

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

JESSE L. HALL,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

ORDER

10-cv-239-bbc

Plaintiff Jesse Hall filed this action under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, contending that MLP Azumah, an employee of defendant United States of America at the Federal Correctional Institution in Forrest City, Arkansas, acted negligently by failing to properly diagnose and treat his stomach cancer. Now before the court is defendant's motion to dismiss or transfer the case under 28 U.S.C. § 1406. Plaintiff has not responded to the motion.

I conclude that venue is improper in this district because all of the relevant events occurred in Forrest City, Arkansas and plaintiff resides in Beaumont, Texas. Therefore, I will grant defendant's motion and transfer the case to the Eastern District of Arkansas.

DISCUSSION

The venue statute that governs plaintiff's Federal Tort Claims Act claim is 28 U.S.C. § 1402(b). Carter v. United States, 333 F.3d 791, 792 (7th Cir. 2003). Under § 1402(b), a plaintiff may bring a "civil action on a tort claim against United States . . . only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred." Plaintiff was granted leave to proceed on a claim that he received negligent medical care while incarcerated at the Federal Correctional Institution in Forrest City, Arkansas. The acts or omissions relevant to plaintiff's tort claim occurred in Forrest City, Arkansas, which is in the Eastern District of Arkansas; none of the events giving rise to the claim occurred in Wisconsin. In addition, plaintiff resides presently in Beaumont, Texas, in the Eastern District of Texas. Thus, under § 1402(b), venue is proper in the Eastern District of Arkansas or the Eastern District of Texas, but not in the Western District of Wisconsin.

Under 28 U.S.C. § 1406, a court may either dismiss a case for improper venue or transfer a case to another court where venue is proper, if the transfer would further the interests of justice. The court may transfer venue pursuant to § 1406(a) regardless whether it has personal jurisdiction over the defendants. Goldlawr, Inc. v. Heiman, 369 U.S. 463, 466 (1961). Defendant has requested that the case be dismissed or transferred to the Eastern District of Arkansas.

The decision whether to dismiss or transfer a case on the basis of improper venue lies

within the sound discretion of the district court. Continental Insurance Co. v. M/V ORSULA, 354 F.3d 603, 608 (7th Cir. 2003). When a plaintiff is proceeding pro se, transfer to a district court in which venue is proper is in the interest of justice. Cox v. Litscher, 2000 WL 34234059, *2 (W.D. Wis. Aug. 21, 2000). Thus, rather than dismiss the case, I will transfer it to the Eastern District of Arkansas. All of the relevant events at issue took place in that venue and that is the most likely location of witnesses and documents relevant to plaintiff's claim. In addition, under the Federal Tort Claims Act, plaintiff's negligence claim will be evaluated under Arkansas law. 28 U.S.C. § 1346(b)(1) (the United States' liability is determined "in accordance with the law of the place where the act or omission occurred"); Gil v. Reed, 381 F.3d 649, 658 (7th Cir. 2004). Although the district court in the Eastern District of Texas would certainly be capable of applying Arkansas law, an Arkansas court will be more familiar with the applicable law on negligence and medical malpractice. Finally, by failing to respond to defendant's motion to dismiss or transfer, plaintiff has waived any argument for a different venue.

ORDER

IT IS ORDERED that

1. Defendant United States of America's motion to dismiss or transfer, dkt. #13, is GRANTED. This case is TRANSFERRED to the United States District Court for the

Eastern District of Arkansas.

2. The clerk of court is directed to transmit the case file to the United States District Court for the Eastern District of Arkansas.

Entered this 13th day of January, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge