

CAUSE NO. D-1-GN-14-001215

ERIC DRAKE,
Plaintiff,

v.

KASTL LAW P.C., SEANA
WILLING, CARL GINSBERG, AND
THE COURT OF REPORTERS
CERTIFICATION BOARD,
Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200TH JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

AUG 19 2014 12:41 M.
At Amalia Rodriguez-Mendoza, Clerk

ORDER DECLARING PLAINTIFF A VEXATIOUS LITIGANT

On August 19, 2014, in accordance with TEX. CIV. PRAC. & REM. CODE § 11.053, this Court held a hearing on Defendant Seana Willing’s Motion to Declare Eric Drake a Vexatious Litigant. Plaintiff has filed a Motion to Recuse and seeks to recuse every District Judge in Travis County.

CR a judge subject to a motion to recuse

In accordance with TEX. R. CIV. P. 18a(f)(2)(A), ~~this Court~~ [^] “must take no further action in the case until the motion has been decided, except for good cause stated in writing or on the record.”

This Court **FINDS** that good cause exists for hearing Defendant Seana Willing’s Motion to Declare Eric Drake a Vexatious Litigant, noticed for hearing on August 19, 2014 at 9 a.m. The good cause supporting proceeding with said Defendant Seana Willing’s Motion to Declare Eric Drake a Vexatious Litigant includes the following:

1. Plaintiff Eric Drake was notified that on August 19, 2014, multiple motions to have him declared a vexatious litigant were set to be heard, including Defendant Seana Willing’s Motion to Declare Eric Drake a Vexatious Litigant;
2. The purpose of the vexatious litigant statute is to prevent abuse of the judicial

- system by *pro se* litigants¹;
3. Plaintiff Eric Drake filed a Motion for Non-Suit on August 7, 2014, beginning the 30 day plenary jurisdiction of the trial court;
 4. Plaintiff Eric Drake filed a Motion to Recuse on August 7, 2014, seeking recusal of “all judges so that the judge that have (sic) ruled improperly against him does not continue his or her abusive behavior.” (Plaintiff’s Motion to Recuse, page 2, ¶ 4);
 5. Plaintiff Eric Drake’s Motion to Recuse is defective on its face in that it:
 - a. is based solely on the judge’s rulings in the case (Plaintiff’s Motion to Recuse, page 1, ¶ 4 [second ¶ 4 on that page]); and
 - b. does not state with detail and particularity facts that would be sufficient to justify recusal;
 6. In the event that this Court does not proceed with the hearing on August 19, 2014, it is likely that the recusal process will allow Plaintiff Eric Drake to evade the purposes of the vexatious litigant statute by allowing him to improperly exhaust the trial court’s plenary jurisdiction; and
 7. Plaintiff Eric Drake has additionally demonstrated the bad faith of his Motion to Recuse and this litigation as a whole by stating his intent to file suit against the spouses of District Judges in Travis County as well as the spouses of other state

¹ In enacting Chapter 11 of the Texas Civil Practice and Remedies Code, Texas legislature sought to strike a balance between Texans’ right of access to their courts and the public interest in protecting defendants from those who abuse the Texas court system by systematically filing lawsuits with little or no merit. *Drum v. Calhoun*, 299 S.W.3d 360, 364 (Tex.App.-Dallas 2009, pet. denied). Additionally, purpose of the statute is to make it possible for courts to control their dockets rather than permitting courts to be burdened with repeated filings of frivolous and malicious litigation by litigants without hope of success while, at the same time, providing protections for litigants’ constitutional rights to open courts when they have genuine claims that can survive the scrutiny of the administrative judge and the posting of security to protect defendants. *In re Potts*, 399 S.W.3d 685, 688 (Tex.App.Houston [14th Dist.] 2013, orig. proceeding) citing *In re Potts*, 357 S.W.3d 766, 768 (Tex.App.-Houston [14th Dist.] 2011, orig. proceeding).

- officials in an effort to evade any immunities that attach to those officials;
8. Plaintiff Eric Drake brought his Motion to Recuse without sufficient cause and solely for the purpose of delay, specifically to exhaust the trial court's plenary jurisdiction without allowing the trial court to consider Defendant Seana Willing's Motion to Declare Eric Drake a Vexatious Litigant;
 9. In the event that the Motion to Recuse is later granted, any order related to Defendant Seana Willing's Motion to Declare Eric Drake a Vexatious Litigant can be vacated, so no irreversible harm exists in hearing the matter.

Accordingly, this Court **FINDS** that good cause exists to hear Defendant Seana Willing's Motion to Declare Eric Drake a Vexatious Litigant on August 19, 2014 at 9 a.m. and the Court having reviewed the motion, pleadings, the law, evidence and arguments of all parties, enters the following order:

On April 28, 2014, Eric Drake filed this lawsuit, claiming federal civil rights violations against Defendant Seana Willing, alleging violations of 42 U.S.C. §§ 1983. Eric Drake also made multiple claims against other defendants in this litigation.

In the instant suit, Eric Drake makes the conclusory assertion that although Defendant Seana Willing conducted an investigation initiated by Eric Drake, including evidence provided by Eric Drake, because Eric Drake did not like the outcome of the investigation, "Plaintiff identifies the following rights he opines were violated: "the Plaintiff (sic) First Amendment Rights have been violated, his Equal Protection Rights have been violated, his Due Process clause." (Complaint, ¶ 97).

These assertions are unaccompanied by the pleading of any specific allegation of what legal interest he has in the outcome of an investigation by a state agency, or how the actions of Seana Willing deprived him of a constitutionally protected interest.

Despite the absence of such allegations of fact, Eric Drake seeks monetary damages and injunctive relief requiring Seana Willing to provide this Court with the complaint made by Eric Drake and to justify to this Court the administrative determination of the Texas Commission on Judicial Conduct regarding a specific complaint. Eric Drake does not identify any legal authority that allows for a judicial review of such an investigation, nor does he explain how this Court should have jurisdiction to evaluate the judicial conduct of another district judge, when such jurisdiction is provided under Article V, sec. 1-a(10) of the Texas Constitution to reside with the Commission on Judicial Conduct.

Accordingly, there is not a reasonable probability the plaintiff will prevail in the litigation against Seana Willing.

Over the last seven years, Eric Drake 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 “Eric Drake”:

1. *Eric Drake v. Travelers Indemnity Company and Consumer County Mutual Insurance Co.*, In the United States District Court for the Eastern District of Texas, Marshall Division; Civil Action No. 2:11-CV-318;
2. *Eric Drake v. Travelers Casualty Insurance Co., et al.*, In the United States District Court for the Eastern District of Texas, Marshall Division; Civil Action No. 2:11-CV-516;
3. *Eric Drake v. Bank of America*, In the United States District Court for the Eastern District of Texas, Marshall Division; Civil Action No. 2:11-CV-515;
4. *Eric Drake v. Travelers Indemnity Company and Consumer County Mutual*

- Insurance Company*; In the United States District Court for the Western District of Texas, San Antonio Division; Civil Action No. 5:12-CV-00346;
5. *Eric Drake v. Mary Smith, et al.*; In the United States District Court for the Western District of Texas, Waco Division; Civil Action No. W-12-MC-152;
 6. *Eric Drake v. Wendell Withrow, et al.*; In the United States District Court for the Eastern District of Texas, Marshall Division; Civil Action No. 2:11-CV-303;
 7. *Eric Drake v. Mercedes Benz U.S.A.*; In the United States District Court for the Eastern District of Texas, Marshall Division; Civil Action No. 2:12-CV-00041;
 8. *Eric Drake v. Robert Burns, et al.*; In the United States District Court for the Southern District of Texas, Houston Division; Civil Action No. 4:09-MC-606;
 9. *Eric Drake v. Penske Truck Leasing Co., L.P., Navistar International Corp., Gallagher Basset Services, Inc.*; In the United States District Court for the Eastern District of Texas, Marshall Division; Civil Action No. 2:11-CV-00183;
 10. *Eric Drake v. Penske Truck Leasing Co., LP., et al.*; In the United States District Court for the Eastern District of Texas, Sherman Division; Case No. 4:12-CV-264;
 11. *In re: Eric Drake*; In the United States District Court for the Eastern District of Texas, Sherman Division; Case No. 4:11-MC-037;
 12. *In re: Eric Drake*; In the United States District Court for the Eastern District of Texas, Sherman Division; Case No. 4:11-MC-043;
 13. *In re: Eric Drake*; In the United States District Court for the Northern District of Texas, Dallas Division; Case No. 3:13-MC-078;
 14. *In re: Eric Drake*; In the United States District Court for the Southern District of Texas, McAllen Division; Action No. 7:14-MC-669;
 15. *Eric Drake v. Kristina Nadine Kastl, et al.*; In the 193rd District Court of Dallas County, Texas; Cause No. DC-13-14911;
 16. *Eric Drake v. Wendell Withrow, et al.*; In the 191st District Court of Dallas County, Texas; Cause No. DC-12-03942;
 17. *Eric Drake v. Consumer County Mutual Insurance Co.*; In the 44th District Court of Dallas County, Texas; Cause No. DC-09-04284;
 18. *Eric Drake v. Kristina Nadine Kastl, et al.*; In County Court at Law No. 5 of Dallas County, Texas; Cause No. CC-13-03247;

19. *Eric Drake v. James Selaiden*; In County Court at Law No. 3 of Tarrant County, Texas; Cause No. 2013-005772-3;
20. *Eric Drake vs. United States of America*; In the United States District Court for the Middle District of Louisiana, Baton Rouge Division; Civil Action No. 3:12-cv-00372; and
21. *Eric Drake vs. St. Paul Travelers Insurance, et al.*; In the United States District Court for the Eastern District of Texas, Tyler Division; Civil Action No. 6:08-CV-301.

In addition, over the last seven years, Eric Drake has commenced, prosecuted, or maintained as a *pro se* litigant the following litigations other than in small claims court that have been finally determined adversely to him under the name "Eric Von Drake":

22. *Eric Von Drake, In the United States District Court for the Northern District of Texas, Dallas Division; Civil Action No. 3:08-MC-064*;
23. *In re: Eric Von Drake, In the United States District Court for the Northern District of Texas, Fort Worth Division; Civil Action No. 4:08-MC-023*;
24. *Eric Von Drake vs. Edgar Lynn Rogers, et al.*; In the United States District Court for the Western District of Louisiana, Shreveport Division; Civil Action No. 08-0038; and
25. *In re: Eric Von Drake*; In the United States District Court for the Western District of Texas, Austin Division; Action No. 1:08-MC-717.

Further, Eric Drake 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. As with this instant litigation, a substantial part of the litigations identified *supra* arise out of the common occurrence of a car accident in February of 2007 and the litigation that followed. In three of the litigations that arose out of these same or substantially

similar facts, transition, or occurrence, a federal judge declared Eric Drake a vexatious litigant.

These cases are:

1. *Eric Drake v. Travelers Indemnity Company and Consumer County Mutual Insurance Co.*, In the United States District Court for the Eastern District of Texas, Marshall Division; Civil Action No. 2:11-CV-318;
2. *Eric Drake v. Travelers Casualty Insurance Co., et al.*, In the United States District Court for the Eastern District of Texas, Marshall Division; Civil Action No. 2:11-CV-516; and
3. *Eric Drake v. Bank of America*, In the United States District Court for the Eastern District of Texas, Marshall Division; Civil Action No. 2:11-CV-515.

Despite repeated warnings from both state and federal courts, Eric Drake has commenced, prosecuted, and maintained the instant litigation as a *pro se* litigant against Defendant Seana Willing and other defendants, arising out of litigation following the February of 2007 car accident.

Courts cannot allow litigants to abuse the judicial system and harass their victims without consequence. Accordingly, the Court **FINDS** that Eric Drake 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 Eric Drake from using the judicial system to retaliate against and harass Defendant Seana Willing 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 he will prevail in litigation **and** the party has **either** (1) 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 finally determined adversely to the plaintiff **or** (2) 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 (1) and (3).

As discussed above, Eric Drake does not allege or produce any evidence to establish a waiver of the sovereign immunity of Defendant Seana Willing with respect to his claims, nor does Eric Drake have standing to bring any cause of action against Defendant Seana Willing.

Accordingly, after reviewing the record and all the pleadings in the case, this Court **FINDS** that there **IS NOT** a reasonable probability that Eric Drake will prevail.

The Court also **FINDS** that Eric Drake has 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 finally determined adversely to Eric Drake.

The Court also **FINDS** that Eric Drake 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.

The Court **ORDERS** that **ERIC DRAKE** is prohibited from filing *pro se* any new litigation in a court in this state, under the name “**Eric Drake,**” “**Eric Von Drake,**” 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.

ERIC DRAKE 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 Eric Drake as a vexatious litigant and this pre-filing order, pursuant to TEX. CIV. PRAC. REM. CODE § 11.103 (a). The Office of Court Administration of the Texas Judicial System shall list Eric Drake a/k/a "Eric Von Drake" on the list of vexatious litigants subject to pre-filing 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 **ERIC DRAKE** is **ORDERED** to provide security to Defendant Seana Willing by posting a bond with this Court in the amount of \$ _____ to cover reasonable expenses incurred in connection with the litigation commenced by Eric Drake, including costs and attorney's fees; that, if Eric Drake fails to post a \$ _____ bond within ten calendar days of the signing of this Order, then this suit will be dismissed in its entirety, pursuant to TEX. CIV. PRAC. REM. CODE § 11.056.~~

8. 19 2014
Date


JUDGE PRESIDING