

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MICHAEL J. FAVOR [sic],

Plaintiff,

Case No. 2:13-cv-655

JUDGE GREGORY L. FROST

Magistrate Judge Norah McCann King

v.

W.L. GORE ASSOCIATES, INC., et al.,

Defendants.

ORDER

This matter is before the Court on Plaintiff Michael J. Favors' motion to certify for immediate appeal to the Sixth Circuit Court of Appeals this Court's September 11, 2013 order denying remand or, alternatively, to certify state law questions to the Supreme Court of Ohio. (ECF No. 50.) The Court **DENIES** Plaintiff's motion.

Plaintiff first asks this Court to certify its September 11, 2013 decision (ECF No. 47) as one "that involves a controlling question of law as to which there is substantial ground for difference of opinion" and to certify that "an immediate appeal from that order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). The Court declines to do so. The two questions over which Plaintiff seeks immediate appeal are as follows:

1. Whether defective surgical mesh intentionally implanted into the body of a patient is a "foreign object" within the meaning of Ohio R. Code §2305.115(D)(2); and
2. Whether Ohio recognizes a cause of action, that is not a medical claim, for negligent maintenance of medical records.

(ECF No. 50 at PageID# 512.)

In its Opinion and Order of September 11, 2013, the Court resolved both of these questions against Plaintiff, resulting in a finding of fraudulent joinder of non-diverse defendants. (ECF No. 47 at PageID# 503-07.) The Court therefore denied Plaintiff's motion to remand this case to the state court from which Defendants removed it. (*Id.* at PageID# 507.) The Court views neither of the purely state law questions cited by Plaintiff as one from which an immediate appeal would "materially advance the ultimate termination of the litigation." Resolution of these issues would determine the forum of the litigation (*i.e.*, federal court or state court) but would not necessarily advance the termination of the entire action. Accordingly, the Court declines Plaintiff's invitation to certify this decision for an immediate appeal that would do nothing more than delay proceedings in an action over which this Court has determined it has jurisdiction.

As to Plaintiff's requested alternative relief of certifying state law questions to the Supreme Court of Ohio, the Court finds certification inappropriate. Under Supreme Court Rule of Practice 9.01, a federal court may issue a certification order upon "finding there is a question of Ohio law that may be determinative of the proceeding and for which there is no controlling precedent in the decisions of this Supreme Court." The decision to certify a state-law question to the Ohio Supreme Court falls within the discretion of the federal court. *Gascho v. Global Fitness Holdings, LLC*, 918 F. Supp. 2d 708, 713 (S.D. Ohio 2013).

This Court declines to certify Plaintiff's questions to the Supreme Court of Ohio. Even if the Court accepts the premise that there is no controlling Ohio Supreme Court precedent with regard to the issues he seeks to certify, the Court finds that certification would not save time, energy, or resources. The issues Plaintiff identifies would be determinative of only part of this action. Thus, certification would cause undue delay for resolution of issues that would not even be dispositive of the entire action.

The Court **DENIES** Plaintiff's motion (ECF No. 8.) In light of the Court's prompt resolution of this motion, Plaintiff's concomitant request for a stay of briefing on pending motions is also **DENIED**.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE