

June 17, 2008

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

ANTHONY E. JOHNSON,

Petitioner - Appellant,

v.

FEDERAL BUREAU OF PRISONS;
CLAUDE CHESTER, Warden, United
States Penitentiary, Federal Prison
Camp, Leavenworth, Kansas; C. A.
ASHMAN, Unit Manager, Federal
Prison Camp, Leavenworth, Kansas;
D. C. BALL, Case Manager, Federal
Prison Camp, Leavenworth, Kansas;
R. S. STRAUTTON, Federal Prison
Camp, Leavenworth, Kansas; FNU
CLERK, Correctional Counselor,
Federal Prison Camp, Leavenworth,
Kansas,

Respondents - Appellees.

No. 08-3008
(D.C. No. 07-CV-3292-RDR)
(D. Kan.)

ORDER AND JUDGMENT*

Before **O'BRIEN**, **EBEL**, and **GORSUCH**, Circuit Judges.

* After examining appellant's brief and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2) and 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent except under the doctrines of law of the case, *res judicata* and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Anthony Johnson, a federal prisoner, filed a *pro se* habeas petition pursuant to 28 U.S.C. § 2241, claiming that the Bureau of Prisons (“BOP”) erroneously denied him a transfer to a Community Correctional Center (“CCC”). In addition to habeas relief, Mr. Johnson sought an immediate writ of mandamus and declaratory judgment related to his requested CCC placement, as well as a preliminary injunction against the BOP preventing it from retaliating against him for seeking placement in a CCC and bringing this action. The district court denied Mr. Johnson’s preliminary requests for relief. While the balance of his petition remains pending in the district court, Mr. Johnson took this appeal seeking interlocutory review of the district court’s disposition of his requests for mandamus, declaratory judgment, and injunctive relief.

Construing Mr. Johnson’s pleadings before us liberally, and although the district court has not rendered a final judgment in this case, we conclude that we have jurisdiction to entertain this interlocutory appeal to the extent that it seeks review of the district court’s denial of injunctive relief. *See* 28 U.S.C.

§ 1292(a)(1). Under settled case law, a movant is entitled to a preliminary injunction if he or she can establish:

- (1) a substantial likelihood of success on the merits of the case;
- (2) irreparable injury to the movant if the preliminary injunction is denied; (3) the threatened injury to the movant outweighs the injury to the other party under the preliminary injunction; and (4) the injunction is not adverse to the public interest. Because a

preliminary injunction is an extraordinary remedy, the right to relief must be clear and unequivocal.

Kikumura v. Hurley, 242 F.3d 950, 955 (10th Cir. 2001). We will overturn a district court's decision denying injunctive relief only in the presence of an abuse of discretion, an error of law, or a clearly erroneous factual finding. *Id.* After examining the district court's order, Mr. Johnson's filings, and the record on appeal, we conclude that Mr. Johnson has failed to demonstrate that the district court's decision falls prey to any of these problems.

To the extent that Mr. Johnson's appeal seeks review not just of the district court's denial of injunctive relief but also its denial of mandamus and declaratory relief against the BOP, we decline to exercise jurisdiction over it because no final judgment exists and the matters implicated by those requested forms of relief are intertwined with the facts and issues in his pending habeas petition.¹

* * *

To the extent that Mr. Johnson's appeal concerns the district court's denial of preliminary injunctive relief, we affirm the district court. To the extent that Mr. Johnson's appeal seeks to contest the district court's denial of immediate declaratory and mandamus relief against the BOP, we dismiss it. We deny Mr.

¹ While Mr. Johnson's current appeal seeks a writ of mandamus as against the BOP, we note that, in case number 08-3125, Mr. Johnson has also sought and been denied by this court a writ of mandamus as against the district court in connection with his desire to be transferred to a CCC.

Johnson's motion for an expedited appeal and severance of issues, but we grant his petition to proceed *in forma pauperis* before us in this matter.

ENTERED FOR THE COURT

Neil M. Gorsuch
Circuit Judge