

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

GARY WAYNE WRIGHT, II,

Plaintiff,

v.

**MARSHALL COUNTY ALABAMA, et
al.,**

Defendants.

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Case No.: 4:22-CV-615-RDP

ORDER

This matter is before the court upon the court’s *sua sponte* review of Plaintiff’s Complaint. (Doc. # 1). That review reveals that Plaintiff, who is proceeding *pro se*, requests in his prayer for relief a temporary restraining order (“TRO”) and preliminary injunctive relief. (Doc. 1 at ¶ 87). However, Plaintiff’s complaint is not verified, and no separate motion has been filed with supporting affidavits.

The court understands that Plaintiff is proceeding *pro se*. The court commends him on the excellent job he has done in drafting his complaint. Nevertheless, there are certain requirements that apply in a matter such as this that must be addressed.

Rule 65 of the Federal Rules of Civil Procedure governs the issuance of a TRO, and a plaintiff requesting a TRO under Rule 65 must establish that: (1) there is a substantial likelihood of success on the merits; (2) irreparable injury will be suffered if relief is not granted, that is, there is no adequate remedy at law; (3) the threatened injury outweighs any harm relief would inflict on the non-movant; and (4) the entry of the requested relief would serve the public interest. *Siebert v. Allen*, 506 F.3d 1047, 1049 (11th Cir. 2007); *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005). The decision to grant or deny a TRO “is within the sound discretion of the district court and will not be disturbed absent a clear abuse of discretion.” *Int’l Cosmetics*

Exch., Inc. v. Gapardis Health & Beauty, Inc., 303 F.3d 1242, 1246 (11th Cir. 2002) (quoting *Palmer v. Braun*, 287 F.3d 1325, 1329 (11th Cir. 2002)) (internal quotation marks omitted).

The court notes that the record does yet not show that Plaintiff has served Defendants with the Complaint. Of course, Rule 65 allows a court to enter a TRO without written or oral notice to the adverse party, but *only* if the movant files an affidavit or verified complaint setting forth “specific facts [that] 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 the movant also “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). In this case, Plaintiff has filed neither a verified complaint nor an affidavit setting forth specific facts in support of his motion for a TRO. Indeed, he has not even filed a separate motion for a TRO, but has instead merely requested a TRO as part of the request for relief in the Complaint. This is insufficient to comply with the requirements of Rule 65. Accordingly, to the extent his Complaint (Doc. # 1) can be construed as requesting a TRO, it is **DENIED WITHOUT PREJUDICE**.

Plaintiff is advised, however, that if he intends to seek a TRO or a preliminary injunction, he must file a separate motion, support his motion with a brief and affidavits setting forth “specific facts [that] clearly show that immediate and irreparable injury, loss, or damage will result to the movant,” and, as appropriate, address the requirement of Rule 65(c) that he provide security in an amount that will pay the Defendants’ costs and damages if the court ultimately determines that they were wrongfully restrained or enjoined as a result of Plaintiff’s motion. *See* Fed. R. Civ. P. 65(c). In all likelihood, the court would be called upon to conduct a hearing in this matter.

If Plaintiff does file such a motion, he should also consider whether the County’s Courthouses, or the grounds in or around the exterior portions of the courtyards of the Courthouses, to which the Resolution applies, are a public forum or a limited public forum. Plaintiff should also consider whether the time, place, and manner restrictions in the Resolution are content-neutral,

and narrowly tailored to achieve a significant government interest. *See Keister v. Bell*, 879 F.3d 1282, 1288-89 (11th Cir. 2018).

DONE and **ORDERED** this June 17, 2022.



R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE