 3rd day of January, 2022.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge