

CAUSE NO. 16358

JAMES F. MCKINNON,
Plaintiff,

vs.

JUDGE STEPHEN B. ABLES,
Defendant.

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IN THE DISTRICT COURT

GILLESPIE COUNTY, TEXAS

216th JUDICIAL DISTRICT

ORDER DECLARING JAMES F. MCKINNON A VEXATIOUS LITIGANT

On 10/14/2020, in accordance with TEX. CIV. PRAC. & REM. CODE § 11.053, this Court held a hearing on Defendant Judge Stephen B. Ables' ("Judge Ables") Motion to Declare James F. McKinnon a Vexatious Litigant. Judge Ables' Motion to Declare James F. McKinnon a Vexatious Litigant was filed on or before the 90th day after of the filing of Judge Ables' Answer in this lawsuit, in accordance with TEX. CIV. PRAC. & REM. CODE § 11.051. All parties received proper notice of this hearing, in accordance with TEX. CIV. PRAC. & REM. CODE § 11.053. The Court having reviewed the motion, pleadings, the law, evidence and arguments of all parties, enters the following order:

On July 30, 2020, James F. McKinnon filed this lawsuit, alleging that Judge Ables is responsible for state torts and unspecified violations of the U.S. Constitution. (Petition). James F. McKinnon makes the conclusory assertion that Judge Ables erred when he did not disqualify Probate Judge Polly Jackson in Plaintiff's probate case in 2015 and 2016. (Petition, p. 7, ¶ 2, p. 20, ¶ 25(3), and p. 21, ¶ 26; Petition Exhibits A and B). James F. McKinnon seeks more than \$50 million in damages. (Petition, pp. 42-43).

James F. McKinnon does not allege or produce any evidence to establish a waiver of the sovereign immunity of Judge Ables in his official capacity or the abrogation of judicial immunity in Judge Ables' individual capacity. Further, James F. McKinnon does not have standing to

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At 10:55 O'clock AM
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Jan Davis
JAN DAVIS
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

bring any of his claims in this lawsuit against Judge Ables because James F. McKinnon does not present an alleged injury that is “fairly traceable” to the specific conduct of Judge Ables, and this Court cannot redress any alleged injury, because awarding any relief in this matter would require this Court to review and invalidate Judge Ables’ judicial decisions or any steps he has taken regarding the probate matter. As a matter of law, James F. McKinnon cannot collaterally attack the decisions of the probate court in this litigation. See e.g., *Burns v. Burns*, 2 S.W.3d 339, 344 (Tex. App.—San Antonio 1999, no pet.) (“If an administration is already pending in one court properly exercising probate jurisdiction when a subsequent suit is filed in the district court, the jurisdiction of the original probate court is dominant”). As a result, this Court also lacks subject matter jurisdiction to entertain this lawsuit.

Accordingly, there is not a reasonable probability that James F. McKinnon will prevail in the litigation against Judge Ables.

Over the last seven years, James F. McKinnon has filed this and commenced, prosecuted, or maintained as a *pro se* litigant numerous other litigations other than in small claims court that have been finally determined adversely to him. These include, but are not limited to the following litigations finally determined adversely to James F. McKinnon:

1. *In the Estate of Cherry S. McKinnon, Deceased, and James F. McKinnon v. State of Texas Officers of the Court*; Cause No. 15893 in the 216th District Court of Gillespie County, Texas, dismissed April 1, 2020
2. *McKinnon v. Bank of Am., N.A.*, Cause No. 04-19-00114-CV, in the Fourth Court of Appeals, dismissed August 14, 2019
3. *McKinnon v. Third Court of Appeals of Austin, Texas*; Cause No. 15562 in the 216th District Court of Gillespie County, Texas, dismissed February 4, 2019
4. *McKinnon v. Wallin*, Cause No. 03-18-00611-CV, in the Third Court of Appeals, dismissed January 30, 2019

5. *McKinnon v. Wallin*, Cause No. 03-18-00612-CV, in the Third Court of Appeals, dismissed January 30, 2019
6. *McKinnon v. Wallin*, Cause No. 03-17-00592-CV, in the Third Court of Appeals, dismissed August 14, 2018), *review denied* (Nov. 9, 2018)
7. *In re McKinnon*, Cause No. 03-17-00817-CV, in the Third Court of Appeals, dismissed December 7, 2017

Courts cannot allow litigants to abuse the judicial system and harass their victims without consequence. Accordingly, the Court **FINDS** that James F. McKinnon is such a litigant and his conduct is subject to review and action by this Court.

Chapter 11 of the CIVIL PRACTICE AND REMEDIES CODE, provides this Court with the authority to prevent James F. McKinnon from using the judicial system to retaliate against and harass Judge Ables or any other party.

ORDER

Chapter 11 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE governs suits brought by vexatious litigants. The Court may, on defendant's motion or *sua sponte*, 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 not** a reasonable probability that she will prevail in litigation **and** in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051, the party has commenced, prosecuted, or maintained at least five litigations as a *pro se* litigant other than in a small claims court that have been finally determined adversely to the plaintiff. TEX. CIV. PRAC. REM. CODE § 11.054 (1).

As discussed above, James F. McKinnon does not allege or produce any evidence to establish a waiver of the sovereign immunity of Defendant Stephen B. Ables or abrogate Judge Ables' judicial immunity, nor does James F. McKinnon establish his own standing to bring any cause of action against Judge Ables.

Specifically, the Court **FINDS** as follows:

- (1) There **IS NOT** a reasonable probability that James F. McKinnon will prevail in his current litigation against Judge Stephen B. Ables.
- (2) In the past seven year period, James F. McKinnon, has “commenced, prosecuted, or maintained at least five litigations as a *pro se* litigant other than in a small claims court that have been finally determined adversely to” James F. McKinnon.
- (3) James F. McKinnon meets the criteria for finding a plaintiff a vexatious litigant.

The Court also **FINDS** that James F. McKinnon has previously stated that it is his intent to keep suing members of the judiciary for adverse judicial rulings in his lawsuits, and that this lawsuit is an example James F. McKinnon following through on his intended course of action.

Accordingly, this Court **ORDERS** that **JAMES F. McKINNON** is adjudicated to be a vexatious litigant.

Because of this, the Court **ORDERS** that **JAMES F. McKINNON** is prohibited from filing *pro se* any new litigation in a court in this state, under the name “**James F. McKinnon,**” “**James McKinnon,**” “**the Estate of Cherry S. McKinnon**” or any other name, without first being granted permission to file by the local administrative judge, pursuant to TEX. CIV. PRAC. REM. CODE § 11.101. 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.

JAMES F. McKINNON is hereby **NOTIFIED** that he is subject to punishment pursuant to the inherent powers of the court or by contempt if he fails to obey this pre-filing order.

The Court further **ORDERS** that the Clerk of the Court is directed to notify the Office of Court Administration of this Court’s declaration of James F. McKinnon as a vexatious litigant

and this prefiling order, pursuant to TEX. CIV. PRAC. REM. CODE § 11.103 (a). The Office of Court Administration of the Texas Judicial System shall list James F. McKinnon a/k/a "the Estate of Cherry S. McKinnon, deceased" on the list of vexatious litigants subject to prefiling orders on the agency's Internet website. TEX. CIV. PRAC. REM. CODE § 11.103(b).

Finally, the Court **ORDERS** that proceedings in this matter are hereby stayed; that **JAMES F. MCKINNON** is **ORDERED** to provide security to Defendant Stephen B. Ables by posting a bond with this Court in the amount of \$ 10,000.00 to cover reasonable expenses incurred in connection with the litigation commenced by James F. McKinnon, including costs and attorney's fees; that, if James F. McKinnon fails to post a \$ 10,000.00 bond within ten calendar days of the signing of this Order, then this suit will be dismissed with prejudice in its entirety, pursuant to TEX. CIV. PRAC. REM. CODE § 11.056.

October 14, 2020

Date

COPIES TO:

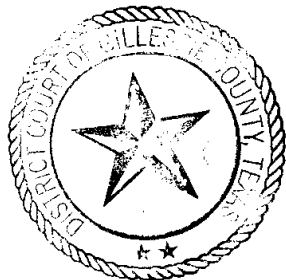
JAMES F. MCKINNON ✓
MAIL 10-14-20

SCOTT M. GRAYDON ✓ EMAIL 10-14-20
ASSISTANT ATTORNEY GENERAL

DLA-

Albert D. Little

JUDGE PRESIDING



I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL RECORD ON FILE IN THIS OFFICE.

DATED October 15, 2020
JAN DAVIS, DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

BY Stewart DEPUTY

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