NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 28, 2024*
Decided April 2, 2024

Before

DIANE S. SYKES, *Chief Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 23-2689

FIRAS M. AYOUBI,
Plaintiff-Appellant,

v.

LATOYA HUGHES, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Central District of Illinois.

No. 23-cv-4121

Joe Billy McDade,
Judge.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

No. 23-2838

FIRAS M. AYOUBI,
Plaintiff-Appellant,

v.

LATOYA HUGHES, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Central District of Illinois.

No. 23-cv-3274

Michael M. Mihm,
Judge.

O R D E R

Firas Ayoubi, an Illinois prisoner, brought two similar lawsuits against prison staff and Illinois public officials. In both cases, he moved for leave to proceed in forma pauperis and for a temporary restraining order and preliminary injunction. The district judges each denied him leave to proceed in forma pauperis because Ayoubi had three strikes under the Prison Litigation Reform Act and, they determined, did not qualify for the imminent-danger exception. In addition, they each denied injunctive relief upon concluding that Ayoubi failed to show a reasonable likelihood of success on the merits. We now consolidate Ayoubi's appeals for disposition and affirm.

Because we are reviewing dismissals on the pleadings, we take Ayoubi's well-pleaded factual allegations as true. *Nelson v. City of Chicago*, 992 F.3d 599, 602 (7th Cir. 2021). Ayoubi has a movement disorder, which causes his limbs to twist and jerk involuntarily. In the past, this has caused him physical pain when he uncontrollably collided with walls or furniture or hit other prisoners, who retaliated in kind. Ayoubi was recently moved from Dixon Correctional Center in Lee County, Illinois to Hill Correctional Center in Galesburg, Illinois. Ayoubi asserts that Hill has more aggressive inmates, smaller cells, and a much smaller medical staff. He received no treatment for his movement disorder and was required to live in a two-man cell, even after pleading with the defendants.

Ayoubi filed two federal complaints. In the first (which corresponds to Appeal No. 23-2689), he alleged that the defendants were acting with deliberate indifference to his safety in violation of the Eighth Amendment because they knew that the conditions at Hill were exacerbating his serious medical condition but refused to place him in a single cell. He also asserted that the defendants violated the Americans with Disabilities

Act and the Rehabilitation Act by denying him a single cell despite providing them to others (including gay prisoners) who asked to be housed separately.

In his second complaint (corresponding to Appeal No. 23-2838), Ayoubi reiterated these claims and added one under the First and Fourteenth Amendments, alleging that a prison official retaliated against him for his grievance by transferring him to Hill. He argued that the transfer was retaliatory and that the removal from Dixon unlawfully deprived him of access to certain programs and jobs. He also asserted that the Illinois Department of Corrections was liable under *Monell v. Department of Social Services*, 436 U.S. 658 (1978) and brought state law claims of fraud against one defendant, breach of contract and unjust enrichment against the prison's medical contractor, and negligence against all defendants.

In each case, Ayoubi moved to proceed in forma pauperis and for a preliminary injunction and temporary restraining order requiring Hill to move him to a single cell. The judges denied the motions, with identical reasoning: Because Ayoubi had accumulated strikes in prior cases, the Prison Litigation Reform Act prohibits him from proceeding in forma pauperis unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). The judges concluded that the potential for harm from his involuntary movements or from conflict with inmates was not sufficiently imminent. And as to Ayoubi's requests for injunctive relief, the judges concluded that he had not demonstrated a reasonable likelihood of success on the merits of his claims and that the public interest did not weigh in favor of a preliminary injunction.

Ayoubi appeals these decisions, and in each case, he also moved to proceed in forma pauperis on appeal. Motions panels of this court previously concluded in Appeal No. 23-2689 and Appeal No. 23-2838, however, that he had not demonstrated imminent danger of serious physical injury.

On appeal, Ayoubi argues that the district judges ignored evidence that established both an imminent and irreversible harm, requiring the district judges to both grant him leave to proceed in forma pauperis and order injunctive relief.

We turn first to the denials of Ayoubi's motions in the district court to proceed in forma pauperis, decisions we review de novo. 28 U.S.C. § 1291; *Wallace v. Baldwin*, 895 F.3d 481, 483 (7th Cir. 2018); *Turley v. Gaetz*, 625 F.3d 1005, 1007 n.3 (7th Cir. 2010). Prisoners with three strikes cannot proceed in forma pauperis in federal court unless they show they are "under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Assertions of imminent danger that reference only past injuries, or that state

fears about the future without a reason to think that danger is imminent do not satisfy this standard. *Taylor v. Watkins*, 623 F.3d 483, 485 (7th Cir. 2010); *Sanders v. Melvin*, 873 F.3d 957, 960 (7th Cir. 2017).

That is all Ayoubi has provided here, and so the exception does not apply. He asserts that he has had violent encounters with cellmates after inadvertently hitting them and fears it will happen again, chiefly because his current cellmate has expressed anger about Ayoubi's uncontrollable movements. But nothing in his pleadings suggests that the potential danger is imminent or that the resultant harm, were it to occur, would be serious. *See Sanders*, 873 F.3d at 960.

Before we review the denials of Ayoubi's motions for injunctive relief, we must determine whether we have jurisdiction to review these interlocutory rulings. *See Wheeler v. Talbot*, 770 F.3d 550, 552 (7th Cir. 2014) (noting that appellate courts do not have jurisdiction to review denials of temporary restraining orders). Ayoubi styled his motions as requests for a temporary restraining order and preliminary injunction, but labels are not determinative. *Sampson v. Murray*, 415 U.S. 61, 86–88 (1974); *Geneva Assurance Syndicate, Inc. v. Med. Emergency Servs. Assocs. S.C.*, 964 F.2d 599, 600 (7th Cir. 1992). Instead, we look to the substance of the motion. *Geneva*, 964 F.2d at 600. The hallmarks of a temporary restraining order are "its brevity, ex parte character, and…its informality," *id.*; FED. R. CIV. P. 65(b)(2), while a preliminary injunction requires notification to the opposing party, requests longer-term relief, and must be evaluated with a longer, reasoned determination by the district judge than would be required for a temporary restraining order. FED. R. CIV. P. 52(a)(2), 65(a)(1).

On balance, the factors favor interpreting the district judges' orders as addressing motions for a preliminary injunction as well as motions for a temporary restraining order, giving us jurisdiction. True, Ayoubi requested injunctive relief before the defendants were served with process and indeed before even obtaining the judges' permission to file a complaint in forma pauperis. These factors suggest that only a temporary restraining order would be appropriate. *See Wheeler*, 770 F.3d at 552. Here, however, understanding the judges' orders as addressing requests for both a temporary restraining order and a preliminary injunction does not conflict with the notice requirement because the judges denied the requests. *Id.* And Ayoubi seems to want relief that would last longer than the 14-day lifespan of a temporary restraining order; namely, a single cell, permanently. Finally, each judge issued a reasoned order, as would be required for a preliminary injunction. FED. R. CIV. P. 52(a)(2).

Our conclusion that we have jurisdiction, however, does not help Ayoubi. He has waived any argument that the district judges erred. *See Bradley v. Village of Univ. Park*, 59 F.4th 887, 897 (7th Cir. 2023). In his briefs, Ayoubi argues only that he was in danger of irreparable harm. But each judge also concluded that Ayoubi failed to show that he had a reasonable likelihood of success on the merits. Ayoubi's arguments do not address this reasoning, and he has therefore waived any argument against it. *Id.*

We end by observing that this is not the first repetitive appeal Ayoubi has filed in this court, nor is it his first unsuccessful attempt to proceed in forma pauperis after receiving three strikes. *See* Appeal No. 14-3553 (7th Cir.), Appeal No. 14-3681 (7th Cir.). As he acknowledges in his complaint, his litigation history is extensive, and, in 2021, the Northern District of Illinois barred him from filing further civil cases. Executive Committee Order at 1, *In re Firas M. Ayoubi*, 1:20-cv-07288 (N.D. Ill. Apr. 26, 2021). We warn him that further frivolous appeals may result in sanctions, including fines that, if unpaid, may result in a bar on filing papers in civil lawsuits in any court within this circuit. *See Support Sys. Int'l, Inc. v. Mack*, 45 F.3d 185, 186 (7th Cir. 1995).

AFFIRMED