

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

CHRIS CARTY,)	
Plaintiff)	Civil Action No.: 7:12cv00086
)	
v.)	
)	
T. COX, et al.,)	<u>REPORT AND RECOMMENDATION</u>
Defendants.)	By: PAMELA MEADE SARGENT
)	United States Magistrate Judge

The pro se plaintiff, Chris Carty, is an inmate at Red Onion State Prison, (“ROSP”). This case is before the court on the plaintiff’s Motion for a Temporary Restraining Order & a Preliminary Injunction, (Docket Item No. 24), (“Motion”), seeking injunctive relief ordering that T. Cox, a nurse at ROSP, be removed from providing medical care to Carty and that Carty be moved to another state prison. The defendants have responded to the Motion. None of the parties have requested a hearing. The Motion is before the undersigned magistrate judge by referral pursuant to 28 U.S.C. § 636(b)(1)(B). The undersigned now submits the following report and recommended disposition.

I. Facts

Carty brings this civil rights action against two defendants: T. Cox, a registered nurse who works at ROSP; and P. Stanley, a correctional officer at ROSP.¹ Carty seeks damages under 42 U.S.C. § 1983 for injuries he alleges that he suffered as a result of the excessive use of force against him by unnamed

¹ Carty originally also sued “John Doe,” but that defendant was dismissed by March 12, 2012, Order of the court.

correctional officers on October 28, 2011, and Cox's and Stanley's subsequent refusal to provide medical care to him. On July 23, 2012, Carty filed the Motion. Carty, in an attached Sworn Affidavit, (Docket Item No. 24, Att. No. 2), alleged that Cox and a co-worker, G. Deel, had retaliated against him for suing Cox by giving him an "unknown crush substance" which made him "very sick" on May 31 and June 2, 2012. Carty also filed a number of inquiries and informal complaints as exhibits in support of the Motion. In these exhibits, Carty alleges that he was given "some white substance" which made him weak, constipated, feel pain in his body and vomit.

II. Analysis

"The law is well settled that federal injunctive relief is an extreme remedy." *Simmons v. Poe*, 47 F.3d 1370, 1382 (4th Cir. 1995). Furthermore, a preliminary injunction is considered "an extraordinary remedy involving the exercise of a very far-reaching power, which is to be applied 'only in limited circumstances' which clearly demand it." *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 811 (4th Cir. 1992) (quoting *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 800 (3rd Cir. 1989)). The party seeking entry bears the burden to establish that these factors support granting a preliminary injunction: (1) the likelihood of irreparable harm to the movant if preliminary injunctive relief is denied; (2) the likelihood of harm to the opposing party if the requested relief is granted; (3) the movant's likelihood of succeeding on the merits of the actions; and (4) the public interest. *See Equity in Athletics, Inc. v. Dep't of Educ.*, 504 F. Supp. 2d 88, 99 (W.D.Va. 2007) (citing *Direx Israel, Ltd.*, 952 F.2d at 811-12).

Based on the information currently before the court, I find that Carty has failed to establish that the entry of a preliminary injunction is appropriate. In particular, Carty has failed to demonstrate any likelihood of irreparable harm if the injunctive relief is denied. Carty claims that he was provided an “unknown crush substance” that made him ill on two occasions. He has not alleged that this behavior has continued. Nor has he alleged that he continues to suffer any ill effects from taking this substance. Carty also has failed to demonstrate any likelihood of success on this issue on the merits of the case. To be specific, Carty has not demonstrated that the two defendants sued in this case, Cox and Stanley, can provide the relief requested. There is no evidence before the court showing that either Cox, a prison nurse, or Stanley, a correctional officer, has the authority to order Carty transferred to another prison. Also, there is no evidence that either Cox or Stanley has the authority to control whether Cox continues to provide medication or medical care to Carty.

PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW

As supplemented by the above summary and analysis, the undersigned now submits the following formal findings, conclusions and recommendations:

1. Carty has failed to demonstrate any likelihood of irreparable harm if injunctive relief is denied;
2. Carty has failed to demonstrate any likelihood of success on this issue on the merits of the case; and
3. Carty has failed to demonstrate that the entry of a preliminary injunction is appropriate.

RECOMMENDED DISPOSITION

Based on the above-stated reasons, I recommend that the court deny the Motion.

Notice to Parties

Notice is hereby given to the parties of the provisions of 28 U.S.C. § 636(b)(1)(C):

Within fourteen days after being served with a copy [of this Report and Recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed finding or recommendation to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence to recommit the matter to the magistrate judge with instructions.

Failure to file written objection to these proposed findings and recommendations within 14 days could waive appellate review. At the conclusion of the 14-day period, the Clerk is directed to transmit the record in this matter to the Honorable Samuel G. Wilson, United States District Judge.

The Clerk is directed to send copies of this Report and Recommendation to all counsel of record and unrepresented parties.

DATED: This 28th day of August, 2012.

/s/ Pamela Meade Sargent
UNITED STATES MAGISTRATE JUDGE