

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

MICHAEL A. MCGUIRE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 2:11-CV-1027-WKW
	)	
CITY OF MONTGOMERY POLICE	)	
DEPARTMENT, <i>et al.</i> ,	)	
	)	
Defendants.	)	

ORDER

Before the court is Plaintiff Michael A. McGuire's Motion for Temporary Restraining Order (Doc. # 6). For the reasons discussed below, the motion is due to be denied.

Plaintiff's suit arises from his name being posted on the Alabama "State and Federal sex offender registries." (Doc. # 6 ¶ 3.) Plaintiff alleges that Defendants determined his sex-offender status "without notice" and "a hearing before a fair and impartial hearing body" before his name was posted on the registries. (Doc. # 1 ¶ 79.) After Plaintiff filed suit in an Alabama state court, a post-deprivation hearing for Plaintiff was set before an Alabama administrative law judge. Plaintiff now seeks to enjoin the post-deprivation hearing, which is currently set for December 14, 2011.

A temporary restraining order may be issued without notice only if

- (A) specific facts in an affidavit or verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
- (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b)(1). A temporary restraining order also requires the same four elements as a preliminary injunction, and the movant bears the burden of demonstrating that they are present. *See Parker v. State Bd. of Pardons & Paroles*, 275 F.3d 1032, 1034–35 (11th Cir. 2001).¹ Plaintiff has not demonstrated the requirements for Rule 65(b) relief.

First, Plaintiff has not shown that he will suffer immediate and irreparable injury if Defendants are given an opportunity to respond to the motion. Plaintiff argues that notice should not be given to Defendants because the administrative law judge has been unwilling to stay the hearing and “previous efforts to stay the [post-deprivation hearing] have been fruitless.” (Doc. # 6 ¶ 10.) Plaintiff has not shown how the fact that the administrative law judge denied Plaintiff's previous requests to

¹ These four elements are “(1) a substantial likelihood of success on the merits, (2) a threat of irreparable injury, (3) that [movant's] own injury would outweigh the injury to the nonmovant, and (4) that the injunction would not disserve the public interest.” *Tefel v. Reno*, 180 F.3d 1286, 1295 (11th Cir. 1999).

stay the post-deprivation hearing demonstrates that Defendants should not be given an opportunity to be heard on this matter.

Second, Plaintiff has not demonstrated that a temporary restraining order is necessary to prevent irreparable injury. Plaintiff argues that he “has no adequate remedy at law because he was denied any ability to appeal the [D]efendants’ unilateral determination that the 1996 Community Notification Act, as amended, applie[d] to” him. (Doc. # 6 ¶ 5.) Plaintiff fails to identify an injury. Moreover, Plaintiff has been given the ability to appeal Defendants’ unilateral determination. A post-deprivation hearing for Plaintiff has been scheduled, the very hearing that Plaintiff now seeks to enjoin.

Third, Plaintiff’s counsel has failed to provide “specific facts *in an affidavit or a verified complaint*” showing irreparable injury will occur before Defendants can be notified. Fed. R. Civ. P. 65(b)(1)(A) (emphasis added).

Accordingly, it is ORDERED that the Motion for Temporary Restraining Order (Doc. # 6) is DENIED.

DONE this 13th day of December, 2011.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE