

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

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CHRISTINE PORTER,

Plaintiff,

v.

FOOD AND DRUG ADMINISTRATION,

Defendant.  
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ORDER

11-cv-119-bbc

In her original complaint in this action, plaintiff Christine Porter sued the United States Food and Drug Administration, alleging that she was harmed by various prescription drugs. In an April 6, 2011 order, I concluded that plaintiff's complaint violated Fed. R. Civ. P. 8(a)(2) because her allegations against the agency were extremely vague, and I gave her a chance to file an amended complaint more fully detailing her claim.

Plaintiff's amended complaint dropped the Food and Drug Administration as a defendant. Instead, she alleged that her previous doctors prescribed her medications for vertigo and sinusitis that were not effective, eventually causing a grand mal seizure and brain damage. In a June 1, 2011 order, I concluded that plaintiff was attempting to pursue medical malpractice claims, which do not belong in federal court. In dismissing the lawsuit, I noted that plaintiff's new claims were the same as those she previously raised in case no. 08-cv-635-bbc. In that case, I explained to plaintiff that if she wanted to pursue these state law malpractice claims, she would have to do so in state court.

Now plaintiff has submitted a partially filled-out complaint form with the caption to case no. 11-cv-119-bbc, on which she writes “ Barb Crabb I need to over rule case 08 cv 635 bbc,” and “over rule so I can file papers 08 635 bbc.” Also, she has filed a motion for leave to proceed in forma pauperis.

This raises the question how to docket these submissions. Because plaintiff has submitted her request on a blank complaint form and filed a motion for leave to proceed in forma pauperis, one logical option would be to docket these submissions in a new case. Another option would be to docket them in either case nos. 08-cv-635-bbc or 11-cv-119-bbc and consider the complaint form as a motion for reconsideration of the previous rulings in either of those cases. Either way, plaintiff’s request to overrule my previous decision regarding her medical malpractice claims is futile. First, there is no question that this court does not have federal question jurisdiction over her state law malpractice claims. Second, she makes no attempt at showing that diversity jurisdiction applies by indicating that all defendants are citizens of states other than the one of which she is a citizen and that she seeks more than \$75,000 in damages. Because her request is futile, I will docket her submission as a motion for reconsideration in case no. 11-cv-119-bbc and deny that motion, rather than subject her to a \$350 filing fee by initiating a new case.

There is a third possibility—that plaintiff wishes to appeal the rulings in either or both of the two cases. However, plaintiff’s ambiguous submission does not identify what ruling she wishes to appeal. Moreover, I am reluctant to docket the submission as a notice of appeal without a clear indication from plaintiff that this is what she wishes, because she would owe a \$455 filing fee for an appeal. If plaintiff wishes to appeal any of the rulings in either case nos.

08-cv-635-bbc or 11-cv-119-bbc, she will have to file a document labeled clearly as a notice of appeal that identifies the ruling she wishes to appeal.

ORDER

IT IS ORDERED that

1. Plaintiff Christine Porter's motion for reconsideration of the June 1, 2011 order in case no. 11-cv-119-bbc, dkt. #14, is DENIED.

2. Plaintiff's motion for leave to proceed in forma pauperis, dkt. #15, is DENIED as unnecessary.

Entered this 20th day of July, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge