

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

EDGAR T. NUMRICH,
Plaintiff,

3:15-CV-00183-JE
OPINION AND ORDER

v.

STATE OF OREGON,
Defendant.

EDGAR T. NUMRICH
P.O. Box 1381
Lake Oswego, OR 97035-0539
(503) 635-2599

Plaintiff, *Pro Se*

ELLEN ROSENBLUM
Attorney General
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Attorneys for Defendant

BROWN, Judge.

This matter comes before the Court on the Ninth Circuit's Referral Notice, Case No. 15-35759, referring Plaintiff Edgar T. Numrich's appeal to this Court for the sole purpose of determining whether Plaintiff's *in forma pauperis* status should continue for [his] appeal or whether the appeal is frivolous or taken in bad faith."

The Court concludes Plaintiff's *in forma pauperis* status should not continue for appeal.

DISCUSSION

On June 17, 2015, Magistrate Judge John Jelderks issued Findings and Recommendation in which he recommended the Court grant Defendant State of Oregon's Motion to Dismiss, deny as moot Defendant's Motion for More Definite Statement, and dismiss this matter with prejudice on the ground that Plaintiff's claims are barred by the Eleventh Amendment to the United States Constitution.

On August 31, 2015, the Court issued an Order adopting the Findings and Recommendation, granting Defendant's Motion to Dismiss, denying as moot Defendant's Motion for More Definite Statement, and dismissing this matter with prejudice. On August 31, 2015, the Court also issued a Judgment dismissing this matter with prejudice.

On September 28, 2015, Plaintiff filed a Notice of Appeal to the Ninth Circuit.

On September 30, 2015, the Ninth Circuit, as noted, referred Plaintiff's appeal to this Court for the sole purpose of determining whether Plaintiff's "*in forma pauperis* status should continue for [his] appeal or whether the appeal is frivolous or taken in bad faith."

In the June 17, 2015, Finding and Recommendation the Magistrate Judge found Plaintiff's claims were barred by the Eleventh Amendment. Absent waiver or consent by the State the Eleventh Amendment bars suits in federal court against the State or its agencies. *Pennhurst v. Halderman*, 465 U.S. 89, 100-101 (1984). Plaintiff did not establish the State of Oregon either waived or consented to be sued in this matter. In addition, the Supreme Court has held a State is not a "person" subject to suit under 42 U.S.C. §1983. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 67 (1989). Accordingly, Plaintiff's claims are barred by the Eleventh Amendment.

CONCLUSION

For these reasons, the Court concludes Plaintiff's appeal of the Court's August 31, 2015, Order and Judgment is frivolous, and, therefore, Plaintiff's *in forma pauperis* status should not

continue for Plaintiff's appeal.

IT IS SO ORDERED.

DATED this 7th day of October, 2015.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge