

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

DENNIS EARL BARNES,

Plaintiff,

v.

WILLIAM J. BLACK and
METROPOLITAN PROPERTY AND
CASUALTY INSURANCE,

Defendant.

ORDER

03-C-703-C

In this is a civil action for monetary relief, plaintiff Dennis Earl Barnes claimed that defendant William J. Black, a policy holder of defendant Metropolitan Property and Casualty Insurance Company, negligently drove his vehicle into the side of another vehicle in which plaintiff was a passenger. In an opinion and order dated May 23, 2004, I granted defendants' motion to dismiss, concluding that this court lacked personal jurisdiction over defendant Black and that plaintiff was unable to maintain a direct action against defendant Metropolitan under the Wisconsin direct action statute. Now before the court is plaintiff's motion to reconsider that decision, which I construe as a motion pursuant to Fed. R. Civ. P. 59 to alter or amend the judgment of dismissal. Plaintiff's motion will be denied. His

arguments are premised on misconceptions of the governing law and require little discussion.

First, plaintiff argues that the Wisconsin long-arm statute is not applicable because it is part of state law and this is a federal court. As I explained in the May 23 opinion and order, in a case based on diversity of citizenship, a federal court has personal jurisdiction over a non-consenting, nonresident defendant to the extent authorized by the law of the state in which that court sits. Giotis v. Apollo of the Ozarks, Inc., 800 F.2d 660, 664 (7th Cir. 1986). Because this court sits in Wisconsin, the Wisconsin long-arm statute is applicable. This principle is well-settled. Id.; NUCOR Corp. v. Aceros Y Maquilas de Occidente, S.A. de C.V., 28 F.3d 572, 579-80 (7th Cir. 1994); Daniel J. Hartwig Associates, Inc. v. Kanner, 913 F.2d 1213, 1216 (7th Cir. 1990); Heritage House Restaurants Inc. v. Continental Funding Group, Inc., 906 F.2d 276, 279 (7th Cir. 1990).

In finding that the court lacked personal jurisdiction over defendant Black, I relied on the only relevant evidence plaintiff submitted which suggested that defendant had waived personal service. Plaintiff now asserts that he received a notice from the United States Marshals Service containing two receipts showing personal service on defendants. Plaintiff has not submitted these receipts and assertions in briefs are not evidence. (Plaintiff has attached a letter he received from the Marshals Service indicating that payment for service of process in this case is due. However, because this letter does not indicate where defendants were served, it is immaterial.) Even if plaintiff had submitted the receipts, they

would not help him. According to plaintiff, the receipts show that defendant Black was served in Reddick, Illinois. Under the Wisconsin long-arm statute, personal jurisdiction attaches by virtue of personal service of a natural person only when service takes place *within* the state, Wis. Stat. § 801.05(1)(a); personal service of process outside state borders does not give a court sitting in Wisconsin jurisdiction over the person served.

Although plaintiff asserts that defendant Metropolitan was served within the state. Plaintiff is correct, but this defendant was not dismissed for lack of personal jurisdiction. Plaintiff's claim against defendant Metropolitan arose under the Wisconsin direct action statute. Under that act, if the insured is not a party to the action, a claim may be maintained against the insurance providers only if the insurance policy was issued or delivered in Wisconsin. Wild v. Subscription Plus, Inc., 292 F.3d 526, 532 (7th Cir. 2002) (citing Kenison v. Wellington Ins. Co., 218 Wis. 2d 700, 710, 582 N.W.2d 69, 73 (1998)) (other citations omitted). Defendant Black, the insured party in this case, was dismissed for lack of personal jurisdiction and plaintiff failed to show that policy on which his claim was based was issued or delivered in Wisconsin. Accordingly, plaintiff could not maintain his direct action against defendant Metropolitan.

The remainder of plaintiff's brief simply rehashes those arguments that he raised and I rejected earlier. I gave considered attention to the matters addressed in the May 23 order before rendering the decision. I do not intend to revisit the matters again. If plaintiff

believes this court erred in its decision, he is free to raise the matter on appeal. Alternately, because I dismissed his case without prejudice, plaintiff is free to file his claim in a court that has the authority to exercise personal jurisdiction over defendant Black.

IT IS ORDERED that plaintiff Dennis Earl Barnes's Fed. R. Civ. P. 59 motion to alter or amend the judgment is DENIED.

Entered this 4th day of June, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge