IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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THOMAS D. STANTON,

ORDER

Plaintiff,

08-cv-492-bbc

v.

ALFONSO GRAHAM, Chairman, Wisconsin
Parole Commission; WILLIAM RANKIN,
WI-Compact Administrator; QUALA CHAMPANGE,
WI/DCC Administrator; PETER F. MANNENBACH,
Attorney; DAVID R. BRAITHWAITE, Administrative
Law Judge, WI-Division of Hearings and Appeals;
KENNETH L. LUND, Attorney Manager, WI-Public
Defender's Office, Appellate Division; BRENT BOEHLKE,
Parole Agent; JOE LONGUEVILLE, Supervisor, MN-Probation
and Parole; ROSE ANN BISCH, MN-Deputy Compact
Administrator; AMY LANG, Compact Specialist, Minnesota
Department of Corrections; and INTERSTATE COMMISSION
FOR ADULT OFFENDER SUPERVISION, Lexington, KY,

Defendants.

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This is a case full of problems. Plaintiff Thomas Stanton is a parolee who is confined at a halfway house in Janesville, Wisconsin. In a sprawling 50-page complaint with nearly 100 pages of attachments, he challenges a number of actions by defendants that he believes unfairly brought him to his current situation. He describes the lawsuit as "a consolidated

state tort action, state certiorari action, state habeas corpus action, state declaratory judgment action and a federal civil right action and /or whatsoever this Court, in its wisdom and discretion, may decide to label it." Cpt., at 1, dkt. #1-2.

Given this description, it is not surprising that plaintiff filed the case in state court originally. On August 21, 2008, defendant Joe Longueville removed the case to this court, representing that he had received noticed of the lawsuit on July 24, 2008, which is within the 30-day deadline imposed by 28 U.S.C. § 1446(b). Immediately after the removal, three different sets of defendants filed motions to dismiss on various grounds.

In an order dated September 3, 2008, I stayed further proceedings in the case for two reasons. First, defendant Longueville's notice of removal was deficient because it was not joined by all defendants as required by 28 U.S.C. § 1446(a). Northern Illinois Gas v. Airco Industrial Gases, 676 F.2d 270, 273 (7th Cir. 1982). Second, because those in custody at a halfway house are subject to the requirements of the Prison Litigation Reform Act, Witzke v. Femal, 376 F.3d 744, 753 (7th Cir. 2004), the case could not proceed until I had screened it under 28 U.S.C. § 1915A. Accordingly, I directed defendant Longueville to correct the deficiencies in his notice of removal by September 9, 2008. If he succeeded, I would screen the complaint and then address any of defendants' motions left unresolved by the screening process.

In response to the September 3 order, the court received two new notices of removal,

one from defendant Longueville (on September 9) and one from defendant Interstate Commission for Adult Offender Supervision (on September 5). (Although defendant commission filed its notice of removal more than 30 days after July 24, 2008, it says that its notice is timely because it did not get notice of the lawsuit until August 15. Compare Chlopek v. Federal Insurance Co., 2005 WL 3088355, 2 (W.D. Wis. 2005) (Shabaz, J.) (each defendant has 30 days to remove from time it receives notice of lawsuit) with Higgins v. Kentucky Fried Chicken, 953 F. Supp. 266 (W.D. Wis. 1997) (Crabb, J.) (30-day time limit under § 1446(b) begins to run for *all* defendants as soon as one defendant receives copy of complaint). See also Boyd v. Phoenix Funding Corp., 366 F.3d 524 (7th Cir. 2004) (noting difference of opinion on the issue).)

Neither Longueville's nor the commission's notice of removal is signed by any other defendant. Instead, the commission represented that it had "consulted with all of the defendants and that they all consent to removal of this case to this Court." Dkt., #24, ¶11. Longueville represented that all other defendants with the exception of defendant Mannenbach "affirmatively consented to removal of this case from state court to federal court." Dkt. #26, ¶10. In addition, Longueville said that he had "spoken to Defendant Mannenbach, who indicated that he does not object to removal at this time and that he would file a formal notice of consent by September 12, 2008, unless he determined upon further review that removal was not in his interest." Id.

Both notices of removal are deficient. Under Roe v. O'Donohue, 38 F.3d 298, 301 (7th Cir. 1994), abrogated on other grounds by Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344 (1999), "[a] petition for removal fails unless all defendants join it. . . . To 'join' a motion is to support it *in writing*." See also 16 Moore's Federal Practice, § 107.11[1][c] (2008) ("[U]nder the majority view, it is insufficient for the removal notice to simply state that the codefendants do not oppose the removal.") Thus, even the commission's notice, which purports to speak for all defendants, is inadequate because none of the other defendants signed it.

Even though the other defendants have failed to sign the notice of removal, that failure could have been overlooked if the other defendants had each filed a consent to removal with the court. Moore's § 107.11[1][c]("The joining requirement is satisfied if, for example, a defendant who did not join the properly filed removal notice files a written consent within the statutory time for filing the notice of removal.") Defendants came close in this regard, but no cigar: all but one have filed a consent to removal. As defendant Longueville suggested might happen, defendant Mannenbach never filed a consent, presumably because he decided that removal was "not in his interest."

The long-standing rule for removal under § 1446 is that *all* defendants must join in removing the case. Phoenix Container, LP v. Sokoloff, 235 F.3d 352, 353 (7th Cir. 2000) (citing Hanrick v. Hanrick, 153 U.S. 192 (1894), and Torrence v. Shedd, 144 U.S. 527

(1892)). Even one detractor is enough to require a remand. Because defendant Mannenbach has not consented to the removal, the case must be remanded to state court.

Even if the notice of removal had been proper, most of the case would have been remanded in any event. Plaintiff's complaint can be grouped into four broad categories: (1) refusals by defendants to transfer his custody to Minnesota; (2) events leading to the decision to rescind his grant of parole; (3) conditions of his parole; (4) various actions that plaintiff says are "arbitrary and capricious." With the possible exception of Category #1, which may qualify as a federal claim because it seeks to enforce the Interstate Compact for Adult Offender Supervision, each of plaintiff's claims would have to proceed in state court.

Categories ##2 and 3 are both challenges to petitioner's custody that may not proceed in federal court until plaintiff has exhausted his state judicial remedies and then only as a petition for a writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475, 93 (1973) (claims seeking immediate or speedier release from confinement cannot be brought under § 1983); Williams v. Wisconsin, 336 F.3d 576 (7th Cir. 2003) (because parolee's confinement is defined not by his placement in prison but by various lesser restrictions on his liberty, challenge to conditions of parole are challenge to parolee's custody and cannot be challenged under § 1983). Presumably, plaintiff was attempting to exhaust his state judicial remedies when defendant Longueville removed the case.

Category 4 consists of claims that clearly belong in state court. There is no federal

cause of action for challenging "arbitrary and capricious" conduct of state employees. Rather, Wisconsin courts have exclusive jurisdiction over such claims in the context of a writ of certiorari. State ex rel. L'Minggio v. Gamble, 2003 WI 82, ¶23, 263 Wis. 2d 55, 667 N.W.2d 1; Outagamie County v. Smith, 38 Wis. 24, 34, 155 N.W.2d 639, 645 (1968). Although it is likely that many of plaintiff's claims cannot be tried in the same lawsuit, those issues will have to be addressed by the state court after remand, together with those raised by defendants in their motions to dismiss.

ORDER

IT IS ORDERED that this case is REMANDED to the Circuit Court for Dane County, Wisconsin as improperly removed. The clerk of court is directed to return the record in this case to the state court.

Entered this 25th day of September, 2008.

BY THE COURT:

/s/

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BARBARA B. CRABB
District Judge