

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

CAUSE NO. D-1-FM-18-002520

IN THE INTEREST OF	§	IN THE DISTRICT COURT
E.F. AND M.F.,	§	98TH JUDICIAL DISTRICT
CHILDREN	§	TRAVIS COUNTY, TEXAS

ORDER DETERMINING PLAINTIFF A VEXATIOUS LITIGANT

On August 17, 2022, the Court heard Defendant, Waikei Scott Fung's, *Motion to Declare Plaintiff a Vexatious Litigant* and took this matter under advisement.

Defendant, Waikei Scott Fung, was present Pro Se at the remote hearing and announced ready.

Plaintiff, Marinda Tong, was present Pro Se at the remote hearing and announced ready.

The Court, after examining the record, and hearing evidence and argument of the parties, finds that all necessary prerequisites of the law have been legally satisfied and that this Court has jurisdiction of this case and parties.

A record was taken by Leah Haye's, Court Reporter for the 419th District Court of Travis County, Texas.

In making this order, the Court considered the Defendant's *Motion to Declare Plaintiff a Vexatious Litigant*, Plaintiff's *Response for Motion to Declare Plaintiff a Vexatious Litigant*, and argument presented by the parties. In addition, the Court takes judicial notice of the of the Court's file in Cause No. D-1-FM-18-002520 and D-1-FM-21-007230. See, *In re C.S.*, 208 S.W.3d 77, 81 (Tex. App. Fort. Worth 2006, pet. denied).



The Court finds that Petitioner is an individual who commenced or maintained litigation pro se.

Tex. Civ. Prac. & Rem. Code § 11.001. The Court finds that Petitioner filed her *Motion for Emergency*

Relief Protective Order and Modification of Parent-Child Relationship on May 17, 2022. The Court finds that Defendant filed *Defendant's Motion to Declare Plaintiff a Vexatious Litigant* on June 30, 2022, and filed *Respondent's Original Answer – Modification Case* on July 28, 2022. The Court finds *Defendant's Motion to Declare Plaintiff a Vexatious Litigant* was filed on before the 90th day after the date the Defendant filed *Respondent's Original Answer – Modification Case*, as required by Tex. Civ. Prac. & Rem. Code § 11.051.

The Court finds that after litigation has been finally determined against the Plaintiff, Plaintiff repeatedly relitigated or attempted to relitigate, pro se, either the validity of the determination against the same Defendant as to whom the litigation was finally determined, or 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. Tex. Civ. Prac. & Rem. Code § 11.054(2)(A) and (B). The Court identifies the following cases to which Tex. Civ. Prac. & Rem. Code § 11.054(2)(A) and (B) apply:

1. In Cause D-1-FM-18-002520 Marinda Tong filed *Request for De Novo Hearing Request to Remove Temporary Orders* on May 10, 2021. The Request for the de novo appeal was struck pursuant to a Court order filed on July 2, 2021
2. In Cause D-1-FM-18-002520 Marinda Tong filed *Motion to Modify Final Decree* on September 29, 2021. The Motion was denied in its entirety pursuant to a Court order filed on November 29, 2021.
3. In Cause D-1-FM-18-002520 Marinda Tong filed *Petitioner's Motion for Temporary Orders* on June 21, 2022. *Petitioner's Motion for Temporary Orders* was denied in its entirety pursuant to a Court order filed on July 15, 2022.

4. In Cause D-1-FM-18-002520 Marinda Tong filed the following Motions that are may still be pending: (1) *Petition in Suit Affecting the Parent-Child Relationship*, filed August 5,



2022; (2) *Motion for Emergency Relief Protective Order and Modification of Parent-Child Relationship*, filed May 17, 2022.

5. In Cause D-1-FM-21-007230, Marinda Tong filed *Application for Temporary Ex Parte Protective Order and Protective Order* on November 16, 2021. On February 9, 2022, this matter was heard by the Court. The Application for Protective Order was denied pursuant to a final order filed on March 30, 2022.
6. In Cause D-1-FM-21-007230, on March 2, 2022, the Court heard Marinda Tong's request for temporary orders. The Court's docket note of this same date state that Marinda Tong was instructed her requests for temporary orders could not be pursued in this cause, as it is limited to her request for a Protective Order.
7. In Cause D-1-FM-21-007230, the Court heard Marinda Tong's requests for relief on May 11, 2022. The Court's Order from this hearing, filed on May 20, 2022, states, "[m]uch of the requested relief had been previously been ruled upon, but to the extent new motions were made and any additional relief was requested, all relief was and is hereby denied."
8. In Cause D-1-FM-21-007230, on June 15, 2022 the Court heard Marinda Tong's *Motion to Appeal Protective Order Relief Request and Modify Parent-Child Relationship*, filed on May 19, 2022. The Court's docket note of this same date state that it was not clear whether Marinda Tong was requesting a modification of a protective (though no protective order has been entered in this cause) or seeking a protective order, but both requests were denied in their entirety. The Court's docket note from June 15, 2022 also state that Marinda Tong was instructed any Motion to Modify in Suit Affecting the Parent-Child Relationship must
filed in Cause D-1-FM-18-002520, as this cause is limited to her request for a Protective



9. In Cause D-1-FM-21-007230, Marinda Tong filed *Amended Application for Protective Order* on April 22, 2022. The *Amended Application for Protective Order* failed to allege new facts and was, therefore, considered by the Court to be a Request for Reconsideration of the final order entered by the Court on March 30, 2022. On April 25, 2022, the Court filed *Order on Request for Reconsideration of Application for Protective Order* denying Marinda Tong's request for reconsideration.

10. In Cause D-1-FM-21-007230, Marinda Tong filed *Motion to Appeal Protective Order Relief Request and Modify Parent-Child Relationship* on May 19, 2022 and on June 3, 2022 she filed *Motion for Emergency Relief Appeal of Protective Order and Modification Parent-Child Relationship*. On July 5, 2022, in Cause 03-22-00320-CV, the Texas Court of Appeals, Third District, at Austin, dismissed both Motions for want of jurisdiction.

The Court finds that Defendant has shown there is no reasonable probability that the Plaintiff will prevail in the litigation against the Defendant. Tex. Civ. Prac. & Rem. Code § 11.054.

The Court finds that Defendant's Motion to Deem Plaintiff, Marinda Tong, a Vexatious Litigant pursuant Tex. Civ. Prac. & Rem. Code § 11.051 *et seq.* of the Texas Civil Practice and Remedies Code should be GRANTED.

IT IS THEREFORE ORDERED that Plaintiff, Marinda Tong, is a Vexatious Litigant as that term is defined by Tex. Civ. Prac. & Rem. Code § 11.054.

IT IS FURTHER ORDERED that Plaintiff shall furnish security for the benefit of the Defendant in the amount of \$500 (Five Hundred Dollars and 00/100) on or before September 15, 2022. The Court finds that this amount is sufficient to assure payment to the Defendant for his reasonable expenses incurred in or in connection with litigation commenced, caused to be commenced, maintained, or caused to be maintained by the Plaintiff.



IT IS FURTHER ORDERED that Plaintiff is subject to a Prefiling Order pursuant to Tex. Civ. Prac. & Rem. Code § 11.101 and that Plaintiff is prohibited from filing, on her own behalf as a pro se litigant, any new litigation in any state district or statutory county court in Texas, against any party, as provided by Tex. Civ. Prac. & Rem. Code § 11.102 as follows:

PERMISSION BY LOCAL ADMINISTRATIVE JUDGE. (a) A vexatious litigant subject to a Prefiling Order under Tex. Civ. Prac. & Rem. Code § 11.101 is prohibited from filing, pro se, new litigation in a court to which the order applies without seeking the permission of:

- (1) the local Administrative Judge of the type of court in which the vexatious litigant intends to file; or
- (2) the local Administrative District Judge of the county in which the vexatious litigant intends to file if the litigant intends to file in a justice or constitutional county court.

IT IS ORDERED that Marinda Tong, a vexatious litigant, is subject to a pre-filing order under Tex. Civ. Prac. & Rem. Code § 11.101, and shall seek permission to file litigation and shall provide a copy of the request to all defendants named in the proposed litigation.

IT IS ORDERED THAT a clerk of a court may not file a litigation, original proceeding, appeal, or other claim presented, pro se, by a vexatious litigant subject to a prefiling order under Tex. Civ. Prac. & Rem. Code § 11.101 unless the litigant obtains an order from the appropriate local Administrative Judge described by Tex. Civ. Prac. & Rem. Code § 11.102(a) permitting the filing.

SIGNED on this the 24th day August, 2022.


HON. CATHERINE A. MAUZY

