

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JEFFREY M. SCHREIBER,

Petitioner,

ORDER

v.

02-C-350-C

Portage Police Department Officers PETERSON,
TAYLOR, MALCHOW, FEHD and SCOTT;
Columbia County District Attorney JANE
KOHLWAY,

Respondents.

Judgement was entered for defendants in this case on July 29, 2002, because the allegations made by plaintiff either were legally frivolous or they failed state to a claim upon which relief could be granted. In September 2002, petitioner moved to amend his complaint to allege more facts and name additional defendants. In an order dated September 24, 2002, I noted that although a court may grant a motion for leave to amend a complaint after judgment has been entered, the plaintiff must first make a motion under Fed. R. Civ. P.59 or 60 to set aside the judgment. More important, I noted that even if petitioner *had* moved to set aside the judgment, I could not grant leave to amend because petitioner's additional

allegations still did not state a claim.

More than five months later, petitioner has filed a new motion, asking the court to set aside the judgment and accept his amended complaint. Petitioner's motion will be denied. The allegations he makes in his proposed amended complaint are the same allegations he made in his September 2002 proposed complaint. As I stated then, these allegations do not state a claim upon which relief may be granted.

The essence of plaintiff's complaint is that his ex-wife has been denying him visitation with their child, even though a divorce decree established joint custody. When he complained to various police officers, they refused to arrest his ex-wife for interference with custody of a child. When he complained to a district attorney, she refused to prosecute either petitioner's ex-wife or the police officers.

Even if true, none of these allegations states a claim under federal law. The decision whether to arrest or prosecute an individual is within the exclusive province of the officer or prosecutor. See Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978). If petitioner believes that the divorce decree is not being properly enforced, he should seek relief from the court that entered the decree.

ORDER

IT IS ORDERED that petitioner Jeffrey Schreiber's motion for leave to amend his

complaint is DENIED.

Entered this 9th day of March, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge