

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DON H. LEE,	)	2:05-cv-2626-GEB-KJM-PS
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
COUNTY OF EL DORADO;	)	
GAYLE ERBE-HAMLIN;	)	
HENRY BRZEZINSKI;	)	
DEBORAH BURGE;	)	
and DOES 1 THROUGH 25,	)	
	)	
Defendants.	)	
_____	)	

On December 29, 2005, Plaintiff filed an application for a temporary restraining order ("Pl.'s Application") seeking (1) the return of two dogs Plaintiff argues Defendants have unconstitutionally seized in connection with a state court proceeding, and (2) to restrain Defendant County of El Dorado from prosecuting this state court proceeding in which an issue is whether the dogs are vicious. (Pl.'s Application at 2.) Defendants oppose Plaintiff's application on abstention grounds.<sup>1</sup>

---

<sup>1</sup> Defendants' position need not be reached because of the ruling herein.

1 The standard for granting a temporary restraining order is  
2 similar to the standard for granting a preliminary injunction. Cf.  
3 Los Angeles Unified Sch. Dist. v. U.S. Dist. Ct. for Cent. Dist. of  
4 Cal., 650 F.2d 1004, 1008 (9th Cir. 1981) (standard for preliminary  
5 injunction is at least as strict as that for a TRO) (Ferguson, J.,  
6 dissenting). To obtain a preliminary injunction, the moving party  
7 must show "either: (1) a combination of probable success on the merits  
8 and the possibility of irreparable harm; or (2) that serious questions  
9 are raised and the balance of hardships tips in [its] favor."  
10 Preminger v. Principi, 422 F.3d 815, 823 (9th Cir. 2005); Oakland  
11 Tribune, Inc. v. Chronicle Pub. Co., Inc., 762 F.2d 1374, 1376 (9th  
12 Cir. 1985). The alternative formulations do not constitute two  
13 separate tests, but rather "represent two points on a sliding scale in  
14 which the required degree of irreparable harm increases as the  
15 probability of success decreases." Miller v. Cal. Pac. Med. Ctr., 19  
16 F.3d 449, 456 (9th Cir. 1994). However, "[u]nder any formulation of  
17 the test, [the moving party] must demonstrate that there exists a  
18 significant threat of irreparable injury." Oakland Tribune, 762 F.2d  
19 at 1376; Dollar Rent A Car of Washington, Inc. v. Travelers Indem.  
20 Co., 774 F.2d 1371, 1374 -75 (9th Cir. 1985) ("An essential  
21 prerequisite to the granting of a preliminary injunction is a showing  
22 of irreparable injury to the moving party in its absence.")

23 Plaintiff argues he will suffer irreparable harm if his dogs  
24 are not returned because he "loves and deeply misses his dogs," his  
25 dogs "have been traumatized," and "[t]heir health is at risk."  
26 (Pl.'s Application at 17.) Plaintiff declares that one of his dogs  
27 "has a medical condition called 'cell mass carcinonma,'" which  
28 requires her skin to be checked weekly. (Lee Decl. ¶ 29.) Plaintiff

1 asserts he has "not been allowed to inspect her skin for more than six  
2 (6) weeks" and he "fear[s] that this problem has not been properly  
3 monitored." (Id.) In addition, Plaintiff declares that his other dog  
4 "is required to be on daily doses of the antibiotic 'Amoxicillin.'" (Id.  
5 ¶ 30.) Plaintiff asserts he has "not been allowed to give him  
6 antibiotics for more than six (6) weeks" and he "fear[s] that this  
7 problem has not been properly monitored." (Id.) Plaintiff contends  
8 his dogs "may very well be dead" if they are not returned to him  
9 before the commencement of the state court proceeding on February 10,  
10 2005.<sup>2</sup> (Pl.'s Application at 17.)

11 Plaintiff's asserted bond with his dogs does not demonstrate  
12 that without their return he will suffer immediate irreparable  
13 emotional harm. See Chalk v. U.S. Dist. Court Cent. Dist. of Cal.,  
14 840 F.2d 701, 710 (9th Cir. 1988) (immediate, severe emotional and  
15 physiological distress constitutes irreparable harm)  
16 Ray v. School Dist. of DeSoto County, 666 F. Supp. 1524, 1534 (M.D.  
17 Fla. 1987) (severe emotional distress resulting in a physiological  
18 disorder constitutes irreparable harm). Further, Plaintiff's "fears"  
19 that his dogs have not been properly monitored and that his dogs "may"  
20 be dead if they are not returned are too speculative to establish a  
21 significant threat of irreparable injury. Garcia v. Warden, 2005 WL  
22 2001098, \*1 (E.D. Cal. 2005) ("fear . . . is speculative and does not  
23 does not constitute irreparable harm"); Thomas v. Hoehne, 2005 WL  
24

---

25 <sup>2</sup> Plaintiff argues his dogs will suffer "needless incarceration"  
26 and "unfounded misery" due to the commencement date of the state court  
27 proceeding. (Pl.'s Application at 17.) However, the state court  
28 proceeding was originally scheduled for December 16, 2005, and was  
rescheduled only after Plaintiff "waive[d] his right" to an earlier  
hearing date and requested a continuance in order to conduct discovery.  
(Pl.'s Req. for Judicial Notice, Ex. 3.)

1 2487947, \*2 (W.D. Mich. 2005) ("Speculative injury is not sufficient;  
2 there must be more than an unfounded fear on the part of the  
3 applicant."); Taylor v. Conn. Dept. of Corr., 2005 WL 2644974, \*1  
4 (D.R.I. 2005) ("unsubstantiated fear, speculation and subjective  
5 apprehension . . . cannot establish an immediate threat of immediate,  
6 irreparable harm"). Therefore, Plaintiff has not demonstrated he will  
7 suffer irreparable injury if his dogs are not immediately returned to  
8 him.

9 In addition, Plaintiff argues that he will suffer  
10 irreparable harm if Defendant County of El Dorado is not restrained  
11 from prosecuting the state court proceeding because that proceeding  
12 "is entirely tainted . . . ." (Pl.'s Application at 17.) However,  
13 Plaintiff fails to explain why the state court forum is not adequate  
14 to redress the harm he fears he will suffer. Therefore, Plaintiff's  
15 conclusory allegation is insufficient to establish a significant  
16 threat of irreparable injury. Oakland Tribune, 762 F.2d at 1377  
17 (conclusory statements by an interested party do not establish  
18 irreparable injury).

19 Therefore, Plaintiff's application for a temporary  
20 restraining order is denied.

21 IT IS SO ORDERED.

22 Dated: January 5, 2006

23 /s/ Garland E. Burrell, Jr.  
24 GARLAND E. BURRELL, JR.  
25 United States District Judge  
26  
27  
28