

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

WILLIAM GERHARTZ,

Plaintiff,

v.

DAVID RICHERT and BILL TYSON,
in their individual capacity, under the color of state law,

Defendants.

ORDER

12-cv-38-slc

In this civil action for monetary relief brought under 42 U.S.C. § 1983, plaintiff William Gerhartz, a prisoner at the Stanley Correctional Institution in Stanley, Wisconsin, alleges that defendants David Richert and Bill Tyson violated his rights under the Fourth and Fourteenth Amendments by conspiring to obtain a blood sample from him without his consent and without probable cause. The events that gave rise to this claim occurred on February 16, 2006 in Calumet County, located in the Eastern District of Wisconsin. Plaintiff alleges that defendants, both sheriff's deputies employed by Calumet County, ordered hospital personnel to draw plaintiff's blood without his consent following a motor vehicle accident in which plaintiff's car struck another vehicle, even though defendants had no reason to believe plaintiff was intoxicated.

Defendants, who reside in Brown and Calumet counties, respectively, have moved to dismiss this case for improper venue or, in the alternative, transfer plaintiff's case to the Eastern District of Wisconsin pursuant to 28 U.S.C. § 1406(a). 28 U.S.C. § 1391(b) provides that a civil action may be brought in—

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;

(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) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

28 U.S.C § 1391(b).

As defendants point out, neither of them lives in this district, so § 1391(b)(1) does not afford a basis to keep the case here. As for (2), plaintiff acknowledges in his opposition brief that all of the events giving rise to his claims occurred in Calumet County, which is located in the Eastern District of Wisconsin. In the absence of any evidence to suggest that defendants live in this district or that any of the events or omissions giving rise to plaintiff's claim occurred in this district, venue does not lie properly in the Western District of Wisconsin.

28 U.S.C. § 1406(a) provides: "The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." Given that plaintiff is proceeding *in forma pauperis*, I find that the interest of justice is better served by transferring this case rather than dismissing it for improper venue. Accordingly,

ORDER

IT IS ORDERED that defendants' motion for a change of venue pursuant to 28 U.S.C. § 1406(a), dkt. 14, is GRANTED. The clerk of court is directed to transmit the case file to the United States District Court for the Eastern District of Wisconsin.

Entered this 13 day of July, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge