

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

WILLIAM VON FLOWERS,

ORDER

Plaintiff,

04-C-892-C

v.

MARIO CANZIANI,

Defendant.

Plaintiff William Von Flowers is a patient at the Wisconsin Resource Center in Winnebago, Wisconsin. He filed this complaint in the Circuit Court for Dane County, Wisconsin; defendant has removed it to this court pursuant to 28 U.S.C. §§ 1441. The removal appears to be proper.

A defendant may remove to federal court any action brought in state court over which the federal court has original jurisdiction. 28 U.S.C. § 1441(a). Plaintiff's complaint raises claims over which this court has original jurisdiction. He contends that defendant is violating his constitutional rights by requiring him to remove braids from his hair before he may escorted on doctor or dentist appointments outside the institution, failing to afford him adequate medical and dental health care and subjecting him to conditions of confinement

that are identical to the conditions imposed on persons serving criminal sentences.

Moreover, defendant's notice of removal is timely. The record reflects that plaintiff's complaint was served on defendant Mario Canziani on October 25, 2004. Pursuant to 28 U.S.C. § 1446(b), a notice of removal must be filed within thirty days after the receipt by the defendant of a copy of the initial pleading. Defendant's notice of removal was filed on November 24, 2004.

In what appears at first blush to be an odd stance for a party that has removed a case to federal court, defendant asks this court to dismiss plaintiff's case on the ground that plaintiff cannot prosecute it here. This is because plaintiff is the subject of an order issued by the Court of Appeals for the Seventh Circuit on May 30, 2003, requiring "the clerks of all federal courts in the circuit [] to return unfiled any papers submitted either directly or indirectly by or on behalf of plaintiff [Von Flowers] until he pays a \$500 sanction imposed against him." Von Flowers v. Wisconsin Dept. of Health & Family Services, No. 02-2812 slip op. at 1 (7th Cir. May 30, 2003). Alternatively, defendant moves to dismiss plaintiff's complaint on the ground of res judicata.

As to the first ground for dismissal, defendant's motion must be denied. The Court of Appeals for the Seventh Circuit has ruled on the question whether a case filed in state court by a litigant who is subject to a sanction order imposed pursuant to Mack v. Support Systems Int'l, Inc., 45 F.3d 185 (7th Cir. 1995), must be dismissed upon removal because

plaintiff is barred from litigating it. In In the Matter of Joseph Skupniewitz, 73 F.3d 702 (7th Cir. 1996), Richard Mack filed an action raising federal law claims in state court after the court of appeals had ruled that federal clerks of court were to return to Mack unfiled any papers he submitted in the circuit's federal courts. As in this case, the state removed the case to federal court. The district court remanded the case to state court sua sponte, reasoning that the case "obviously cannot be conducted in federal court." Mack v. Skupniewitz, No. 95-C-374, slip op. at 2 (E.D. Wis. Apr. 17, 1995). The court of appeals reversed and remanded, holding that an order for sanctions under Mack is inapplicable to the situation in which the sanctioned litigant is filing papers "in a purely defensive mode." In the Matter of Joseph Skupniewitz, 73 F.3d at 705. Therefore, it reasoned, Mack was permitted "to file a response to any motion made by the defendants which could result in a final judgment." Id. Nevertheless, in directing the district court to rescind its remand order, the court of appeals emphasized that the clerk was to continue to return to Mack unfiled any papers he might submit in his role as "plaintiff or movant," such as the petition for a writ of mandamus, motion for change of venue and motion for production of documents that plaintiff had filed in the action.

In light of the court's decision in In the Matter of Joseph Skupniewitz, I must deny defendant's motion to dismiss this action on the ground that plaintiff Von Flowers is under an order of the Court of Appeals for the Seventh Circuit requiring clerks of court to return

his submissions unfiled. Plaintiff Von Flowers will be permitted to file a brief in opposition to defendant's motion to dismiss under the doctrine of res judicata. However, if plaintiff Von Flowers attempts to file any motions, amended pleadings, or other papers unrelated to the motion to dismiss, they will be returned to him in accordance with the sanction order in force against him.

ORDER

IT IS ORDERED that defendant's motion to dismiss this action on the ground that plaintiff Von Flowers is under an order of the Court of Appeals for the Seventh Circuit requiring clerks of court to return his submissions unfiled is DENIED.

Further, IT IS ORDERED that plaintiff may have until December 27, 2004, in which to serve and file a brief in opposition to defendant's motion to dismiss his action as res judicata. Defendant may have until January 10, 2005, in which to serve and file a reply.

Entered this 6th day of December, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge