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APPELLANT PRO SE:

ERIC D. SMITH
New Castle, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ERIC D. SMITH,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 33A01-0905-CV-213
	)	
JOHN ROBERTS, Chief Justice of the United States Supreme Court,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE HENRY SUPERIOR COURT
The Honorable Michael Peyton, Judge
Cause No. 33D01-0903-PL-5

September 8, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Eric D. Smith appeals the denial of his motion to correct error after the trial court determined his complaint was frivolous. We affirm.

FACTS AND PROCEDURAL HISTORY

On March 10, 2009, Smith filed a complaint against John Roberts in his official capacity as Chief Justice of the United States Supreme Court. His complaint alleges there is a Star of David carved into the Supreme Court building and "alleges that Roberts has acted negligently in his officials [sic] duties by allowing and continuely [sic] establishing, advocating, and advancing the Jewish religion in violation of the First Amendment to the United States Constitution of America [sic]." (Appellant's App. at 13.) The complaint states Smith is bringing his claim under the Federal Tort Claims Act and the Indiana Tort Claims Act. Smith asked the court to "declare that the displayal [sic] of the six-pointed Star of David violates the Establishment Clause of the First Amendment to the United States Constitution of America [sic], and that Roberts was negligent in his duties" and to "order the removal of the six-pointed Star of David from the United States Supreme Court." (*Id*. at 18.)

On March 20, 2009, the trial court entered an order determining Smith's suit was frivolous:[1]

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[1] Ind. Code § 34-58-1-2 provides:

> (a) A court shall review a complaint or petition filed by an offender and shall determine if the claim may proceed. A claim may not proceed if the court determines that the claim:
> (1) is frivolous;
> (2) is not a claim upon which relief may be granted; or
> (3) seeks monetary relief from a defendant who is immune from liability for such relief.
> (b) A claim is frivolous under subsection (a)(1) if the claim:
> (1) is made primarily to harass a person; or

> Examining the Plaintiff's six (6) page complaint as a whole, the Court comes to the conclusion that his claim is frivolous with it having been made primarily to harass the Defendant and lacks an arguable basis either in law or fact. Despite his claim to the contrary, the Court does not find any basis for a negligence claim under the Indiana and Federal Tort Claims Acts recognizable in this Court. This Court has no authority to order the Star of David removed from the U.S. Supreme Court. As such, the action should be dismissed.

(*Id*. at 22.)

On March 30, 2009, Smith filed a "Motion to Reconsider Dismissal."[2] (*Id*. at 23.) The trial court denied that motion, and Smith appeals.

DISCUSSION AND DECISION

We review a ruling on a motion to correct error for abuse of discretion. *Zaremba v. Nevarez*, 898 N.E.2d 459, 463 (Ind. Ct. App. 2008). "An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances before the court, including any reasonable inferences therefrom." *Id*.

In his brief, Smith concedes he has not stated a claim on which relief can be granted under the Indiana Tort Claims Act. (Appellant's Br. at 7 n.1.) Smith further concedes:

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(2) lacks an arguable basis either in:
(A) law; or
(B) fact.

[2] Smith devotes part of his brief to a discussion of whether he should have filed a motion to reconsider pursuant to Ind. Trial Rule 53.4 or a motion for relief from judgment pursuant to T.R. 60(B). We note the proper motion would be a motion to correct error pursuant to T.R. 59, because it was made within thirty days after entry of an appealable final order. *See Hubbard v. Hubbard*, 690 N.E.2d 1219, 1221 (Ind. Ct. App. 1998) (motion to reconsider may be made prior to entry of final judgment; after final judgment, a party may file a motion to correct error). Accordingly, we will treat his motion as a motion to correct error. *See id*. (although appellee improperly designated her motion as a motion to reconsider, we treated it as a motion to correct error and considered whether it was proper under T.R. 59).

> After doing research, I do agree with the trial court that Roberts could not be liable under the Federal Tort Claims Act, because the FTCA prohibits suing individuals. Mars v. Hanberry, 752 F.2d 254, 255 (6th Cir. 1985). Moreover, you cannot get an injunction under the FTCA. Moon v. Takisaki, 501 F.2d 389, 390 (9th Cir. 1974).

(*Id*. at 8-9.)

It is not clear what aspect of his claim Smith believes still stands after these concessions. Assuming *arguendo* he has stated an otherwise valid claim alleging a violation of the Establishment Clause, he cites no authority that Indiana courts can grant him relief against the Supreme Court of the United States. He argues that state courts have jurisdiction to hear cases involving federal questions, which certainly is true. *See, e.g., Green v. Hendrickson Publishers, Inc.*, 770 N.E.2d 784, 790 (Ind. 2002). However, that does not mean Indiana courts can grant him effective relief against the Supreme Court of the United States, which is the ultimate authority on federal questions. Therefore, the trial court did not abuse its discretion by denying Smith's motion to correct error.

Affirmed.

BAKER, C.J., and BARNES, J., concur.