

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-00318-RM-CBS

DANIELE LEDONNE,

Plaintiff,

v.

DR. BEVERLEE MCCLURE, in her official capacity as President of Adams State University, and PAUL GROHOWSKI, in his official capacity as Chief of Adams State Police Department,

Defendants.

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR AN EXPEDITED BRIEFING SCHEDULE [DOC. #10] AND EXPEDITED HEARING ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Defendants, Dr. Beverlee McClure and Paul Grohowski, through undersigned counsel, respond to Plaintiff's Motion for Expedited briefing schedule [Doc. #10], and in support state the following:

ARGUMENT

Plaintiff argues that Defendants be given no more than ten days to respond to his motion for preliminary injunction. The implication is that Plaintiff will suffer irreparable harm unless Defendants respond to the motion in ten days instead of the twenty-one days generally provided under the rules of civil procedure for a response. Within the context of a motion for injunctive relief, irreparable harm must be of "such *imminence* that there is clear and present need for equitable relief...." *Heideman v.*

South Salt Lake, 348 F.3d 1182, 1189 (10th Cir. 2003 (emphasis in original) (brackets, citations and internal quotation marks omitted).

Here, though the no trespass order was delivered to Plaintiff on October 14, 2015 [*Complaint*, Doc. #1 at ¶ 1], he did not move for a preliminary injunction until February 10, 2016. A delay in filing a motion for injunctive relief may be taken as an indication that the harm would not be serious enough to justify a preliminary injunction. *Utah Gospel Mission v. Salt Lake City Corporation*, 316 F.Supp. 2d, 1201, 1221 (D.Utah 2004). Accordingly, the almost four month delay in filing the motion for preliminary injunction undercuts Plaintiff's argument for an expedited briefing schedule. Saying it another way, if Plaintiff found it sufficient to wait approximately four months before filing his preliminary injunction motion, then it seems reasonable for Defendants to have twenty-one days after service to respond to it.

Nor does Plaintiff's motion otherwise support the need for an expedited briefing schedule. Plaintiff alleges that the no trespass order is threatening his livelihood, but fails to provide any specific examples. [*Motion*, Doc. #10 at 2]. Plaintiff was not employed by Adams State University, nor was he enrolled in classes at the time the no trespass order issued. The allegations in Plaintiff's Complaint reflect that after the no trespass order was issued, the University still allowed Plaintiff to come onto the campus to meet contractual obligations he had to film "The Nutcracker Ballet" and to film an art gallery opening. [*Complaint*, Doc. #1 at ¶ 69; ¶ 70]. These allegations and

the lack of specificity as to how Plaintiff's livelihood is being threatened merit against an expedited briefing schedule.

Plaintiff's allegation that he is being denied educational, intellectual, and cultural programs on campus suffers from a similar lack of specificity. [*Motion*, Doc. 10 at 3]. In his motion for preliminary injunction, the only specific item that Plaintiff alleged requiring immediate action by the Court was a trip to Peru that is scheduled for this summer. [*Complaint*, Doc. #1 at ¶ 51; *Motion a Preliminary Injunction*, Doc. #10 at ¶ 28]. Based on reason and belief, the trip was open to both University members and the community at large and Plaintiff had previously paid for the trip. On February 18th, defense counsel informed Plaintiff's counsel that Plaintiff would be able to go on the trip. The resolution of this issue is another reason that an expedited briefing schedule is unnecessary.

Moreover, Defendants need twenty-one days to intelligently respond to Plaintiff's motion. The Complaint and Motion for Preliminary Injunction were filed February 10th. Defense counsel first learned of this case on February 11th. The complexity of the factual scenario presented in this case is demonstrated by the fact that the Complaint consists of 112 paragraphs spanning several different events and involving several individuals besides the Defendants. Defense counsel was unable to confer with Defendants about Plaintiff's allegations until the week of February 15th. On February 18th Defendants agreed to waive service of the Complaint. However, in an effort to move the case forward as quickly as reasonably possible, Defendants agreed to only

take twenty-one 21 days to answer the Complaint instead of the sixty days that they would have otherwise been provided. Therefore, Defendants are not attempting to unnecessarily delay proceedings. That said, Defendants cannot reasonably respond to Plaintiff's motion within ten days.

CONCLUSION

For the reasons stated herein, Plaintiff's motion requesting that Defendants respond to his Motion for Preliminary Injunction within ten days should be denied.

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CERTIFICATE OF SERVICE

I certify that I served the foregoing State Defendants' Response to Plaintiff's Motion for Expedited Briefing Schedule [Doc. #10] and Expedited Hearing on Plaintiff's Motion for Preliminary Injunction. by e-filing with the CM/ECF system maintained by the court or by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 22nd day of February 2015, addressed as follows:

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