

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WILLIAM M. WINDSOR,)	
)	
Plaintiff,)	
)	
)	CIVIL ACTION NO.
v.)	
)	1:11-cv-01922-TWT
)	
JUDGE WILLIAM S. DUFFEY,)	
MAID OF THE MIST CORPORATION,)	
MAID OF THE MIST STEAMBOAT)	
COMPANY, LTD.,)	
JUDGE ORINDA D. EVANS,)	
JUDGE JULIE E. CARNES,)	
JUDGE JOEL F. DUBINA,)	
JOHN LEY AND JAMES N. HATTEN,)	
)	
Defendants.)	

**THE FEDERAL DEFENDANTS' REPLY MEMORANDUM
IN SUPPORT OF MOTION TO DISMISS**

William Windsor's opposition to the motion to dismiss filed on behalf of defendants Judge William S. Duffey, Judge Orinda D. Evans, Judge Julie E. Carnes, Judge Joel F. Dubina, John Ley and James N. Hatten (the "Federal Defendants"),¹ does nothing to change the fact that a declaratory judgment action

¹ The Federal Defendants are represented by and through the United States Attorney for the Northern District of Georgia, which is representing them in their

is not and cannot be a substitute for an appeal. *See Glitsch, Inc. v. Koch Eng'g Co., Inc.*, 216 F.3d 1382, 1384 (Fed. Cir. 2000). The Complaint makes clear that this is precisely what Windsor seeks to do. *See* Complaint ¶¶ 36-38. As discussed more fully in the initial Memorandum of Law in Support of the Federal Defendants' Motion to Dismiss, the motion to dismiss should be granted on this basis.

Windsor's opposition raises several other meritless points.

First, he claims that the motion should be converted to a motion for summary judgment and that he is entitled to discovery. Although the Federal Defendants' motion to dismiss does recite some of the history of Windsor's frivolous litigation, the merits of the motion are based solely on the allegations of the complaint and its legal insufficiencies. There is no reason to convert the motion to a motion for summary judgment or to allow discovery.

Second, Windsor claims that the Court lacks jurisdiction because, he claims, the Court has not considered his motion to remand. He is incorrect. The Court, through the Honorable Judge Totenberg, held that the removal was proper and that the Court has jurisdiction. Dkt. 39 at 6 n.2.

official capacity as they are sued.

Third, and finally, Windsor argues that because he has filed multiple notices of appeal, he has divested the Court of jurisdiction. But, the Eleventh Circuit has held that “a notice of appeal filed with respect to a non-appealable order does not have any effect on the district court’s jurisdiction.” *United States v. Riolo*, 398 Fed. App’x 568, 571 (11th Cir. 2010). Thus, to the extent Windsor has sought to appeal non-appealable orders, those filings have no impact on this Court’s jurisdiction.

The only order that Windsor has appealed that might be appealable is the order against his further filing of frivolous actions. Because that order might be considered an injunction by the Eleventh Circuit, it might be immediately appealable. But, even if it is a proper appeal, “an interlocutory appeal does not completely divest the district court of jurisdiction. ‘The district court has authority to proceed forward with portions of the case not related to the claims on appeal’” *Green Leaf Nursery v. E.I. DuPont De Nemours and Co.*, 341 F.3d 1292, 1309 (11th Cir. 2003). Thus, the Court would only be divested of jurisdiction regarding a modification of the order restricting Windsor’s filings and retains jurisdiction to decide the Federal Defendants’ motion to dismiss.

CONCLUSION

For these reasons, and for the reasons set forth in the initial Memorandum of Law in Support, the Complaint should be dismissed.

Respectfully submitted, this 17th day of August, 2011.

SALLY QUILLIAN YATES
UNITED STATES ATTORNEY

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CERTIFICATE OF COMPLIANCE

I certify that the documents to which this certificate is attached have been prepared with one of the font and point selections approved by the Court in LR 5.1B (Times New Roman, 14 pt.) for documents prepared by computer.

This 17th day of August, 2011.

/s/Christopher J. Huber

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Federal Defendant's Reply Memorandum in Support of Motion to Dismiss on the plaintiff by causing true and correct copies thereof to be placed in the U.S. Mail, with proper postage affixed, and addressed as follows:

William M. Windsor
P.O. Box 681236
Marietta, Georgia 30068

In addition, a copy was served on:

Carl H. Anderson, Jr.
4000 Sun Trust Plaza
303 Peachtree Street NE
Atlanta, Georgia 30308-3243

This 17th day of August, 2011.

/s/Christopher J. Huber