

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

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EUGENE L. CHERRY,

Plaintiff,

v.

GERALD BERGE, CINDY SAWINSKI,  
JOLENE MILLER, JOLINDA WATERMAN  
and DR. SAFARI,

Defendants.  
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ORDER

02-C-544-C

Plaintiff Cherry has notified the court that he does not wish to prosecute Dr. Safari at this time, now that he has learned that she is no longer employed at the Wisconsin Secure Program Facility and that the facility does not have a forwarding address for her. I construe plaintiff's request to be a notice of voluntary dismissal pursuant to Rule 41, Federal Rules of Civil Procedure.

Rule 41(a)(1) provides:

. . .an action may be dismissed by the plaintiff without order of the court (1) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment. . . .Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice,

except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

In this case, defendant Safari did not answer because she has not been served with plaintiff's complaint. Therefore, plaintiff is free to dismiss his lawsuit against Dr. Safari voluntarily, without prejudice to his refiling his complaint against her at a later date.

#### ORDER

I accept plaintiff's notice of voluntary dismissal of Dr. Safari from this action. Dr. Safari is DISMISSED from the case, without prejudice to plaintiff's filing a new lawsuit against her at a future time.

Entered this 6th day of January, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge