

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

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JESSIE THOMAS # 263550,

Plaintiff,

v.

CORRECTIONS CORPORATION OF  
AMERICA, RENEE WATKINS, OFFICER JOHN  
DOE #1, OFFICER JOHN DOE #2 and  
OFFICER JOHN DOE #3,

Defendants.

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ORDER

03-C-0044-C

Defendants Corrections Corporation of America and Renee Watkins have moved to dismiss this case for improper venue. The motion is supported by the affidavit of defendant Watkins, who is named as a defendant for the sole purpose of identifying the John Doe defendants allegedly responsible for using excessive force against plaintiff while he was an inmate at the Whiteville Correctional Facility in Whiteville, Tennessee.

Defendants correctly cite to 28 U.S.C. § 1391(b) as the applicable venue provision.

It states:

A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by

law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

In their brief in support of the motion, defendants suggest for the sake of argument that defendant Corrections Corporation of America is a defendant that “resides” for the purpose of venue in the Western District of Wisconsin. Nevertheless, defendants argue that because *all* the defendants do not reside in this state as required for venue to be proper here under subsection (1), proper venue lies in the district in which a substantial part of the events giving rise to the claim occurred, which is the Western District of Tennessee, making subsection (3) inapplicable.

I agree with defendant Watkins that the allegations of plaintiff's complaint make it clear that plaintiff's claim arose in the Western District of Tennessee, and that venue is proper there. However, to establish that venue is not proper in the Western District of Wisconsin, defendant Watkins (or one of the Doe defendants, if not defendant Watkins) cannot aver only that she has had residences in places other than this district and presently resides in Whiteville, Tennessee. This is because a person may have a second residence and that second residence may exist in the Western District of Wisconsin. Thus, where defendants are conceding that one of the defendants resides in the Western District of

Wisconsin, the question whether any other defendant does not reside in the Western District of Wisconsin is the controlling question on which defendant's venue motion will be decided. At this time, no defendant has put in evidence to prove that he or she does not have a residence in the Western District of Wisconsin. Therefore, I will stay a decision on defendants' motion to dismiss for improper venue to permit defendant Watkins an opportunity to submit a supplemental affidavit in support of the motion.

Also, because I have not decided this matter on any prior occasion, defendants may wish to supplement their brief in support of the motion to dismiss with legal support for the proposition that a defendant who has been named solely for the purpose of identifying Doe defendants is a proper defendant to establish venue or the lack of it. Alternatively, defendants may choose to supplement their motion with the affidavit of one of the Doe defendants in which that defendant avers he or she has no residence in the Western District of Wisconsin.

#### ORDER

IT IS ORDERED that a decision is STAYED on defendants' motion to dismiss for improper venue.

FURTHER, IT IS ORDERED that defendants may have until May 9, 2003, in which to supplement their brief and affidavits so as to further support the motion to dismiss.

Plaintiff may have until May 23, 2003, in which to serve and file a response to defendants' submissions.

Entered this 18th day of April, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge