

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

THOMAS EDWARD KOTAWA )  
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 Plaintiff, )  
 )  
 v. ) No.: 1:08-cv-01141-JDB  
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 )  
 JOSEPH EASTERLING, WARDEN; *et al.*, )  
 )  
 Defendants. )

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ORDER DENYING PLAINTIFF'S MOTION FOR RESTRAINING ORDER

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On June 23, 2008, Plaintiff Thomas Kotewa, an inmate at the Hardeman County Correctional Facility (“HCCF”), filed a motion for a restraining order pursuant to Rule 65 of the Federal Rules of Civil Procedure, against HCCF Warden Joe Easterling, HCCF Education Director Hester Ladd, HCCF Assistant Warden Rosie Kendrix, TDOC contract monitor Bryant Williams, and CCA contract attorney Curtis Hopper. (“Motion,” Docket Entry [“D.E.”] 7). In addition to seeking a restraining order against all the named Defendants in this matter, Plaintiff also seeks such an order against a non-party to this litigation, Mayor Willie C. Spencer. (*Id.*). The restraining order that Plaintiff seeks would prohibit Defendant Easterling and the other Defendants, and presumably the non-party Spencer, from limiting Plaintiff’s access to the HCCF law library to six (6) hours a week and, instead, permitting him to have access to the library for 37.5 hours a week, which he claims he needs to meet court deadlines and to prepare pleadings concerning this civil rights action. (Motion at pp. 3-5). Plaintiff also seeks an order prohibiting these persons from retaliating against him or otherwise hindering his access to the courts. (See

*Id.*). On July 8, 2008, Defendants Joe Easterling, Hester Ladd, Rosie Kendricks, and Curtis F. Hopper filed a response in opposition to Plaintiff's motion. (D.E. 8).

Plaintiff states that he brings this motion pursuant to Rule 65 of the Federal Rules of Civil Procedure, but does not specify whether it is brought pursuant to subsection (a) or (b). Although Plaintiff appears to bring this motion under Rule 65(b), that provision is inapplicable because Defendants were provided notice of the motion. Plaintiff's motion, therefore, is properly construed as an application for a preliminary injunction, pursuant to Rule 65(a), instead of temporary restraining order as the motion is styled. Accordingly, the Court analyzes Plaintiff's Motion as an application for the issuance of a preliminary injunction.

The standard for the issuance of a preliminary injunction in the Sixth Circuit is as follows:

When deciding whether to issue a preliminary injunction, the district court considers the following four factors: (1) whether the movant has a "strong" likelihood of success on the merits; (2) whether the movant would otherwise suffer irreparable injury; (3) whether issuance of a preliminary injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of a preliminary injunction. These factors are to be balanced against one another and should not be considered prerequisites to the grant of a preliminary injunction.

*Leary v. Daeschner*, 228 F.3d 729, 736 (6th Cir. 2000) (citations omitted). "A preliminary injunction is an extraordinary remedy which should be granted only if the movant carries his or her burden of proving that the circumstances clearly demand it." *Overstreet v. Lexington-Fayette Urban County Gov't*, 305 F.3d 566, 573 (6th Cir. 2002); *see also Leary*, 228 F.3d at 739 (stating "the proof required for the plaintiff to obtain a preliminary injunction is much more stringent than the proof required to survive a summary judgment motion").

In this case, Plaintiff's Motion does not address the criteria for preliminary injunctive relief and, in particular, does not make a showing that would permit the Court to conclude there

is a likelihood of success on the merits. Plaintiff alleges that he is not being afforded adequate access to the courts, but simultaneously admits that he is being permitted six (6) hours a week of law library time. (D.E. 7, ¶ 4, p. 2). Plaintiff asserts, without elaboration, that he needs 37.5 hours per week of law library access “to meet court deadlines and to prepare pleadings regarding Civil Rights Complaint” (D.E. 7, ¶ 4a, p. 2), but he does not state what those deadlines are or why he needs an additional 31.5 hours a week of library time to prepare pleadings in, presumably, the present action. Defendants noted in their response that Plaintiff has already filed a Complaint in this matter, and there were, at the time the present motion was filed, no pending motions for Plaintiff to respond to that might warrant additional library time. Thus, Plaintiff fails to make any showing that would permit the Court to conclude there is a likelihood of success on the merits based upon this allegation.

Furthermore, Plaintiff seeks injunctive relief to prevent Defendants from allegedly retaliating against him for filing this lawsuit. (D.E. 7, ¶ 4b, p. 3). Plaintiff states that the alleged retaliation is that he is not being permitted sufficient time to assist other inmates with legal matters, in addition to not having adequate library time for his own legal endeavors, and thus, he is allegedly experiencing an impediment to his access to the courts. (*Id.*). To the extent that Plaintiff claims that his access to the courts is being curtailed through not being able to assist other inmates, Plaintiff does not have a constitutionally protected right to assist other inmates with their legal problems. *See Gibbs v. Hopkins*, 10 F.3d 373, 378 (6th Cir. 1993) (prisoners have no constitutional right to assist other prisoners with legal matters unless no reasonable alternatives are present).

Plaintiff’s final ground for seeking injunctive relief is that Defendant Curtis Hopper, who is a contract attorney who assists inmates at the HCCF with preparing initial civil pleadings, has

allegedly refused to see or assist Plaintiff. (D.E. 7, ¶ 4d, pp. 3-4). It is unclear what form of injunctive relief Plaintiff seeks against Defendant Hopper. Because Plaintiff has already filed an initial pleading in this matter, there is no basis for ordering Defendant Hopper to assist Plaintiff with the preparation of an initial pleading.

For these reasons, Plaintiff's Motion for Restraining Order is DENIED. To the extent that Plaintiff's motion is construed as an application for a preliminary injunction, his application is also DENIED.

IT IS SO ORDERED.

s/Edward G. Bryant  
Edward G. Bryant  
United States Magistrate Judge

Date: February 18, 2009