

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-2181

STEPHEN ALAN ALBERTS, II, Ed.D.,

Plaintiff - Appellant,

v.

WHEELING JESUIT UNIVERSITY; LETHA ZOOK,

Defendants - Appellees.

Appeal from the United States District Court for the Northern District of West Virginia, at Wheeling. Frederick P. Stamp, Jr., Senior District Judge. (5:09-cv-00109-FPS)

Submitted: January 8, 2010

Decided: January 29, 2010

Before WILKINSON, DUNCAN, and AGEE, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Stephen Alan Alberts, II, Appellant Pro Se. Christopher Paul Riley, BAILEY, RILEY, BUCH & HARMAN, LC, Wheeling, West Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Stephen Alan Alberts, II, seeks to appeal an order entered by the U.S. District Court for the Western District of Pennsylvania adopting the magistrate judge's report and recommendation and transferring his case to the Northern District of West Virginia. Because the order Alberts seeks to appeal was entered by the District Court for the Western District of Pennsylvania, an appeal from an order of that court may only be taken to the U.S. Court of Appeals for the Third Circuit, which embraces that district court. See 28 U.S.C. § 1294 (2006). Accordingly, this court cannot consider Alberts's challenge to the transfer order.

Further, we decline to transfer this appeal to the Court of Appeals for the Third Circuit. Pursuant to 28 U.S.C. § 1631 (2006), when an appeal is noticed for a circuit court, and the court finds "that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed." We conclude, however, that while there is a want of jurisdiction in this court, transfer to the Third Circuit Court of Appeals is not in the interest of justice because Alberts's appeal is otherwise interlocutory. Circuit courts may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2006),

and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2006); Fed. R. Civ. P. 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546-47 (1949). The order Alberts seeks to appeal is neither a final order nor an appealable interlocutory or collateral order. See In re Carefirst of Md., Inc., 305 F.3d 253, 255-56 (4th Cir. 2002); Carteret Sav. Bank v. Shushan, 919 F.2d 225, 230 (3d Cir. 1990) (holding 28 U.S.C. § 1406 (2006) transfer order is not an appealable collateral order).

Accordingly, we deny Alberts's motion to find for damages in his favor and dismiss the appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED