

W.D.N.Y.
23-cv-1268
Vilardo, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 22nd day of November, two thousand twenty-four.

Present:

José A. Cabranes,
Richard C. Wesley,
Steven J. Menashi,
Circuit Judges.

David C. Lettieri,

Plaintiff-Appellant,

v.

24-528


Broome County Humane Society, et al.,

Defendants-Appellees.

Appellant, pro se, moves for in forma pauperis status. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); see 28 U.S.C. § 1915(e).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

Catherine O'Hagan Wolfe



05/01/2024	8	<p>TEXT ORDER: The <i>pro se</i> plaintiff, David C. Lettieri, filed a complaint asserting claims under 42 U.S.C. § 1983. Docket Item <u>1</u> . After this Court denied Lettieri permission to proceed <i>in forma pauperis</i> because he had accrued three strikes, Docket Item <u>3</u> ; <i>see</i> 28 U.S.C. § 1915(g), Lettieri moved for reconsideration of that order and asked the Court to transfer the case to the Northern District of New York, Docket Items <u>4</u> and <u>7</u> .</p> <p>"The major grounds justifying reconsideration are an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent a manifest injustice." <i>Kharshiladze v. Philips</i>, 2021 WL 1525869, at *1 (W.D.N.Y. Apr. 19, 2021) (quoting <i>Virgin Atl. Airways v. Nat'l Mediation Bd.</i>, 956 F.2d 1245, 1255 (2d Cir. 1992)). Lettieri's motions do not provide any reason for this Court to reconsider its prior order. <i>See</i> Docket Items <u>4</u> and <u>7</u> . Lettieri argues that this District is not the "proper venue" for this action. <i>See</i> Docket Items <u>4</u> and <u>7</u> . But even if that is correct, this Court is under no obligation to transfer the case: When a case is filed in an improper venue, "[t]he district court... shall dismiss [the case], or if it be in the interest of justice, transfer such case to any district... in which it could have been brought." 28 U.S.C. § 1406. And given Lettieri's "pattern of abuse of the judicial process," <i>see In re David C. Lettieri</i>, 23-mc-32, Docket Item 18 at 1 (W.D.N.Y. Jan. 19, 2024), it clearly is not in the interest of justice to transfer this action to another district. The fact that the Court came to a different conclusion in <i>Lettieri v. New York State Police</i>—which was filed before Lettieri accrued his third strike, <i>see</i> Case No. 23-cv-518, Docket Item 1 (W.D.N.Y. June 9, 2023)—does not change that analysis. Lettieri's motions for reconsideration and to transfer, Docket Items <u>4</u> and <u>7</u> , therefore are DENIED, <i>see</i> Fed. R. Civ. P. 62.1 (allowing a district court to deny a motion for relief while an appeal is pending). SO ORDERED. Issued by Hon. Lawrence J. Vilardo on 5/1/2024. (DJ)</p> <p>This was mailed to: the plaintiff. (Entered: 05/01/2024)</p>
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Judgment in a Civil Case

United States District Court
WESTERN DISTRICT OF NEW YORK

DAVID C. LETTIERI

JUDGMENT IN A CIVIL CASE
CASE NUMBER: 23-CV-1268

v.

BROOME COUNTY HUMANE SOCIETY, ET AL

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the case is dismissed without prejudice.

Date: September 30, 2024

MARY C. LOEWENGUTH
CLERK OF COURT

By: s/ Colin
Deputy Clerk