IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

QUINCY CORNELL, Plaintiff v. HON. EILEEN O'NEILL BURKE, in her individual capacity; SERGEANT MICHAEL J. SCHASSBURGER, in his individual and official capacities; and CORRECTIONAL OFFICER MALONE, in his individual and official capacities, Defendants	)	Case No. 1:13-cv-04833 JUDGE CHARLES P. KOCORAS

DEFENDANT COOK COUNTY CIRCUIT COURT JUDGE EILEEN O'NEILL BURKE'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND INCORPORATED BRIEF IN SUPPORT THEREOF

Defendant COOK COUNTY CIRCUIT COURT JUDGE EILEEN O'NEILL BURKE, by and through her counsel, LISA MADIGAN, the Attorney General for the State of Illinois, submits the following motion to dismiss and incorporated brief in support thereof, pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6).

INTRODUCTION

Plaintiff has sued Cook County Circuit Court Judge Eileen O'Neill Burke, in her individual capacity, for money damages. *Plaintiff's Complaint* ["*Complaint*"] at paragraph 4. The complaint consists of five separate claims against Judge Burke: (1) unreasonable seizure pursuant to U.S. CONST. amend IV, (2) violation of right to be heard and due process pursuant to U.S. CONST. amends. I and XIV, (3) negligence, (4) false imprisonment, and (5) intentional infliction of emotional distress. *See Complaint, generally*. All of Plaintiff's claims against

Judge Burke arise from his being held in contempt on November 1, 2011. *Complaint*, at paragraphs 4, 7-9.

FACTS

On August 30, 2011, JP Morgan Chase Bank obtained judgment for possession of a 2007 Nissan Altima. *See Judgment in Detinue issued August 30, 2011*, attached as Exhibit A; *see Henson v. CSC Credit Services*, 29 F.3d 280, 284 (7th Cir. 1994) (court may take judicial notice of matters of public record on a motion to dismiss); *Offutt v. Kaplan*, 884 F.Supp. 1179 (N.D. Ill. 1995) (court may consider court orders in underlying proceeding on a motion to dismiss). Judge Burke ordered Quincy Cornell to deliver possession of the vehicle immediately. *Ibid*. As set forth in the Court Order dated November 1, 2011, Plaintiff was held in contempt for failure to comply with the August 30, 2011 judgment order. *See Order dated November 1, 2011*, attached as Exhibit B. The Nissan Altima was repossessed and Mr. Cornell was ordered released. *See Order dated November 8, 2011*, attached as Exhibit C. As set forth in his complaint, "Defendant Eileen O'Neill Burke…is a residential Judicial Subcircuit No. 10 Judge for the County of Cook in the state of Illinois and, as such, was at all time relevant to this action, acting while an employed, compensated, enriched, and rewarded employee for the County of Cook, a political subdivision organized and existing under the laws of the state of Illinois." *Complaint* at paragraph 4.

ARGUMENT

I. PLAINTIFF'S CLAIMS AGAINST JUDGE BURKE ARE BARRED BY ABSOLUTE JUDICIAL IMMUNITY.

As a general rule, judges are immune from monetary damages claims. Believed to originate from medieval times, judicial immunity was the settled doctrine of English courts and has been continued here as well. *Forrester v. White*, 484 U.S. 219, 225 (1988). It applies to any

suit for money damages, including any claim made under 42 U.S.C. § 1983. *Pierson v. Ray*, 386 U.S. 547, 554 (1967). The United States Supreme Court first articulated the current doctrine in *Bradley v. Fisher*, 80 U.S. 335 (1872). In reaffirming this common law doctrine, the *Bradley* Court identified five considerations in support of absolute judicial immunity:

1. A judge must be free to make decisions without fear of personal consequences.
2. Because litigation necessarily involves controversy and competing interests, losing parties may be quick to ascribe malevolent motives to a judge.
3. A qualified "good faith" immunity would be virtually worthless because of the ease of alleging bad faith.
4. The prospect of defending civil damage actions would force judges to employ otherwise unnecessary meticulous recordkeeping and would render judges less inclined to rule forthrightly.
5. Other safeguards, such as appeal and impeachment reduce the need for private rights of action for damages against judges.

Eades v. Sterlinske, 810 F.2d 723, 725 (7th Cir. 1987) *citing Bradley*, 80 U.S. at 347-354. "[T]he nature of the adjudicative function requires a judge frequently to disappoint some of the most intense and ungovernable desires that people can have." *Forrester v. White*, 484 U.S. 219, 226 (1988); *see also Stump v. Sparkman*, 435 U.S. 349, 364 (1978) *citing Bradley*, 80 U.S. at 348. If judges were personally liable for erroneous decisions, the resulting avalanche of suits, most of them frivolous but vexatious, would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits. The resulting timidity would be hard to detect or control, and it would manifestly detract from independent and impartial adjudication. *Id*. at 226-227.

In *Stump*, the Supreme Court established a two-part test for determining the applicability of judicial immunity: first, the acts must be within the judge's jurisdiction and second, these acts must be performed in the judge's judicial capacity. *Stump*, 435 U.S. at 356. As to the first

requirement, a judge is not "deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'" *Id*. at 356-357 *quoting Bradley* 80 U.S. at 351. There is an important distinction between excess of jurisdiction and "clear absence of all jurisdiction over the subject matter." "[W]here jurisdiction over the subject-matter is invested by law in the judge, or in the court which he holds, the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other questions involved in the case, although upon the correctness of his determination in these particulars the validity of his judgments may depend." *Bradley*, 80 U.S. at 352. To illustrate the difference, the *Bradley* Court gave the following examples: "if a probate judge, with jurisdiction over only wills and estates, should try a criminal case, he would be acting in the clear absence of jurisdiction and would not be immune from liability for his action; on the other hand, if a judge of a criminal court should convict a defendant of a nonexistent crime, he would merely be acting in excess of his jurisdiction and would be immune." *Id*.

As to the second requirement of the two-part *Stump* test, "[t]he factors which determine whether an act by a judge is a judicial one relate to whether the act is normally performed by a judge and whether the parties dealt with the judge in his or her judicial capacity." *John v. Barron*, 897 F.2d 1387, 1392 (7th Cir. 1990) *citing Stump*, 435 U.S. at 362. It is not proper to scrutinize the particular act in question since any mistake of a judge in excess of his authority would become a "nonjudicial" act, as an improper or erroneous act would not be normally performed by a judge. *Mireles v. Waco*, 502 U.S. 9, 12 (1991). The relevant inquiry is the nature and function of the act, not the act itself. *Id*. at13. "In other words, we look to the particular act's relation to a general function normally performed by a judge…." *Id*. "Courts

have considered the following factors in determining whether an act is judicial: (1) whether the act or decision involves the exercise of discretion or judgment, or is rather a ministerial act which might as well have been committed to a private person as a judge; (2) whether the act is normally performed by a judge; and (3) the expectations of the parties, *i.e.*, whether the parties dealt with the judge as a judge. *Lowe v. Letsinger*, 772 F2d. 308, 312 (7th Cir. 1985) (internal citations omitted).

Judicial immunity is immunity from suit altogether, not merely a defense to liability. *Dellenbach v. Letsinger*, 889 F.2d 755, 758 (1989) *quoting Mitchell v. Forsyth*, 472 U.S. 511, 525-526 (1985) ("Absolute immunity, like qualified immunity, has the important attribute of "'its possessor's entitlement not to have to answer for his conduct in a civil damages action.'"). As a result, issues of immunity should be addressed at the earliest possible stage of the litigation and should be decided by the court long before trial. *Hunter v. Bryant*, 502 U.S. 224, 227 (1991). Further, a denial of judicial immunity is an order appealable before final judgment. *Mitchell*, 472 U.S. at 525.

A. AS CIRCUIT COURT JUDGE BURKE HAD SUBJECT-MATTER JURISDICTION OVER THE UNDERLYING PROCEEDINGS, SHE HAD JURISDICTION TO HOLD QUINCY CORNELL IN CONTEMPT FOR FAILURE OR REFUSAL TO COMPLY WITH HER ORDERS.

In general, civil contempt is a sanction or penalty designed to compel future compliance with a court order. *Felzak v. Hruby*, 226 Ill.2d 382, 391 (2007) *citing People v. Warren*, 173 Ill.2d 348, 368 (1996). "Vital to the administration of justice is the inherent power of courts to compel compliance with their orders." *Sanders v. Shephard*, 163 Ill.2d 534 (1994) *citing Shillitani v. United States*, 384 U.S. 364, 370 (1966). The power to punish an offender for contempt of court is inherent in the circuit court; *People v. Whitlow*, 357 Ill. 34, 37 (1934); *People v. Boyt*, 129 Ill.App.3d 1, 6 (3rd Dist. 1999); and is vital to the administration of justice.

Sanders v. Shephard, 163 Ill.2d 534, 540 (1994); *People v. Simac*, 161 Ill.2d 297, 305 (1994). Because it is inherent, the power to punish for contempt does not depend on constitutional or legislative grant. *Boyt*, 129 Ill.App.3d at 6.

In *Berg v. Cwiklinski*, 416 F.2d 929 (1969), the plaintiff sued the municipal court judge who held him in contempt and ordered him held in custody. *Id*. at 930. The plaintiff appeared on a traffic violation and the arresting officer failed to appear. The judge ordered him to answer questions by the prosecuting attorney, in violation of the plaintiff's Fifth Amendment right against self-incrimination. When the plaintiff refused, the judge held him in contempt and ordered him arrested and held in custody until the arresting officer arrived. The plaintiff was then convicted at trial. However, he appealed and the Illinois Court of Appeals held that the conviction was void. *Id*. at 930. The Seventh Circuit held that the defendant judge had subject matter jurisdiction over the traffic violation case and therefore had a general power to hold a defendant in contempt. *Id*. at 931. Further, the Court stated, "however erroneous Judge Cwiklinski may have been in thinking that he had the power to order Berg to answer under threat of contempt, and hold him in contempt, he was nevertheless in performance of his judicial duties." *Id*. The *Berg* court ultimately held that judicial immunity barred the plaintiff's claims.

Just as in *Berg*, the plaintiff in this case seeks damages against Judge Burke because she held him in contempt of court. For purposes of this motion to dismiss, the court assumes the truth of Plaintiff's well-pleaded facts. The factual allegations against Judge Burke are as follows:

> 7. On November 1, 2011 Plaintiff Quincy Cornell, entered court room 1401 to resolve the matter regarding JP MORGAN CHASE BANK vs. QUINCY CORNELL. When the clerk called the case, Plaintiff stood in the space between the public gallery and the courtroom Bar and stated his status for the record saying "Good afternoon judge, I'm here today on a special appearance as a Natural Person to resolve the matter of JP

> Morgan Chase Bank vs. QUINCY CORNELL". Judge replied "what? Get out of here!" One of the bailiffs approached Plaintiff and told him to leave the court room.
>
> 8. When the clerk called the case the 2nd time, Plaintiff again stated his status for the record saying "Good afternoon judge, I'm here today on a special appearance as a Natural Person to resolve the matter regarding JP Morgan Chase Bank vs. QUINCY CORNELL". Judge yelled "Approach the bench or I will have you arrested! I'm warning you!" Plaintiff replied "I conditionally accept your offer to grant and convey a security interest in my property upon presentation of an original genuine charging accusatory instrument for my inspection" [sic] Judge replied "you're in contempt".
>
> 9. The bailiffs then handcuffed Plaintiff and forcefully removed him from the court room. While being removed, Plaintiff asked [sic] Judge to see a lawful warrant granting the reasonable seizure of Plaintiff and his property. Plaintiff was not provided with any lawful warrant.

Complaint. The underlying matter identified by the Plaintiff, JP Morgan Chase bank, N.S. v. Quincy Cornell, (Case No. 11-M1-500768), was a "detinue" action for the possession of collateral. *See* Exhibit A. As set forth in the attached court orders, Judge Burke ordered Quincy Cornell to return possession of the collateral immediately and then held him in contempt for failure or refusal to do so. *See* Exhibits A and B.

Pursuant to the Illinois Constitution, "Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office." ILL. CONST. art. VI, § 9. Pursuant to this provision, circuit courts "may adjudicate any justiciable matter coming to them according to the course of common law, as well as any matter over which they are specifically given jurisdiction by statute." *People v. Byrnes*, 34 Ill.App.3d 983, 986 (2nd Dist. 1975). *Detinue* is a common law action for recovery of a chattel or its value, if the chattel cannot be had. *Mineika v. Union Nat. Bank of Chicago*, 30 Ill.App.3d 277, 283 (1st Dist. 1975). Being an action in *detinue*, Judge Burke had subject-

matter jurisdiction over the matter and therefore had jurisdiction to hold Plaintiff in contempt of court for failing to comply with her orders.

B. BECAUSE HOLDING A PERSON IN CONTEMPT OF COURT FOR FAILURE TO COMPLY WITH COURT ORDERS IS A FUNCTION NORMALLY PERFORMED BY A JUDGE, IT WAS THUS PERFORMED IN JUDGE BURKE'S JUDICIAL CAPACITY.

Applying the three factors set forth in *Lowe v. Letsinger*, *supra*, there is simply no question that holding Quincy Cornell in contempt and ordering his arrest was a "judicial function." First, the act or decision at issue in this case involves the exercise of discretion or judgment, rather than a ministerial act which might as well have been committed to a private person as to a judge. *Lowe*, 772 F.2d at 312. Plaintiff complains that Judge Burke held him in contempt for failure to comply with her orders, *i.e.*, failure to hand over possession of collateral and/or refusal to approach the bench. Using her inherent contempt power to compel compliance with her orders is not a ministerial act like typing a document or sending a notice. *See, e.g.*, *Lowe*, 772 F.2d at 313. Second, although federal law may allow contempt charges to be initiated by indictment, *See U.S. v. Williams*, 622 F.2d 830, 838 (5th Cir. 1980); FED. R. OF CRIM. PROC. 42; contempt is unquestionably an act normally performed by a judge. As to the third requirement, it is patently clear from statements in the complaint that Plaintiff was dealing with Judge Burke as a judge. *See Complaint* at paragraphs 7-9.

In *Mireles v. Waco*, *supra*, the plaintiff was an attorney who failed to appear for the initial call of the judge's morning calendar. The defendant judge ordered police officers to "forcibly and with excessive force seize and bring plaintiff into his courtroom." *Id*. at 10. The police officers seized the plaintiff from another courtroom, where he was waiting to appear on a different matter. They "cursed him and called him 'vulgar and offensive names,' then 'without necessity slammed' him through the doors and swinging gates into [the judge's] courtroom." *Id*. Even though "a judge's direction to police officers to carry out a judicial order with excessive

force is not a 'function normally performed by a judge,'" the United States Supreme Court still held that the judge was acting in his "judicial capacity" for purposes of judicial immunity. *Id*. at 12. "But if only the particular act in question were to be scrutinized, then any mistake of a judge in excess of his authority would become a "nonjudicial" act, because an improper or erroneous act cannot be said to be normally performed by a judge. If judicial immunity means anything, it means that a judge 'will not be deprived of immunity because the action he took was in error ... or was in excess of his authority.'" *Id*. at 12-13. Even assuming *arguendo* that holding Quincy Cornell in contempt and having him arrested was in error, it was still performed in Judge Burke's judicial capacity, and judicial immunity bars Plaintiff's claims.

II. THIS COURT LACKS SUBJECT-MATTER JURISDICTION UNDER THE *ROOKER-FELDMAN* DOCTRINE.

The *Rooker-Feldman* Doctrine, derived from the United States Supreme Court decisions in *Rooker v. Fidelity Trust Co*., 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), stands for the principle that federal district courts do not have the appellate jurisdiction to reverse or modify state court judgments. *Ritter v. Ross*, 992 F.2d 750, 753 (1993). If the injury alleged resulted from the state court judgment itself, *Rooker–Feldman* directs that the lower federal courts lack jurisdiction. *Garry v. Geils*, 82 F.3d 1362, 1365 (7th Cir. 1996). Even if the claimed injury is not a direct result of the state court judgment, the *Rooker-Feldman* Doctrine would still bar the claim if it is "inextricably intertwined" with the state court decision. *Epps v. Creditnet Inc.*, 320 F.3d 756, 759 (7th Cir. 2003). An injury is inextricably intertwined when the federal court is being called upon to review the state court decision. *Edwards v. Illinois Bd. of Admissions to the Bar*, 261 F.3d 723 (7th Cir. 2001). Furthermore, a plaintiff cannot avoid the *Rooker-Feldman* Doctrine by simply casting his complaint as a civil rights action. *Ritter*, 992 F.2d at 754. The doctrine applies even when the

plaintiff seeks only damages, rather than actual reversal of state-court orders. *Garry*, 82 F.3d at 1370.

All of Plaintiff's damages arise from the fact that he was arrested and held for contempt of court. *See Complaint, generally*. As a result, all of the Plaintiff's claims necessarily rely on the single argument that Judge Burke's order of contempt was erroneous. *Complaint* at paragraphs 7-9, 16, 20. By way of illustration, assuming that the order of contempt was valid and proper, Plaintiff would have no claim for damages against Judge Burke. This is precisely the type of claim that is barred by the *Rooker-Feldman* Doctrine. As a result, this court is without jurisdiction to hear Plaintiff's claims.

CONCLUSION

For the foregoing reasons, Defendant Judge Eileen O'Neill Burke respectfully requests this Court to dismiss the claims against her, with prejudice, and for such other and further relief as the Court deems proper.

LISA MADIGAN
Attorney General of Illinois

Respectfully submitted,

/s/ *Thor Y. Inouye*

Thor Y. Inouye
Assistant Attorney General
Office of the Illinois Attorney General
100 West Randolph Street, 13th Floor
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(312) 814-4450

CERTIFICATE OF SERVICE

I, Thor Y. Inouye, hereby certify that I have caused true and correct copies of the above and foregoing Motion to Dismiss to be sent via e-filing to all counsel of record on August 19, 2013, in accordance with the rules on electronic filing of documents and via U.S. Mail to any pro se parties.

/s/ *Thor Y. Inouye*
Thor Y. Inouye
Assistant Attorney General

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
FIRST DISTRICT / MUNICIPAL DIVISION

JP Morgan Chase Bank, N.A.,	)	
	)	
	)	
Plaintiff,	)	
vs.	)	Case No. 11 M1 500768
	)	
Quincy Cornell,	)	
	)	
	)	
Defendant(s).	)	

JUDGMENT IN DETINUE

THIS MATTER COMING on for hearing on the Complaint in Detinue of the Plaintiff, JP Morgan Chase Bank, N.A., Plaintiff appearing by its attorney, Darren L. Besic, the Defendant(s), Quincy Cornell, having been duly served with process in this action and the Court having jurisdiction over the parties and the subject matter and being otherwise fully advised, does hereby find:

1. Due notice has been given the Defendant(s), Quincy Cornell, of this hearing.
2. The Defendant(s), Quincy Cornell, has/have failed to appear and/or answer and is/are in default.
3. The Plaintiff, JP Morgan Chase Bank, N.A., has established a right to possession of the disputed property;

IT IS HEREBY ORDERED:

1. Judgment is entered on Count I in favor of Plaintiff, JP Morgan Chase Bank, N.A., and against Defendant(s), Quincy Cornell, for possession of the collateral described as 2007 Nissan Altima 4 Door Sedan, VIN#:1N4AL21EX7N411653 (herein, with all present and future attachments, accessories, replacement parts, repairs, additions, and all proceeds thereof, referred to as "Collateral"); and

2. Defendant(s), Quincy Cornell, is/are ordered to return possession of the described Collateral, to Plaintiff, JP Morgan Chase Bank, N.A., immediately; and

3. If the Defendant(s), Quincy Cornell, fail(s) to return the Collateral as ordered above, Plaintiff, JP Morgan Chase Bank, N.A., shall recover from the Defendant(s) the sum of $15,350.00, the value of the Collateral, or that portion of the Collateral not returned, and $750.00 as damages for wrongful detention, plus court costs and statutory interest; and

4. There is no just reason for delaying enforcement or appeal of this judgment order and execution may issue forthwith; and

5. This matter shall be set for prove-up hearing as to Count II (Breach of Contract) on September 27, 2011, at 2:00 p.m. in Room 1401.

DATE:_____

ENTER:

_____
JUDGE

Judge Eileen O'Neill Burke
AUG 30 2011
Circuit Court 1996

Darren L. Besic
Attorney for Plaintiff
5 East Wilson Street
Batavia, IL 60510
(630) 406-8555
Attorney No. 30103

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Order (2/24/05) CCG 0002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

4210
4348
8217

JP Morgan Chase Bank, N.A.

v.

Quincy Cornell

No. 11 M1 600768

ORDER

Dependant is found to be in contempt of Court for failure to comply with judgment order of Aug. 30th, 2011. Dependant can purge contempt by returning 2007 Nissan Altima 4 door Sedan VIN# 1N4AL21E07N 411653 Cause continued to Nov. 8th

Atty. No.:

Name:

Atty. for:

Address:

City/State/Zip:

Telephone:

ENTERED: 2011, 2:00 P.

Dated: Judge Eileen O'Neill Burke NOV 01 2011

Judge

Circuit Court 1996 Judge's No.

Dependant is hereby remanded to the Custody of the Cook County Sheriff

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

noc

Order **(2/24/05) CCG 0002**

9413
4733
4448

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

J.P. Morgan Chase Bank NA

v.

Quincy Connell

No. 11 M1 500768

ORDER

This matter coming before the Court for status on Courts Order of Contempt entered Nov 1, 2011, Plaintiff having repossessed the 2007 Nissan Altima, the Court having found the contempt purged IT IS ORDERED

1) Rule to Show Cause is discharged and writ quashed.
2) Cook County Sheriff is ordered to release Defendant Quincy Connell from custody as to this case only.

Atty. No.:

Name: Darren L Besic #30103

Atty. for: Plaintiff

Address: 5 E Wilson St.

City/State/Zip: Batavia IL 60510

Telephone: (630) 406-8555

ENTERED: Judge Patrick J. Sherlock
NOV - 8 2011
Circuit Court-1942

Dated: 11/8/2011

Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS