

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

EDWARD J. PISCITELLO,

Plaintiff,

ORDER

v.

02-C-0252-C

GERALD BERGE,

Defendant.

Plaintiff has filed a document titled "Motion to Vacate Judgment -- Void," which I construe as a motion for reconsideration of that portion of this court's June 13, 2002 order denying plaintiff leave to proceed in forma pauperis on his claim that his transfer to the Wisconsin Secure Program Facility violated his constitutional right to due process. Plaintiff asks alternatively that if his motion for reconsideration is denied, then this court allow him to file notice of an interlocutory appeal challenging the dismissal of that claim. I construe this latter request as a motion for modification of the June 13, 2002 order to include a finding that the order is appealable under 28 U.S.C. § 1292. Both of plaintiff's motions will be denied.

In support of his motion for reconsideration of the dismissal of his due process claim,

plaintiff does not raise any argument that I did not already consider in ruling on the matter on June 13. Because plaintiff has made no showing that I erred in interpreting the facts supporting his claim or misapplied the law governing claims that transfers of inmates from one penal institution to another violates the constitution, the motion for reconsideration will be denied.

28 U.S.C. § 1292 sets out the procedure governing interlocutory appeals. It states in relevant part,

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order.

I purposely did not include in the June 13 order a finding that an interlocutory appeal would be proper. Contrary to plaintiff's belief, the order does not involve a controlling question of law as to which there is substantial ground for difference of opinion, and a prompt appeal from the order will not materially advance the ultimate termination of this litigation. Indeed, it will serve only to delay it.

ORDER

IT IS ORDERED that plaintiff's motions for reconsideration of that portion of the

June 13, 2002 order denying him leave to proceed in forma pauperis on his claim that he was denied due process in his transfer and for modification of the June 13, 2002 order to include a finding that the order is appealable under 28 U.S.C. § 1292 are DENIED.

Entered this 24th day of January, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge