

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
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ORDER

February 13, 2025

*Ms. Dwyer
Court U.S.*

Before

DIANE S. SYKES, *Chief Judge*
FRANK H. EASTERBROOK, *Circuit Judge*
AMY J. ST. EVE, *Circuit Judge*

No. 24-3047	DALE C. TRANBARGER, Plaintiff - Appellant v. ANDERSON POLICE DEPARTMENT, Defendant - Appellee
Originating Case Information:	
District Court No: 1:23-cv-02293-JMS-TAB Southern District of Indiana, Indianapolis Division District Judge Jane Magnus-Stinson	

On consideration of the papers filed in this appeal and review of the short record,

IT IS ORDERED that this appeal is **DISMISSED** for lack of jurisdiction.

Rule 4(a) of the Federal Rules of Appellate Procedure requires that a notice of appeal in a civil case be filed in the district court within 30 days of the entry of the judgment or order appealed. In this case judgment was entered on June 28, 2024, and the notice of appeal was filed on November 8, 2024, over three months late. The district court has not granted an extension of the appeal period, *see* Fed. R. App. P. 4(a)(5), and this court is not empowered to do so, *see* Fed. R. App. P. 26(b).

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NOTICE OF ISSUANCE OF MANDATE

March 7, 2025

To: Kristine L. Seufert
UNITED STATES DISTRICT COURT
Southern District of Indiana
United States Courthouse
Indianapolis, IN 46204-0000

	DALE C. TRANBARGER, Plaintiff - Appellant
No. 24-3047	v. ANDERSON POLICE DEPARTMENT, Defendant - Appellee
Originating Case Information:	
District Court No: 1:23-cv-02293-JMS-TAB Southern District of Indiana, Indianapolis Division District Judge Jane Magnus-Stinson	

Herewith is the mandate of this court in this appeal, along with the Bill of Costs, if any. A certified copy of the opinion/order of the court and judgment, if any, and any direction as to costs shall constitute the mandate.

RECORD ON APPEAL STATUS:

No record to be returned

form name: c7_Mandate (form ID: 135)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DALE C. TRANBARGER,)
)
 Plaintiff,)
)
 vs.) No. 1:23-cv-02293-JMS-TAB
)
 ANDERSON POLICE DEPT.,)
)
 Defendant.)

ORDER

Pro se Plaintiff Dale Tranbarger initiated this litigation against Defendant Anderson Police Department ("APD") on December 21, 2023, alleging that APD improperly seized and retained several of his firearms during a search in 2015. [[Filing No. 1](#); [Filing No. 2](#).] APD has now filed a Motion to Dismiss, which is ripe for the Court's ruling. [[Filing No. 15](#).]

I.
STANDARD OF REVIEW

APD moves to dismiss Mr. Tranbarger's claims under both Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). [[Filing No. 15](#).] Rule 12(b)(1) "allows a party to move to dismiss a claim for lack of subject-matter jurisdiction." *Hallinan v. Fraternal Order of Police of Chicago Lodge No. 7*, 570 F.3d 811, 820 (7th Cir. 2009). Jurisdiction is the "power to decide," *Boley v. Colvin*, 761 F.3d 803, 805 (7th Cir. 2014), and federal courts may only decide claims that fall within both a statutory grant of authority and the Constitution's limits on the judiciary, *In re Chicago, R.I. & P.R. Co.*, 794 F.2d 1182, 1188 (7th Cir. 1986). Although a court deciding a Rule 12(b)(1) motion may accept the truth of the allegations in the complaint, it may look beyond the complaint's jurisdictional allegations and view whatever evidence has been submitted on the issue to determine whether subject-matter jurisdiction exists. *Ciarpaglini v. Norwood*, 817 F.3d 541,

543 (7th Cir. 2016). The party asserting the existence of subject-matter jurisdiction bears the burden of demonstrating by competent proof that such jurisdiction in fact exists. *See Thomas v. Gaskill*, 315 U.S. 442, 446 (1942); *see also Silha v. ACT, Inc.*, 807 F.3d 169, 174 (7th Cir. 2015).

Under Rule 12(b)(6), on the other hand, a party may move to dismiss a claim that does not state a right to relief. The Federal Rules of Civil Procedure require that a complaint provide the defendant with "fair notice of what the...claim is and the grounds up which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (quoting *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007)). In reviewing the sufficiency of a complaint, the Court must accept all well-pled facts as true and draw all permissible inferences in favor of the plaintiff. *Alarm Detection Sys., Inc. v. Vill. of Schaumburg*, 930 F.3d 812, 821 (7th Cir. 2019). A Rule 12(b)(6) motion to dismiss asks whether the complaint "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). Factual allegations must plausibly state an entitlement to relief "to a degree that rises above the speculative level." *Munson v. Gaetz*, 673 F.3d 630, 633 (7th Cir. 2012). This plausibility determination is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.*

II. BACKGROUND

In his Complaint, Mr. Tranbarger appears to complain regarding a state court case he is involved in, stating that:

I have filed federal twice and both times it was returned due to the reasoning that I had not gone to the highest court in the state.

According to the state supreme court clerk, the high appellate court decides if it merits going higher, but in this case, I feel that the appellates are intentionally stopping the proceedings to prevent me from formally filing a federal appeal that the feds have made it plain they want filed.

[Filing No. 1 at 2.] In part of a 286-page exhibit to his Complaint titled "Statement of the Case,"

Mr. Tranbarger states:

The incident occurred on April 5, 2015. I was home alone when the [APD] responded to a call, took me away and removed five firearms and left 3 behind that my daughter took. Three were tagged into evidence and two are missing and no one will talk about them. I hired a P.I. and he couldn't get any answers either.

The lawsuit was filed in 2016 and buried for five years. I found out it was still active and petitioned the court (Mad. Co. Cir. 3:48CV3-1608-PL-000098) to allow the suit to move forward and it was granted along with a change of venue.

Judge Happe...assumed the case and then ruled in the City's favor. St. Sen. Timothy Lanane is the Anderson City Attorney.

I filed an appeal with the state appellate court and they ruled in the City's favor on Sept. 30, 2022.

Then, on Oct. 4, 2022 my case went into the waiting room a few days later, I [received] official filing paperwork in the mail. It seems the state court have done procedures out of order. It seems a witness came forward after the ruling, but I do not know positively that's the situation.

Also, during my sentencing in 2016, Judge Happe, ordered a handgun be destroyed. After a modification, Judge Happe released my property and the gun ordered destroyed was returned by the [APD], and Judge Happe and the state let it go by with no reprimands, contempt of court, etc.

I do not understand this either and I pray that the high court will consider this entire matter.

[Filing No. 1-1 at 22.] Mr. Tranbarger also includes various state court records in his exhibit, including records for cases involving his daughter, Brandy Tranbarger, along with documents written by Ms. Tranbarger. [See Filing No. 1-1.]

In a second "Statement of the Case" filed after his Complaint, Mr. Tranbarger states:

I feel that I can prove wrongdoing/negligence on behalf of the [APD] and possibly the Madison County Prosecutor's Office and court.

I feel that the [APD] infringed on my constitutional and civil right to protect myself in my own home on the day of the incident (4-5-15).

During the search and seizure, I had nine firearms total. Three were tagged into evidence, three were left behind, my grandkids found them and my daughter got possession of those guns through another court. The other three are gone in the wind. We/I can prove on paper [APD] removed two more firearms on a second visit to my home and did not tag them into evidence. I have the description, including serial number to the missing/stolen handgun. My understanding is that a police officer stealing a handgun was a federal offense. If it isn't it should be.

Also, as part of my sentencing (4-16-18), a gun was ordered to be destroyed by the Honorable Judge David Happe. Later, after Judge Happe modified me to a misdemeanor, I am not a convicted felon, my property was released and the gun ordered destroyed was returned to me.

I felt that [APD] was in negligent contempt of court, but now as of last week, the [APD] does not have the order from the court house to destroy the gun and the court house doesn't seem to be able to find the order either.

If [APD] is not in contempt, I must and will drop that charge of negligence. But, I feel negligence still exists concerning that court order and other things that I pray will interest the higher court to help find answers and right whatever wrongs that can be made right.

* * *

In closing, Marcy Hutchinson was my prosecutor during my sentencing and it is my understanding that she was responsible for the order to destroy the gun making it to the [APD]. Whether it did or not, as I said, right now I do not know.

Also, I cannot, will not and am not mak[ing] any accusations without proof and I have none. However, City Attorney Timothy S. Lanane was a State Senator at the time my appeal was denied and Ms. Hutchinson was also working for the state appeals court during the same time period. For my personal opinion only, I will always feel that I was denied by the state due to political string pulling rather than the court ruling on right and wrong by the very laws they made themselves.

[Filing No. 2 at 2-4 (emphasis omitted).] Mr. Tranbarger also states:

I am a Vietnam era Veteran on fixed income and a former Anderson City employee.

I feel that I was forced to retire early as a result of the [APD's] negligence. I feel I was taken advantage of by fellow City [employees] sworn to serve and protect.

Right is right, wrong is wrong and wrongdoing/negligence in this matter should be made right by the law.

[Filing No. 2 at 5.]

The state court case to which Mr. Tranbarger refers in his Complaint is *Dale Tranbarger v. Anderson Police Department*, 48C04-1608-PL-000098 (Madison Cir. Ct.) (the "State Court Case"), in which Mr. Tranbarger asserts claims against APD related to its seizure of his guns during a search of his home. [See Complaint in State Court Case.]¹ The Madison Circuit Court granted summary judgment in favor of APD in the State Court Case, [see June 3, 2022 Order in State Court Case], and Mr. Tranbarger's appeal to the Indiana Court of Appeals was dismissed because he failed to file a brief in support of his appeal, [see September 30, 2022 Order in State Court Case].

III. DISCUSSION

The Court notes at the outset that it construes Mr. Tranbarger's Complaint as alleging claims only against APD. While he mentions other entities and some individuals in passing, Mr. Tranbarger only names APD as a Defendant in his Summons. [Filing No. 10 at 2.] And to the extent he mentions other entities or some individuals, he has not set forth any specific claims against them.

In its Motion to Dismiss, APD argues that Mr. Tranbarger's claims should be dismissed: (1) for lack of subject-matter jurisdiction, because he fails to assert any cognizable federal claims and because there is not diversity of citizenship; (2) because, to the extent he intends to sue APD,

¹ The Court may take judicial notice of public records, including state court records. See *Henson v. CSC Credit Servs.*, 29 F.3d 280, 284 (7th Cir. 1994). The Court does so here to provide additional context for the allegations in Mr. Tranbarger's Complaint.

it is not a suable entity; and (3) because he has not stated a claim against APD for which relief can be granted in any event. [Filing No. 16 at 3-6.] The Court addresses the arguments in turn, as necessary.

A. Lack of Subject-Matter Jurisdiction

APD argues that Mr. Tranbarger does not assert a cognizable federal claim or a basis for diversity jurisdiction and that to the extent he "is asking the federal court to exercise some sort of appellate review of previous court proceedings," "this court has no authority to review other court proceedings, whether they are state or federal, as federal district courts are courts of general original jurisdiction." [Filing No. 16 at 4.]

In his response, Mr. Tranbarger does not address APD's argument regarding a lack of subject-matter jurisdiction, but merely reiterates his allegations regarding the seizure of his firearms that he sets forth in his Complaint. [See Filing No. 17 at 1-3.]

APD did not file a reply.

Because Mr. Tranbarger has failed to address APD's argument, he has waived any opposition thereto. *See Bonte v. U.S. Bank. N.A.*, 624 F.3d 461, 466 (7th Cir. 2010) ("Failure to respond to an argument...results in waiver."). In any event, the only claim the Court can discern from Mr. Tranbarger's Complaint is one for a violation of his constitutional rights related to APD's alleged failure to return his seized firearms to him, and the Court does not have subject-matter jurisdiction over that claim.

"The *Rooker-Feldman* doctrine states that federal courts, other than the Supreme Court, do not have jurisdiction to review decisions of state courts in civil cases." *Johnson v. Orr*, 551 F.3d 564, 567 (7th Cir. 2008). "The doctrine deprives federal courts of subject matter jurisdiction where a party, dissatisfied with a result in state court, sues in federal court seeking to set aside the state-

court judgment and requesting a remedy for an injury caused by that judgment." *Id.* This is true even where the state court judgment is "erroneous or unconstitutional." *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 555 (7th Cir. 1999) (internal quotations and citation omitted). "If the injury the plaintiff complains of resulted from, or is inextricably intertwined with, a state-court judgment, then lower federal courts cannot hear the claim." *Johnson*, 551 F.3d at 567. "The doctrine applies not only to claims that were actually raised before the state court, but also to claims that are inextricably intertwined with state court determinations." *Long*, 182 F.3d at 554. However, the *Rooker-Feldman* doctrine is inapplicable if the injury alleged in the federal suit is "distinct from" the state court judgment, including "when the federal claim alleges a prior injury that a state court failed to remedy." *Johnson*, 551 F.3d at 567 (internal quotations and citations omitted).

"To determine whether *Rooker-Feldman* bars a claim, [courts] look beyond the four corners of the complaint to discern the *actual injury* claimed by the plaintiff." *Id.* (emphasis original). "The pivotal inquiry is 'whether the federal plaintiff seeks to set aside a state court judgment or whether he is, in fact, presenting an independent claim.'" *Long*, 182 F.3d at 555 (quoting *Kamilewicz v. Bank of Boston Corp.*, 92 F.3d 506, 510 (7th Cir. 1996)). "[A] litigant may not attempt to circumvent the effect of *Rooker-Feldman* and seek a reversal of a state court judgment simply by casting the complaint in the form of a civil rights action." *Long*, 182 F.3d at 557.

Here, the only claim the Court can discern is that Mr. Tranbarger is complaining about APD's seizure and retention of his firearms. This is the exact issue he raised in the State Court Case, and for which the State Court entered final judgment against him. The *Rooker-Feldman* doctrine prevents this Court from exercising subject-matter jurisdiction over that claim because Mr. Tranbarger has already litigated the claim in state court. Accordingly, the Court **GRANTS**

APD's Motion to Dismiss for lack of subject-matter jurisdiction and **DISMISSES** Mr. Tranbarger's claims **WITHOUT PREJUDICE.**²

B. Whether APD Is a Suable Entity

In support of its Motion to Dismiss, APD argues that it is not a suable entity but "merely a vehicle through which the city government fulfills policy functions and public safety functions, and not, therefore a proper party defendant." [Filing No. 16 at 5 (quotation and citation omitted).]

Mr. Tranbarger does not address this argument in his response to APD's Motion to Dismiss other than to state generally that he has "had to pro se this case to this point," and does not "understand all of the loopholes and legal technicalities."³ [Filing No. 17 at 1.]

Although the Court has dismissed Mr. Tranbarger's claims for lack of subject-matter jurisdiction because he is attempting to re-litigate claims already raised and decided in the State Court Case, the Court notes that any additional claims against APD that were not a part of the State Court Case – to the extent Mr. Tranbarger alleges any – would also fail. Again, Mr. Tranbarger has waived any opposition to APD's argument regarding it not being a suable entity because he failed to address that argument. *Bonte*, 624 F.3d at 466. And, in any event, APD is not a suable entity.

² A dismissal for lack of jurisdiction is without prejudice. *See Am. Bottom Conservancy v. U.S. Army Corps of Eng'rs*, 650 F.3d 652, 661 (7th Cir. 2011).

³ The Court notes that Mr. Tranbarger includes in his response a handwritten document written by his Daughter, Brandy Tranbarger, which she titles "Rebuttal to Atty Lanane Motion." [Filing No. 17 at 4-8.] Ms. Tranbarger does not indicate in her filing that she is an attorney, nor does she appear on the Indiana Roll of Attorneys. Consequently, she may not file documents on her father's behalf in his lawsuit in this Court, or otherwise attempt to represent his interests. *See Dridi v. American Fam. Mut. Ins. Co., S.I.*, 849 F. App'x 161, 162-63 (7th Cir. 2021) (daughter who was not an attorney could not represent father in federal court); S.D. Ind. L.R. 83-5(a)(1) ("Only members of the court's bar may represent parties before the court."). The Court also disregards any other documents written by Ms. Tranbarger that have been filed in this case on her father's behalf. [*See, e.g.*, Filing No. 1-1 at 1.]

Whether a local government entity is amenable to suit under § 1983 is a matter of state law.

Sow v. Fortville Police Dep't, 636 F.3d 293, 300 (7th Cir. 2011) (citing *McMillian v. Monroe Cnty.*, 520 U.S. 781, 786 (1997)). The Seventh Circuit has stated:

Under Indiana law, a "[m]unicipal corporation" is a "unit,...or other separate local governmental entity that may sue or be sued." Ind. Code § 36-1-2-10. A "[u]nit" means county, municipality, or township," Ind. Code § 36-1-2-23, and a "[m]unicipality" is a "city or town," Ind. Code § 36-1-2-11. Thus, the Indiana statutory scheme does not grant municipal police departments the capacity to sue or be sued.

Sow, 636 F.3d at 300.

APD is a municipal police department. *See House v. Anderson Police Dept.*, 2021 WL 2351056, at *1 (S.D. Ind. June 8, 2021). "Because a city's police department 'is merely a vehicle through which the city government fulfills its policy functions,' it is not a proper defendant in a civil rights suit under § 1983." *Mason v. City of Indianapolis*, 2007 WL 2700193, at *6 (S.D. Ind. 2007). To the extent Mr. Tranbarger asserts any claims for which subject-matter jurisdiction is not precluded by the *Rooker-Feldman* doctrine, the Court **GRANTS** APD's Motion to Dismiss, [Filing No. 15], because APD is not a suable entity.⁴

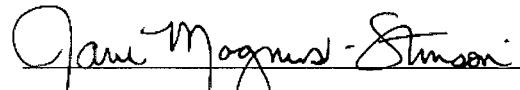
IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** APD's Motion to Dismiss. [15.] Mr. Tranbarger's claims related to APD's seizure of and failure to return his firearms are **DISMISSED WITHOUT PREJUDICE** for lack of subject-matter jurisdiction. To the extent Mr. Tranbarger

⁴ The Court need not and will not discuss whether Mr. Tranbarger has stated a claim upon which relief can be granted, given its rulings that it lacks subject-matter jurisdiction over any claims related to APD's seizure and failure to return his firearms and that APD is not a suable entity in connection with any other claims.

plausibly alleges any other claims against APD, they are **DISMISSED WITH PREJUDICE** because APD is not a suable entity. Final judgment shall enter accordingly.

Date: 6/27/2024



Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

Distribution via ECF only to all counsel of record

Distribution via United States Mail to:

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**Additional material
from this filing is
available in the
Clerk's Office.**