

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-2761  
Conference Calendar

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WILLIAM CALVIN KEATON,

Plaintiff-Appellant,

versus

ROBERT L. OTT, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CA-H-92-2463  
- - - - -

(July 19, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:\*

This Court does not have the jurisdiction to review the denial of a temporary restraining order. Matter of Lieb, 915 F.2d 180, 183 (5th Cir. 1990). The district court's denial of a motion for preliminary injunction, however, is an interlocutory order that is immediately appealable under 28 U.S.C. § 1292(a)(1). See Lakedreams v. Taylor, 932 F.2d 1103, 1106 (5th Cir. 1991).

The decision to deny a preliminary injunction will be reversed by this Court "only under extraordinary circumstances."

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

White v. Carlucci, 862 F.2d 1209, 1211 (5th Cir. 1989). This Court reviews that decision for an abuse of discretion. Id.

A movant for a preliminary injunction must demonstrate 1) a substantial likelihood of success on the merits, 2) a substantial threat that failure to grant the injunction will result in irreparable injury, 3) that the threatened injury outweighs any damage that the injunction will cause to the adverse party, and 4) that the injunction will not have an adverse effect on the public interest. Lakedreams, 932 F.2d at 1107. The movant for an injunction carries "a heavy burden of persuading the district court that all four elements are satisfied," and failure to carry the burden on any one of the four elements will result in the denial of the motion. Enterprise Intern. v. Corporacion Estatal Petrolera Ecuatoriana, 762 F.2d 464, 472 (5th Cir. 1985) (citation omitted). "Speculative injury is not sufficient; there must be more than an unfounded fear on the part of the applicant." Holland America Ins. Co. v. Succession of Roy, 777 F.2d 992, 997 (5th Cir. 1985).

The district court concluded that Keaton had failed to satisfy his burden of establishing an irreparable injury. Keaton alleged that the challenged regulation impaired his right of access to the courts. It is clearly established that prisoners have a constitutionally protected right of access to the courts. Brewer v. Wilkinson, 3 F.3d 816, 820 (5th Cir. 1993), cert. denied, 114 S.Ct. 1081 (1994). In order for Keaton's claim to rise to the level of a constitutional violation of his right of access to the courts, however, he must allege that his position

as a litigant was prejudiced by the rule prohibiting inmates from giving or receiving legal assistance without first obtaining permission from TDCJ-ID officials. See Walker v. Navarro County Jail, 4 F.3d 410, 413 (5th Cir. 1993). Because Keaton failed to allege the element of legal prejudice necessary to set forth a cognizable access-to-the-courts claim, the district court did not abuse its discretion in finding that Keaton had failed to make a showing of irreparable injury. See Brewer, 3 F.3d at 826. As Keaton thus failed to carry his burden on the second element, the showing of a substantial threat that failure to grant the injunction would result in irreparable injury, the district court did not abuse its discretion in denying his motion for a preliminary injunction.

AFFIRMED.