

CAUSE NO. 2012-24410

NEWSOME, EDWARD R (#437698),	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff(s),</i>	§	
vs.	§	HARRIS COUNTY, TEXAS
MEWIS, WILLIAM PAUL	§	
(ATTORNEY),	§	151st JUDICIAL DISTRICT
<i>Defendant(s).</i>	§	

ORDER ON VEXATIOUS LITIGANT

On November 30, 2016, this Court issued a show cause order directing the pro se Plaintiff, Edward Roy Newsom, to

- (1) file pleadings and evidence in the above case showing the Court that his claims are not malicious, frivolous, without basis in law or fact, or brought for purposes of harassment;
- (2) show cause why his cause of action against William Paul Mewis in trial court cause number 2012-24410 should not be dismissed; and
- (3) show cause why the Court should not adjudicate him to be a vexatious litigant.

The Court Ordered Mr. Newsome to file his responses on or before January 6, 2017. On December 22, 2016, Mr. Newsome filed “an “Amended Motion for Leave to file Motion for Order Determining Plaintiff a Vexatious Litigant and Requesting Security of Inability to Play Clerk and Court Fees to Show Cause.” This document primarily reiterates his allegations of civil rights violations, cruel and unusual punishment, and claims of conspiracy arising from his conviction of unauthorized use of a motor vehicle from his petition. On January 23, 2017, he filed an “Amended Motion to File Writ of Mandamus” against the Harris County District Clerk for not performing his ministerial duty of accepting and filing Mr. Newsome’s habeas corpus in a criminal case.

BACKGROUND

In 1989, Edward R. Newsome was convicted of unauthorized use of a motor vehicle and was sentenced to thirty-nine years in the Texas Department of Criminal Justice – Institutional Division (TDJC). The Fourteenth Court of appeals affirmed his conviction in 1988, and the Texas Court of Criminal appeals refused his petition for discretionary review. *See Newsome v.*

State, No. C14-87-00048-CR, 1988 WL 26430 (Tex. App. – Houston [14th Dist.] 1988, pet. ref'd)(not designated for publication).

It appears from Mr. Newsome's *pro se in forma pauperis* petition that he filed suit against his former attorney, William Paul Mewis, alleging malpractice, and other claims related to his legal representation in the above referenced criminal action. On September 19, 2012, the Court sent a notice to all parties that the case was eligible for dismissal for want of prosecution on October 29, 2012, because no service/answer had been filed. Finding that Mr. Newsome's response to the Court's notice "does not indicate any reason why the matter should be retained on the Court's docket." The Court also found that "no service of process has been attempted," "no fees have been paid," and that "the lawsuit itself is a meaningless mishmash of legal jargon with nothing actually pled as a cause of action." Accordingly, on November 16, 2012, this Court signed a final "Order Denying Motion to Retain and Order of Dismissal" in this case. *See* TEX. CIV. PRAC. & REM. CODE § 14.003

Rather than timely filing a timely appeal of the trial court's judgment, Mr. Newsome has, since 2012, filed six original proceedings in the Fourteenth Court of Appeals. The appellate court has denied all of these petitions.¹ On January 8, 2016, the Texas Supreme Court denied his petition for writ of mandamus. In summary, since 2012, Mr. Newsome has, in this case alone, commenced at eight litigations that have all been finally determined against him.

NEWSOME V. WALGREENS

A review of the Harris County District Clerk's files indicates that Mr. Newsome is also attempting to relitigate other final judgments that were decided against him. For example, in *Newsome v. Walgreens Drug Store*, trial court cause number 1995-025994, the 189th District Court entered a final judgment against Mr. Newsome on November 7, 1996. Mr. Newsome did not file his notice of appeal in that case until February 22, 2007, and the appellate court dismissed his appeal on October 16, 2008. Mr. Newsome then filed a *pro se* petition for writ of mandamus in the Walgreen's case, which the First Court of Appeals denied on December 9,

¹ On December 3, 2012, Mr. Newsome simultaneously filed petitions for writs of prohibition and mandamus. The appellate court denied those petitions in *In Re Edward R. Newsome*, appellate court numbers 14-12-01083-CV and 14-12-01084-CV, dated December 11, 2012. On February 4, 201, the Fourteen Court of Appeals denied Mr. Newsome's second petition for mandamus relief arising from this case in 14-14-00119-CV. On September 2, 2015, the court of appeals also denied his petition for mandamus in 14-15-00738-CV. On April 14, 2016, the appellate court denied his fourth petition for writ of mandamus in 14-16-00316-CV on April 14, 2016. Finally, the appellate court denied Mr. Newsome's October 5, 2016 petition for a writ of habeas corpus, appellate cause number 14-16-00794-CV in an opinion issued on October 13, 2016.

2010. Not one to be deterred, Mr. Newsome filed a second and third petition for writ of mandamus in the Walgreens case, which the appellate court denied on February 11, 2014 and May 12, 2015. Mr. Newsome then attempted to file a petition for writ of mandamus with the Texas Supreme Court, which was denied on January 8, 2016. On May 24, 2016, the First Court of Appeals issued yet another opinion denying Mr. Newsome's fourth petition for writ of mandamus against the trial court. Within the last five years, Mr. Newsome has initiated five original proceedings on judgment that has been final since November 15, 2005, the date the appellate court issued mandate.

NEWSOME V. ST. LUKES

Furthermore, Edward R. Newsome has also repeatedly attempted to relitigate the final judgment in trial court cause number 2005-06163, styled *Edward Roy Newsome v. St. Lukes Hospital*, which the trial court dismissed for want of prosecution on September 14, 2005. He responded to the dismissal of the case with an "application for writ of habeas corpus" which also purported to be a motion for leave to file an out of time appeal.² On May 31, 2007, the Fourteenth Court of Appeals issued an opinion in *Newsome v. St. Luke's*, appellate cause number 14-06-01149-CV, dismissing Mr. Newsome's attempted appeal because his notice of appeal was untimely. Mandate issued on October 9, 2007, and the judgment in 2005-06163 was made final for all purposes. On April 16, 2008, Mr. Newsome responded by filing what appears to be a petition for writ of mandamus, *In re. Newsome*, appellate cause number 14-08-00411-CV. The appellate court dismissed the case for want of jurisdiction on June 5, 2008. On September 24, 2008, Mr. Newsome "filed paperwork" which the Fourteenth Court of Appeals "construe[d] as a petition for a writ of habeas corpus." On November 20, 2008, the appellate court dismissed the case, appellate cause number 14-08-00883-CV, for want of jurisdiction. Mr. Newsome then filed appellate cause number 14-10-01139-CV, a petition for mandamus / writ of prohibition, on November 22, 2010. Noting that Mr. Newsom "appears to be seeking to further litigate" "a final judgment in a civil suit that was [previously] appealed to this court," the appellate court denied his petition on December 2, 2010. Turning to the Texas Supreme Court for the first time, Mr. Newsome filed a petition of mandamus complaining of the appellate court's judgment in 14-10-01139-CV. The Supreme Court denied his petition on January 28, 2011 in cause number 11-

² Mr. Newsome asked permission to file an "out of time appeal" under a section of the Code of Criminal Procedure that allows the State of Texas to file an appeal in criminal cases. See TEX. CODE OF CRIM. PRO. Art. 44.01(a)(1). This authority does not support Mr. Newsome's request to appeal a judgment in a civil matter.

0042. Undeterred, Mr. Newsome would file two more petitions for writ of mandamus with the Texas Supreme Court in which he complained about the appellate court's judgments denying him relief in yet another attempted appeal of the trial court's original September 14, 2005 judgment in *Newsome v. St. Lukes*, 14-06-01149-CV and in *In re Newsome*, 14-12-01110-CV, another petition for writ of mandamus. After reviewing the appellate court's decisions, the Texas Supreme Court again denied Mr. Newsome relief in cause number 13-0203 and 15-0950.

In 2016, Mr. Newsome filed two more original proceedings with the appellate court complaining of the trial court's judgment in 2005-06163 – a petition for writ of mandamus, styled *In re Newsome*, appellate cause number 14-16-00320-CV, and a petition for writ of habeas corpus, styled *In re Newsome*, appellate cause number 14-16-00793-CV. The court of appeals denied him relief in both cause numbers.³ Within the last seven years, Mr. Newsome has unsuccessfully attempted to relitigate the trial court's 2005 final judgment by filing no less than eight separate pieces of litigation.

FEDERAL COURT LITIGATION

A review of the Federal PACER database indicates that Mr. Newsome has also been a “frequent litigant” in the federal courts.⁴ One of his 2004 cases was filed in the United States District Court for the Southern District of Texas – Houston Division as *Newsome v. Sutter*, Civil Action No. H-04-3596. In that case, the trial court made a finding that “Newsome has a history of filing frivolous and malicious civil complaints while he has been incarcerated” In an order dismissing Mr. Newsome's federal suit, U.S. District Court Judge Sim Lake also ordered that “Newsome is BARRED from filing any civil rights suit in this district [the Southern District of Texas].” (emphasis in the original). A federal preclusion order is the equivalent of an order by a state court finding a pro se litigant to be vexatious.

As illustrated above, since Edward Roy Newsome has been incarcerated in TDCJ, he has repeatedly filed frivolous and malicious civil complaints which courts have consistently determined have no basis in law or fact.

³ The appellate court denied the petition in 14-16-00320-CV on May 5, 2016, and denied relief in 14-16-00793-CV on October 13, 2016.

⁴ The U. S. Supreme Court denied petitions for certiorari in two cases Mr. Newsome filed against the Director of the Texas Department of Criminal Justice, Correctional Institutions Division. *See Newsome v. Stephens*, 132 S.Ct. 158 (2016); *Newsome v. Thaler*, 132 S.Ct. 158 (2011). The court also denied a third petition for certiorari in *Newsome v. NFN Uy*, 132 S. Ct. 211 (2011).

Chapters 11 and 14 of the Civil Practice and Remedies Code provide this Court with the authority to prevent Edward Roy Newsome from continue his abuse of the judicial system from the security of his prison cell.

INMATE LITIGATION

Any inmate who files an affidavit or unsworn declaration of inability to pay costs shall file a separate affidavit or declaration detailing his previous filings accompanied by the certified copy of his trust account statement. *See* TEX. CIV. PRAC. & REM. CODE §§14.004 & 14.00(f). A review of the Clerk’s file in this case indicates that Mr. Newsome has not filed such an affidavit, a declaration, or a certified copy of this trust account.

Furthermore, Chapter 14 of the Texas Civil Practice and Remedies Code allows a court to dismiss a *pro se in forma pauperis* claim filed by an inmate if the Court finds “the action is frivolous or malicious.” TEX. CIV. PRAC. & REM. CODE §14.003(a)(2). In determining whether a claim is frivolous or malicious, the court may consider a variety of factors, including whether (1) the claim's realistic chance of ultimate success is slight; (2) the claim has no arguable basis in law or in fact; (3) it is clear that the party cannot prove facts in support of the claim; or (4) the claim is substantially similar to a previous claim filed by the inmate because the claim arises from the same operative facts. *See* TEX. CIV. PRAC. & REM. CODE §14.003(b).

A review of the Clerk’s file and the procedural history in this case clearly indicates that the claims are substantially similar to previous claims made by Mr. Newsome. Furthermore, the record clearly shows that the claims raised in this case have no realistic chance of ultimate success and that have no arguable basis in law or fact.

The statute also provides that a Court that dismisses a claim brought by an inmate may notify TDCJ of the dismissal.

THE VEXATIOUS LITIGANT STATUTE

Chapter 11 of the Texas Civil Practice and Remedies Code governs suits brought by vexatious litigants. The statute allows a court, on defendant’s motion or *sua sponte*, to designate a party as a vexatious litigant. TEX. CIV. PRAC. REM. CODE § 11.101. A party may be declared a vexatious litigant if there *is no* reasonable probability that he will prevail in litigation *and* the party has a history of filing or repeatedly re-litigating unsuccessful or frivolous suits. TEX. CIV. PRAC. REM. CODE § 11.054. The statute further indicates that the court must also find that

(1) the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in a small claims court that have been:

- (A) finally determined adversely to the plaintiff;
- (B) permitted to remain pending at least two years without having been brought to trial or hearing; or
- (C) determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure;

(2) after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se, either:

- (A) the validity of the determination against the same defendant as to whom the litigation was finally determined; or
- (B) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined; or

(3) the plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence. TEX. CIV. PRAC. & REM. CODE § 11.054

After reviewing the record and all the pleadings in the case, the Court **FINDS:**

- (1) The plaintiff in this case is Edward R. Newsome, an inmate who has filed an affidavit or unsworn declaration of inability to pay costs;
- (2) No hearing is necessary to determine whether Mr. Newsome's claims in this case should be dismissed;
- (3) The November 16, 2012 judgment entered in the instant case, *Newsome v. Mewis*, trial court cause number 2012-24410 is final for all purposes;
- (4) There ***is not*** a reasonable probability that Edward R. Newsome will prevail in this case;
- (5) Mr. Newsome's suit against Mr. Mewis is malicious, frivolous, without basis in law or fact, and has been brought for purposes of harassment;
- (6) As a *pro se* litigant, Edward R. Newsome is re-litigating or is attempting to re-litigate the validity of the November 16, 2012, final judgment in his suit against William P. Mewis;
- (7) Over the past five years, Edward R. Newsome has commenced approximately twenty-one *pro se* actions (excluding actions in small claims court) that have been finally determined against him;

(8) Edward R. Newsome has a history of filing or repeatedly re-litigating unsuccessful or frivolous suits; and

(9) U.S. District Judge Sim Lake entered an order in an unrelated matter in which he declared Edward Roy Newsome to be a vexatious litigant in 2004.

Accordingly, after reviewing the record and considering the motions, the court **FINDS** Edward R. Newsome is a vexatious litigant.

The Court **ORDERS** that Edward R. Newsome is prohibited from filing *in propria persona* any new litigation in Texas without first being granted permission to file by the local administrative judge. Such permission shall be granted only if the litigation appears to have merit and is not filed for purposes of harassment or delay. Such permission may also be conditioned on the furnishing of a security. *See* TEX. CIV. PRAC. & REM. CODE § 11.054.

This Order also gives **EDWARD R. NEWSOM** written notice that he is subject to sanctions or punishment for contempt if he fails to obey this order.

The Court also **ORDERS** the Harris County District Clerk to send a certified copy of this Order to the following individuals:

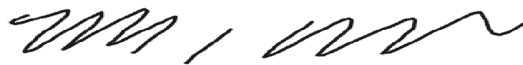
Mr. Bryan Collier
Executive Director, TDCJ
P.O. Box 13084-Capitol Station
Austin, Texas 78711-3084

Mr. David Gutierrez, Chair
Texas Board of Pardons and Paroles
P.O. Box 13401
Austin, TX 78711-3401

The Court also **ORDERS** the Harris County District Clerk to transmit a copy of this Order to
The Office of Court Administration
P.O. Box 12066
Austin, Texas 78711-2066

Finally, as noted above, Edward R. Newsome’s cause of action against William Paul Mewis in this case was dismissed in 2012 and, despite Mr. Newsome’s repeated filings and allegations to the contrary, is final for all purposes. Accordingly, the Court **ORDERS** the District Clerk to **not accept any further filings from Mr. Newsome** in this matter.

Signed February 8, 2017



Hon. MIKE ENGELHART
Judge, 151st District Court



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this February 9, 2017

Certified Document Number: 73770998 Total Pages: 7

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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