

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

DOUGLAS P. WILBERGER,                    )  
  )  
                  Plaintiff,                    )  
  )  
                  v.                            ) Civil Action No. 03-631-SLR  
  )  
LLOYD R. JOSEPH,                         )  
  )  
                  Defendant.                 )

**MEMORANDUM ORDER**

Presently before the court is plaintiff Douglas P. Wilberger's "Motion to Seize All Assets of Lloyd R. Joseph Pending the Outcome of Said Action." (D.I. 29) For the reasons stated below, the court will deny plaintiff's motion.

**I. BACKGROUND**

On July 9, 2003, plaintiff filed a complaint under 42 U.S.C. § 1983, along with an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Plaintiff is currently incarcerated at the Cuyahoga County Jail in Cleveland, Ohio. At the time he filed this complaint, plaintiff was incarcerated at the Howard R. Young Correctional Institution in Wilmington, Delaware. Plaintiff alleges that defendant Lloyd R. Joseph ("Joseph"), a New Castle County Police Officer, detained him on

May 8, 2003. Plaintiff further alleges that Joseph illegally charged him on May 9, 2003, with possession of a firearm by a person prohibited. Plaintiff alleges that the gun was in the trunk of another individual's car, and was not in plaintiff's possession. (D.I. 2 at 2) Plaintiff further alleges that he was acquitted of the charges. (D.I. 22) Plaintiff requests one million dollars in compensatory damages. (Id. at 4) On March 23, 2004, plaintiff filed the instant motion stating that he wishes to ensure that Joseph does not transfer any of his assets out of Joseph's name prior to this case being resolved. (D.I. 29) Plaintiff does not raise any facts to support his request for extraordinary relief.

## **II. DISCUSSION**

Plaintiff is, in essence, requesting that the court grant him a preliminary injunction under Fed. R. Civ. P. 65(a). Plaintiff states that he is seeking to enjoin Joseph from transferring any assets from his name to a third party, prior to a decision in this case. (D.I. 29 at 2) Plaintiff has not alleged that he has obtained a judgment against Joseph in any State Court. Rather, plaintiff clearly states that he is seeking to seize assets in which he has no cognizable interest. (Id.) Consequently, this court has "no authority to issue a preliminary injunction preventing [Joseph] from disposing of [his] assets, pending adjudication of [plaintiff's] ...claim for money

damages." Grupo Mexicano de Desarrollo, S.A., v. Alliance Bond Fund, Inc., 527 U.S. 308, 333 (1999).

Even if the court did have the authority to issue a preliminary injunction in this case, plaintiff's motion would fail. "[T]he grant of injunctive relief is an 'extraordinary remedy, which should be granted only in limited circumstances.'" Instant Air Freight Co. v. C.F. Air Freight, Inc., 882 F.2d 797, 800 (3d Cir. 1989) (quoting Frank's GMC Truck Center, Inc. v. General Motors Corp., 847 F.2d 100, 102 (3d Cir. 1988)). In ruling on plaintiff's motion, this court must consider: 1) the likelihood of success on the merits; 2) the extent to which the plaintiff is being irreparably harmed by the conduct complained of; 3) the extent to which the defendant will suffer irreparable harm if the requested relief is granted; and 4) the public interest. See Clear Ocean Action v. York, 57 F.3d 328, 331 (3d Cir. 1995).

Establishing a risk of irreparable harm is not enough. A plaintiff has the burden of making a "clear showing of immediate irreparable injury." Continental Group, Inc. v. Amoco Chemicals Corp., 614 F.2d 351, 359 (3d Cir. 1980) (quoting Ammond v. McGahn, 532 F.2d 325, 329 (3d Cir. 1976)). The "requisite feared injury or harm must be irreparable -- not merely serious or substantial." Glasco v. Hills, 558 F.2d 179, 181 (3d Cir. 1977). An injunction should only issue if all four factors favor

preliminary relief. See S & R Corp. v. Jiffy Lube Int'l. Inc., 968 F.2d 371, 374 (3d Cir. 1992).

In the Third Circuit, a plaintiff must allege, at a minimum, the following factors in order to establish a claim for malicious prosecution under § 1983: 1) the deprivation of liberty, Albright v. Oliver, 510 U.S. 266, 271 n.4 (1994); 2) an absence of probable cause, Montgomery v. De Simone, 159 F.3d 120, 124 (3d Cir. 1998); and 3) termination or reversal of the criminal proceeding by reason of the plaintiff's innocence, Heck v. Humphrey, 512 U.S. 477, 484 (1994). Here, plaintiff has demonstrated a likelihood of success on the merits regarding his malicious prosecution claim. However, plaintiff has failed to establish that he has or will suffer an immediate "irreparable harm" that would justify issuing a preliminary injunction stripping Joseph of control of his assets. In fact, plaintiff doesn't allege that he will be harmed if the court fails to grant the preliminary injunction; he merely asserts that he is seeking to prevent Joseph from transferring assets out of Joseph's name prior to a decision in this matter. (D.I. 29 at 2)

There being no evidence presented regarding either the extent to which the defendant will suffer irreparable harm if a preliminary injunction is issued, or the public interest, the court can not address those issues. However, it is not necessary to do so, as failure to meet any one of the factors is sufficient

to deny relief.

**III. CONCLUSION**

Having reviewed the record presented, the court finds that it does not have the authority to issue a preliminary injunction preventing Joseph from disposing of his assets pending adjudication of plaintiff's claim for money damages. In the alternative, the court finds that the plaintiff has not carried his burden of proof as required under the standards enunciated above. Therefore, the court shall deny plaintiff's Motion to Seize All Assets of Lloyd R. Joseph Pending the Outcome of Said Action. (D.I. 29)

NOW THEREFORE, at Wilmington this 20th day of May, 2004, IT IS HEREBY ORDERED that:

1. Plaintiff's Motion to Seize All Assets of Lloyd R. Joseph Pending the Outcome of Said Action (D.I. 29) is DENIED.
2. The Clerk of the Court shall cause a copy of this Memorandum Order to be mailed to plaintiff.

Sue L. Robinson  
UNITED STATES DISTRICT JUDGE