

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

WILLIAM R. GATES,

Plaintiff,

v.

JON E. LITSCHER, STEVEN SCHNEITER,
CHARLES BLANCHETT, PERCY PITZER,
OFFICER JOHN DOE #1, OFFICER JOHN
DOE #2, OFFICER JOHN DOE #3 and
OFFICER JANE DOE,

Defendants.

ORDER

00-C-159-C

In an order entered in this case on July 27, 2000, I granted plaintiff's motion to voluntarily dismiss defendant Charles Blanchett from the case and I granted the motion of defendants Litscher and Schneiter to dismiss plaintiff's claim against them for plaintiff's failure to exhaust his administrative remedies pursuant to § 1997e(a). I denied defendant Percy Pitzer's motion to dismiss the complaint for improper venue and lack of personal jurisdiction and instead transferred the case to the Eastern Division of the United States District Court for the Western District of Tennessee. Now plaintiff has filed a document titled "Notice of Appeal," which I construe as a motion for modification of the July 27 order to include a finding

that the order is appealable under 28 U.S.C. § 1292. The motion will be denied.

28 U.S.C. § 1292 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.

In his motion, plaintiff states that he would like to appeal that portion of the July 27 order in which I concluded that it was appropriate to transfer his case to the United States District Court for the Western District of Tennessee. There is not a substantial ground for a difference of opinion on that question and an immediate appeal will not materially advance the ultimate termination of the litigation. As I pointed out to plaintiff in my earlier order, 28 U.S.C. § 1406(a) authorizes a federal court in which venue is improper to transfer a case to another court where venue is proper if the transfer would further the interests of justice. Certainly, plaintiff would be hard-pressed to find any judge who would disagree with this court's conclusion that it is more just to transfer this case to the district in which venue is proper than to dismiss it and require plaintiff to begin his lawsuit all over again in the proper district and incur a second filing fee. Moreover, an appeal would serve only to delay the litigation, not advance it.

Accordingly, IT IS ORDERED that plaintiff's motion for amendment of the July 27,

2000 order to include a finding that the order is appealable under 28 U.S.C. § 1292 is
DENIED.

Entered this 31st day of August, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge