

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION**

CIVIL ACTION NO. 5:08-CV-00188-JHM

MARK TUNNE

PLAINTIFF

V.

PADUCAH POLICE DEPT., et al.

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Plaintiff Mark Tunne's Motion to Strike [DN 96] and Motion for Reconsideration [DN 97]. For the following reasons, Plaintiff's motions are **DENIED**.

I. DISCUSSION

Plaintiff has moved the court to strike Defendants' Response to Plaintiff's Motion to Reconsider [DN89] on account of the Defendants' failure to properly serve the required proposed order with the Response. Plaintiff has also moved the Court to strike its Memorandum, Opinion and Order dated July 18, 2011 [DN 93] as well as to strike his own Reply to Defendants' Response to Plaintiff's Motion to Reconsider [DN 94]. In addition, Plaintiff has filed another Motion for Reconsideration [DN 97].

"As a general rule the filing of a notice of appeal divests the district court of jurisdiction and transfers jurisdiction to the court of appeals. This, however, is not an inflexible rule. Thus this court has consistently held that a district court retains jurisdiction to proceed with matters that are in aid of the appeal." Cochran v. Birkel, 651 F.2d 1219, 1221 (6th Cir. 1981) (internal citations omitted).

The Court finds that an undertaking of the motions before it would not aid in the appeal of this matter. The issues that Plaintiff contends require reversal are issues that have been addressed by the Court previously. These are issues that are more appropriately handled by the Court of

Appeals. Finding that a timely notice of appeal has been filed by Plaintiff and that this matter is currently pending in the Court of Appeals, the Court finds that it has been divested of jurisdiction to hear these motions.

II. CONCLUSION

For the reasons set forth above, **IT IS HEREBY ORDERED** that Plaintiff Mark Tunne's Motion to Strike [DN 96] and Motion for Reconsideration [DN 97] are **DENIED** without prejudice.

cc: counsel of record
Mark Tunne, pro se