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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Joseph Martin McGhee, et al.,

10 Plaintiffs,

11 vs.

12 Judge Elaine Fridlund-Horne, et al.,

13 Defendants.

No. CV17-8152-PCT-DGC

ORDER

14
15 Plaintiff Joseph McGhee has filed a motion to restrain Defendant Fridlund-Horne
16 from issuing certain legal rulings next week in a domestic relations case pending in
17 Coconino County Superior Court. Doc. 2. The motion will be denied.

18 To obtain preliminary injunctive relief such as a TRO, a plaintiff must show that
19 he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the
20 absence of relief, that the balance of equities tips in his favor, and that injunctive relief is
21 in the public interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008). The
22 test includes a sliding scale. If the plaintiff shows that the balance of hardships will tip
23 sharply in his favor, he need not make a strong showing of likelihood of success on the
24 merits – the existence of serious questions will suffice. *Alliance for Wild Rockies v.*
25 *Cottrell*, 622 F.3d 1045, 1049-53 (9th Cir. 2010).

26 Plaintiff has not shown that he is likely to succeed on the merits, and he has not
27 raised serious questions. Plaintiff's claims arise out of a state court case apparently
28 concerning custody and other rights with respect to Plaintiff's son. Plaintiff brings a

1 claim under 42 U.S.C. § 1983, alleging that Judge Fridlund-Horne has ignored motions
2 brought by Plaintiff, violated rules of evidence, denied Plaintiff the right to cross-
3 examine witnesses, and exhibited unfair and prejudicial conduct in the state court case.
4 Doc. 2 at 2.

5 Judges acting in their judicial capacity are protected from civil lawsuits by
6 absolute immunity under both federal and Arizona law. *See Mireles v. Waco*, 502 U.S. 9,
7 11 (1991); *Acevedo v. Pima Cnty. Adult Prob. Dep't*, 690 P.2d 38, 40 (Ariz. 1984).
8 “[Judicial] immunity is overcome in only two sets of circumstances. First, a judge is not
9 immune from liability for nonjudicial actions, *i.e.*, actions not taken in the judge’s
10 judicial capacity.” *Mireles*, 502 U.S. at 11. “Second, a judge is not immune for actions,
11 though judicial in nature, taken in the complete absence of all jurisdiction.” *Id.* at 12.
12 “[J]udicial immunity is not overcome by allegations of bad faith or malice, the existence
13 of which ordinarily cannot be resolved without engaging in discovery and eventual trial.”
14 *Id.* at 11 (citing *Pierson v. Ray*, 386 U.S. 547, 554 (1967)).

15 The actions at issue in this case clearly are judicial actions taken in Defendant
16 Fridlund-Horne’s judicial capacity, and Plaintiff makes no claim that the judge is acting
17 in the complete absence of all jurisdiction. Because Plaintiff’s claims are barred by
18 judicial immunity, he is not likely to succeed on the merits and has not raised serious
19 questions. The Court therefore will deny his motion for a temporary restraining order.

20 **IT IS ORDERED** that Plaintiff’s motion (Doc. 2) is **denied**.

21 Dated this 28th day of July, 2017.

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25 David G. Campbell
26 United States District Judge
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