

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

LAURENTINO ZUNIGA,)	
)	
Plaintiff,)	
)	
vs.)	CAUSE NO. 2:10-CV-189
)	
ED BUSS, Commissioner, Indiana)	
Department of Correction, <i>et al.</i> ,)	
)	
Defendants.)	

OPINION AND ORDER

This matter is before the Court on the Plaintiff’s motion for reconsideration. For the reasons set forth below, the Court **DIRECTS** the Clerk to change the description of this filing in the docket from a motion directed at this Court to an informational copy provided to this Court of a motion filed by the Plaintiff in state court.

BACKGROUND

Laurentino Zuniga, a prisoner confined at the Indiana State Prison, filed a complaint in the LaPorte Circuit Court, pursuant to Indiana Code § 34-13-3-1 *et seq.*, alleging that ISP employees were negligent in failing to provide him medical care. In the body of his complaint, Zuniga asserted that prisoners “have a constitutional right to adequate medical care,” (DE 1 at 4), suggesting that he also intended to pursue federal law claims as well as his state tort law remedy. The Defendants removed the

complaint to this Court pursuant to 28 U.S.C. §§ 1441 and 1446. On May 28, 2010, this Court dismissed, pursuant to 28 U.S.C. § 1915A(b), all claims that the Defendants violated the Plaintiff's federally protected rights, and remanded the complaint to the LaPorte Circuit Court for consideration of the Plaintiff's state law claims. According to the Plaintiff's motion for reconsideration, that court dismissed the tort complaint on July 15, 2010. (DE 10 at 2).

DISCUSSION

The Plaintiff's motion for reconsideration is captioned as being filed "IN THE LAPORTE CIRCUIT COURT STATE OF INDIANA" (DE 10 at 1), and the motion has a state court cause number, 46C01-00091, though the cause number assigned by this Court to this case is typed in above the state cause number using a different font. (*Id.*). In the body of his motion to reconsider, Zuniga states that:

4. On July 15, 2010, the Court dismissed the tort complaint with prejudice on the grounds that Zuniga failed to state a claim upon which relief may be granted as the Complaint seeks monetary relief from defendants who are immune from liability for such relief under the Indiana Tort Claims Act.

5. In the Tort Complaint, Zuniga did not seek monetary relief from agents of the Indiana Department of Correction in their individual capacity.

WHEREFORE, Zuniga moves the Court to reconsider its decision of July 15, 2010, and to find that Zuniga has properly filed a negligence tort complaint against the Indiana Department of Correction.

(DE 10 at 2).

The language contained in the Plaintiff's motion for reconsideration establishes that he is not asking this court to do anything. His motion seeks reconsideration from the LaPorte Circuit Court of an order that court entered dismissing his tort complaint. The Plaintiff asks the LaPorte Circuit Court to reconsider its dismissal of his state complaint and for the reinstatement of his complaint in that court.

The language used by the Plaintiff in this filing establishes that it is not a motion directed at this court. Rather, it is an informational copy provided to this Court that does not seek or require a ruling from this Court.

CONCLUSION

DIRECTS the Clerk to change the description of this filing (DE 10) in the docket from a motion directed at this Court to an informational copy provided to this Court of a motion filed by the Plaintiff in state court.

DATED: August 11, 2010

**S/RUDY LOZANO, Judge
United States District Court**