

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
HARRISON DIVISION**

**MITCHELL PURDOM**

**PLAINTIFF**

**V.**

**CASE NO. 3:16-CV-3072**

**ROGER MORGAN in his official capacity  
as City Attorney for Mountain Home; and  
DON LEWIS and JUDY LEWIS, individually  
and in their capacity as trustees of the  
Lewis Family Trust**

**DEFENDANTS**

**TEMPORARY RESTRAINING ORDER**

Currently before the Court are Plaintiff Mitchell Purdom's Motion for Temporary Restraining Order (Doc. 3), Brief in Support (Doc. 4), and Affidavit (Doc. 5). In his Motion, Mr. Purdom asks the Court to issue an *ex parte* temporary restraining order ("TRO") pursuant to Federal Rule of Civil Procedure 65(b), without requiring that prior written or oral notice be served upon the adverse parties. The basis for the emergency nature of this Motion stems from Mr. Purdom's allegation that Defendants Don and Judy Lewis, the landlords of his residence, have initiated eviction proceedings against him in retaliation for his request that they accommodate his disability. Mr. Purdom asks this Court to enter a TRO against the Lewises, enjoining them from taking actions to evict Mr. Purdom.<sup>1</sup> Mr. Purdom also requests that a preliminary injunction be entered to that effect, and asks that a hearing be set on his request for a preliminary injunction.

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<sup>1</sup> Mr. Purdom's Motion initially also requested restraint and injunctive relief against Defendant Roger Morgan, but Mr. Purdom has since withdrawn that particular request because he and Mr. Morgan have reached an agreement that obviates the need for such relief during the pendency of this action. See Doc. 12.

Under Rule 65(b), granting an *ex parte* TRO is only justified if it clearly appears from specific facts shown in the verified complaint that “immediate and irreparable injury, loss, or damage will result.” “*Ex parte* temporary restraining orders are no doubt necessary in certain circumstances, but under federal law they should be restricted to serving their underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439 (1974) (internal citation omitted). “It is well-established that applications for preliminary injunctions and temporary restraining orders are generally measured against the same factors,” *Nokota Horse Conservancy, Inc. v. Bernhardt*, 666 F. Supp. 2d 1073, 1077 (D.N.D. 2009), which were set forth in the Eighth Circuit case of *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109 (8th Cir. 1981). *Cf. S.B. McLaughlin & Co., Ltd. v. Tudor Oaks Condominium Project*, 877 F.2d 707, 708 (8th Cir. 1989) (observing in passing that the district court below weighed the *Dataphase* factors in determining whether to issue a TRO). Those factors are: “(1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest.” *Dataphase*, 640 F.2d at 114. The movant bears the burden of establishing that the requested relief is appropriate. *Baker Elec. Co-op., Inc. v. Chaske*, 28 F.3d 1466, 1472 (8th Cir. 1994). The movant *must* show the threat of irreparable harm, but “[n]o single factor in itself is dispositive; in each case all of the factors must be considered to determine whether on balance they weigh towards granting the injunction.” *Id.*

In considering these factors, the Court finds that unless a TRO issues, Mr. Purdom faces the immediate, irreparable loss of his home as a result of eviction proceedings initiated by the Lewises. The Court further finds that such harm outweighs any injury that a TRO would inflict on the Lewises, as the currently uncontroverted evidence in the record is that Mr. Purdom has paid the Lewises all money owed to them under their rental agreement, see Doc. 5, ¶¶ 19–20, and Mr. Purdom contends that he will continue paying the Lewises rent as it comes due and owing under their rental agreement, see Doc. 4, p. 26. Furthermore, the Court finds that Mr. Purdom has a reasonable likelihood of success on the merits, and that the public interest favors issuing the requested TRO. See *PCTV Gold, Inc. v. SpeedNet, LLC*, 508 F.3d 1137, 1143–44 (8th Cir. 2007) (explaining that a party seeking preliminary relief does not need to “prove a greater than fifty per cent likelihood that he will prevail on the merits,” but rather need simply show “a reasonable likelihood of success on the merits of [his] claim”). Therefore, the *Dataphase* factors currently weigh in Mr. Purdom’s favor,<sup>2</sup> and the Court will issue his requested TRO against the Lewises.

**IT IS THEREFORE ORDERED** that Plaintiff Mitchell Purdom’s Motion for Temporary Restraining Order (Doc. 3) is **GRANTED IN PART AND DENIED IN PART** as follows:

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<sup>2</sup> The Court makes these findings and conclusions without the benefit of any evidentiary hearing or even adversarial briefing; accordingly, the parties should understand that these rulings are provisional and not binding at any later proceedings in this case, including those on Mr. Purdom’s request for a preliminary injunction. See *United States Sec. and Exch. Comm’n v. Zahareas*, 272 F.3d 1102, 1105 (8th Cir. 2001) (“[W]e have long held that findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding.” (internal quotation marks omitted)).

- Mr. Purdom's request for a temporary restraining order is **GRANTED**, and Defendants Don Lewis and Judy Lewis, individually and in their capacity as trustees of the Lewis Family Trust, are temporarily **ENJOINED for a period of fourteen (14) days from the date of this Order** from taking actions to evict Mr. Purdom.
- Mr. Purdom's request for a preliminary injunction is **DENIED** at this time, but will be revisited at the hearing of this matter, which will be held on **Friday, July 1, 2016, at 1:30pm in in the fifth-floor courtroom at the federal courthouse in Fayetteville, Arkansas**, unless the Defendants request more time to prepare for the hearing.

**IT IS FURTHER ORDERED** that because the entry of this temporary restraining order does not relieve Mr. Purdom of his duty to continue paying rents to the Lewises as due and owing under their rental agreement, it is not necessary for Mr. Purdom to post a bond or other security under Fed. R. Civ. P. 65(c).

**IT IS FURTHER ORDERED** that counsel for Mr. Purdom must cause a copy of this Order to be served on each of the Defendants by no later than **Wednesday, June 22, 2016**, and file of record an appropriate affidavit of delivery that explains the evidence or their actual knowledge of the Defendants' actual receipt of this Order, and that otherwise indicates their compliance with this Order.

**IT IS SO ORDERED** on this 17th day of June, 2016.

/s/ Timothy L. Brooks  
TIMOTHY L. BROOKS  
UNITED STATES DISTRICT JUDGE