APPENDIX A

United States District Court
Northern District of Indiana
Hammond Division

ADRIAN G. RANGEL, Plaintiff, v. COUNTY OF TIPPECANOE, IN, et al., Defendants.	)	Civil Action No. 2:18-CV-131 JVB

ORDER

Pro se Plaintiff Adrian Rangel has filed a complaint and an amended complaint, two motions for a preliminary injunction (DE 3 and DE 38), and a motion for summary judgment (DE 29). Defendant County of Tippecanoe ("County") filed a motion to dismiss the original complaint (DE 9) as did Defendant State of Indiana ("State") (DE 19). The amended complaint differs from the original only in that it added Indiana Governor Eric Holcomb ("Governor") as a defendant and changed some figures. The State and the Governor (sometimes hereinafter referred to as the "State Defendants") then moved to dismiss the amended complaint (DE 34). The County has not moved to dismiss the amended complaint, but because the allegations in both the original and the amended complaint are identical as to the County in all material respects, the Court will consider its motion to dismiss as directed at the amended complaint.

A. Plaintiff's Amended Complaint and Motions

According to his amended complaint, in March 2017, Plaintiff received a notice from the County prosecutor that his child support indebtedness was being increased from about $8,000 to

almost $30,000, explaining that the increase was to cover insurance of some sort. He immediately filed an appearance with the trial court and requested an extension of time to file interrogatories, but his motion was ignored and dismissed by the trial court. He then filed a "Letter of Intent" to sue the trial court for violation of his substantive due process rights, which, he claims resulted in the negligent and intentional infliction of emotional distress. He had no transportation to a hearing, after which the trial court issued an order to the effect that he owed almost $30,000 in outstanding child support.

Plaintiff attempted to appeal this order to the Indiana Court of Appeals ("Court of Appeals"), but was notified that it was an interim order and not a final order. He claims that the ruling also violated his substantive due process rights, alleging that the Court of Appeals conspired with the trial court to obstruct his rights.

The trial court eventually issued a final order, which he attempted to appeal. He filed an in forma pauperis request with the Court of Appeals (apparently to have the filing fee waived) but the Court of Appeals denied it because it had not first been filed with the trial court. He filed a series of in forma pauperis requests in the trial court but all were denied for various failures to submit the request in the proper form. According to the Complaint, the Court of Appeals dismissed his case in March 2018. About two weeks later, the trial court issued another order. Although it is not entirely clear from Plaintiff's complaint, it appears that this last order was the same as the first two.

Plaintiff alleges that the pattern of actions by the trial and appellate courts shows their malicious intent to violate his substantive due process rights. He requests $3 million in compensatory damages and a like sum in punitive damages against all three Defendants for

negligent training and supervision, which he claims resulted in the violation of his due process rights by the County and State Courts.

In his first motion for an injunction, Plaintiff repeats many of the allegations of the Complaint and asks the Court to grant a preliminary injunction against both the County and the State. He does not tell the Court what these Defendants should be enjoined from doing. His second motion is similar to the first, except that in the new motion he refers to a new trial court order dated May 9, 2018,[1] and asks the Court to stop the Tippecanoe County trial court and the Court of Appeals "from issuing any further retaliatory and harassing orders arbitrarily increasing Plaintiff's child support due until the contended violation of Plaintiff's due process and substantive due process rights can be fully addressed by this Court." (DE 38 at 4).

In a filing Plaintiff has titled "L.R. 40-4 Motion for Summary Judgement Regarding Motion of Preliminary Injunction" (DE 29), he claims that a judicial officer, Matt Boulac, issued a writ of body attachment against him in a case pending in Tippecanoe County Superior Court 2 in retaliation for filing this suit. He asks the Court to order Boulac, whom he alleges to be a representative of the Defendants in this case, to quash and vacate the writ until this case has been adjudicated.

B. Discussion

(1) ***The County's Motion to Dismiss***

The County argues that it should be dismissed as a party to this case because it has no control over the trial court that has allegedly denied him his due process rights. The Court

[1]A copy of this order is attached to the motion. *See* DE 38 at 11. It finds that Plaintiff's child support arrearage is $31,928.55.

agrees. *Waldrip v. Waldrip*, 976 N.E. 2d 102, 118 (Ind. Ct. App. 2012), holds that although trial courts in Indiana counties are thought of as county courts, they "are exclusively units of the judicial branch of the state's constitutional system" and not subject to control by the county.

Plaintiff seeks damages from the County for its failure to adequately train and supervise trial and Court of Appeals judges. His complaint does not allege facts to show that the County has any power or duty to train and supervise them, nor could he because Indiana case law is clear on this point. To the extent that he claims that the County is liable for failing to train and supervise the Tippecanoe County prosecutor, the same reasoning applies. *See Waldrip*, 976 N.E.2d at 119 ("A county cannot be held liable for a prosecutor's actions in trying a case.") Accordingly, Plaintiff's claims against the County will be dismissed with prejudice.

(2) ***The State Defendants' Motion to Dismiss***

Plaintiff's claims against the State Defendants fare no better. These Defendants are immune from suit pursuant to the Eleventh Amendment. "The Eleventh Amendment bars private litigants' suits against nonconsenting states in federal courts, with the exception of causes of action where Congress has abrogated the states' traditional immunity through its powers under the Fourteenth Amendment." *Joseph v. Board of Regents*, 432 F.3d 746, 748 (7th Cir. 2005). State officials sued in their official capacities are also immune from suit for damages under the Eleventh Amendment. *Id.* Plaintiff has alleged no facts that plausibly suggest the Governor personally did or failed to do anything to violate his due process rights. Accordingly, the Court

concludes that he is being sued in his official capacity.[2] For that reason, not only is the Governor immune under the Eleventh Amendment, but also, he is not considered a person under 42 U.S.C. § 1983. Therefore, his claim for damages against the State and the Governor must be dismissed with prejudice.

(3) ***Plaintiff's Motions for Preliminary Injunctions***

The Eleventh Amendment also provides the State with immunity from Plaintiff's request for injunctive relief. While it is possible to obtain injunctive relief against a state official, as the State Defendants point out in their memorandum, the Governor is not capable of forcing a trial court or the Court of Appeals to do anything. Under Article III, § 1 of the Indiana Constitution, the government is divided into the legislative, executive, and judicial departments. No official of one department may exercise the functions of another department. The Governor cannot and does not control the operation of the courts. Similarly, as previously discussed, the County has no control over the courts. Plaintiff has no likelihood of success on the merits of his claims against the Governor, the State, or the County. Accordingly, his claims for injunctive relief must be denied.

(4) **Plaintiff's Motion for Summary Judgment**

Plaintiff's motion, although filed as a summary judgment motion, is, in reality, another motion for an injunction. He is seeking relief against an individual he identifies as a judicial office who is not a party to this suit and over whom the County and the Governor have no

[2]A claim against a state official in his official capacity is considered a claim against the state. *Kentucky v. Graham*, 473 U.S. 159, 165–66 (1985).

control. For the reasons already stated above, it too must be denied.

C. Conclusion

For the foregoing reasons Plaintiff's motions for preliminary injunctions (DE 3 and DE 38) and for summary judgment (DE 29) are **DENIED**. The motion to dismiss the original complaint filed by the State of Indiana (DE 19) is **DENIED AS MOOT**. The motions to dismiss filed by the County of Tippecanoe, Indiana (DE 9) and the State of Indiana and Indiana governor Eric Holcomb (DE 34) are **GRANTED**. Plaintiff's amended complaint is **DISMISSED WITH PREJUDICE.**

SO ORDERED on July 23, 2018.

s/ Joseph S. Van Bokkelen
Joseph S. Van Bokkelen
United States District Judge

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

Submitted: October 17, 2018
Decided: October 22, 2018

JOEL M. FLAUM, *Circuit Judge*
ILANA DIAMOND ROVNER, *Circuit Judge*
DAVID F. HAMILTON, *Circuit Judge*

No. 18-2846	ADRIAN G. RANGEL, Plaintiff - Appellant v. TIPPECANOE COUNTY, INDIANA, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 2:18-cv-00131-JVB-JEM Northern District of Indiana, Hammond Division District Judge Joseph S. Van Bokkelen	

The following is before the court: **MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS**, filed on September 6, 2018, by the pro se appellant.

Appellant has filed a motion to proceed in forma pauperis. This court has carefully reviewed the final order of the district court, the record on appeal, and appellant's motion to proceed in forma pauperis. Based on this review, the court has determined that any issues which could be raised are insubstantial and that further briefing would not be helpful to the court's consideration of the issues. *See Israel v. Colvin*, 840 F.3d 432, 442 (7th Cir. 2016); *Taylor v. City of New Albany*, 979 F.2d 87 (7th Cir. 1992); *Mather v. Village of Mundelein*, 869 F.2d 356, 357 (7th Cir. 1989) (per curiam) (court can decide case on motions papers and record where briefing would be not assist the court and no member of the panel desires briefing or argument). The district judge did not err in dismissing the case before trial after finding that the defendants were immune from suit or otherwise not responsible for the wrongs that the appellant alleged. Appellant's final argument, that the district judge should have recused himself, also lacks merit. *See Del Vecchio v. Ill. Dep't of Corr.*, 31 F.3d 1363, 1372 (7th Cir. 1994).

Accordingly, **IT IS ORDERED** that the motion to proceed in forma pauperis is **DENIED**, and the final order of the district court is summarily **AFFIRMED**.