



Fourth Court of Appeals
San Antonio, Texas

May 5, 2017

No. 04-16-00675-CV

Tom **RETZLAFF**,
Appellant

v.

Philip R. **KLEIN**, Klein Investigations & Consulting, and James W. Landess,
Appellees

From the 73rd Judicial District Court, Bexar County, Texas
Trial Court No. 2014-CI-17145
Honorable Antonia Arteaga, Judge Presiding

O R D E R

Sitting: Karen Angelini, Justice
Patricia O. Alvarez, Justice
Irene Rios, Justice

This is an attempted appeal of an interlocutory order brought under section 51.014(12) of the Texas Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(12) (West Supp. 2016) (authorizing an appeal from an interlocutory order denying a motion to dismiss under Chapter 27 of the Texas Civil Practice & Remedies Code, the Texas Citizens Participation Act).

In the trial court, Tom Retzlaff, a nonparty to the underlying proceedings, filed several pleadings seeking protection from discovery. In response, the defendants in the case filed a motion to strike Retzlaff's pleadings on the basis that Retzlaff had been declared a vexatious litigant and had not obtained the required permission to file pleadings in the trial court. The defendants also filed a motion for contempt. Thereafter, Retzlaff moved to dismiss the defendants' motion for contempt based on the Texas Citizens Participation Act (TCPA). The trial court concluded that Retzlaff had not obtained permission to file pleadings as required and granted the defendants' motion to strike all of Retzlaff's pleadings in the trial court. In response, Retzlaff filed a notice of appeal challenging the trial court's effective denial of his motion to dismiss under the TCPA and commenced this appeal. *See id.*

Chapter 11 of the Texas Civil Practice and Remedies Code governs vexatious litigants in Texas. Under this statute, “[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 Section 11.101 unless the litigant obtains an order from the appropriate administrative judge described in Section 11.102(a) permitting the filing.” TEX. CIV. PRAC. & REM. CODE ANN. § 11.103(a) (West 2017) (emphasis added). The statute plainly applies to appeals filed in Texas appellate courts. The only exceptions provided by the statute are that a clerk of a court of appeals may file an appeal from a prefiling order entered under Section 11.101 designating a person a vexatious litigant or a timely filed writ of mandamus under Section 11.102. *See id.* § 11.103(d). Chapter 11 further describes the procedures courts must follow when litigation is mistakenly filed by a vexatious litigant. *See id.* § 11.1035(b). This procedure consists of dismissing the litigation unless the vexatious litigant demonstrates to the court that he has obtained an order from the appropriate administrative judge permitting the filing. *See id.*

There is no doubt that Retzlaff has been designated a vexatious litigant subject to a prefiling order under Section 11.101 of the Texas Civil Practice and Remedies Code. Retzlaff’s name appears on the current list of vexatious litigants maintained by the Texas Office of Court Administration. On October 15, 2008, Retzlaff was declared a vexatious litigant in cause number 338432, styled *Tom Retzlaff v. GoAmerica Communications Corporation, Aaron David Dubrinski, John and/or Jane Doe*, and filed in the County Court at Law #3, in Bexar County, Texas. The order in that case prohibited Retzlaff “from filing, in propria persona, any new litigation in *any state or federal court located in the State of Texas* without first obtaining permission of the local administrative judge....” (emphasis added). Retzlaff appealed the order, and the order was affirmed on appeal. *Retzlaff v. GoAmerica Commc’n Corp.*, 356 S.W.3d 689, 698-701, 705 (Tex. App.—El Paso 2011, no pet.) (“Nothing stated herein should be construed to cast doubt on the trial court’s conclusion that Retzlaff is a vexatious litigant or on the court’s prohibition against Retzlaff’s filing any new litigation in this state.”). Furthermore, the exception enumerated in section 11.103(d) of the Texas vexatious litigant statute does not apply in this appeal, where Retzlaff is not appealing an order designating him a vexatious litigant, but rather an order effectively denying his motion to dismiss under the TCPA.

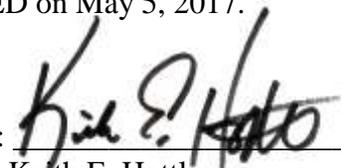
We acknowledge that, on October 19, 2016, the appellees filed a motion to dismiss this appeal, calling attention to Retzlaff’s vexatious litigant status. On October 21, 2016, Retzlaff filed a response to the motion to dismiss. On October 21, 2016, we summarily denied the appellees’ motion to dismiss this appeal. However, after further review and consideration, we are of the opinion that this appeal must be dismissed unless Retzlaff shows that he has obtained an order from the appropriate administrative judge granting him permission to bring this appeal. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 11.103(a), 11.1035(b).

Therefore, this appeal will be dismissed unless Retzlaff files in this Court, no later than ten (10) days from the date of this order, an order from the local administrative judge granting him permission to bring this appeal.

It is so ORDERED on May 5, 2017.

PER CURIAM

ATTESTED TO:



Keith E. Hottle
Clerk of Court

