

THIRTEENTH COURT OF APPEALS OF TEXAS, CORPUS CHRISTI-
EDINBURG

In re Barry Dwayne Minnfee

No. 13-12-00785-CV · No. 13-12-00785-CV · Decided January 15, 2013

SUMMARY

The Thirteenth Court of Appeals of Texas considered Barry Dwayne Minnfee’s pro se petition for writ of mandamus. The court dismissed the proceeding as improvidently filed because Minnfee, a vexatious litigant subject to a prefiling order, had not shown that he obtained permission from the local administrative judge to file it.

CASE DETAILS

COURT	Thirteenth Court of Appeals of Texas, Corpus Christi-Edinburg
WRITING FOR THE COURT	Per Curiam; Justice Garza; Justice Benavides; Justice Perkes
JURISDICTION	Texas
DECIDED	January 15, 2013
DOCKET	13-12-00785-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Relator filed a pro se petition for writ of mandamus challenging unspecified actions or orders. The court dismissed the original proceeding as improvidently filed because relator did not show that he had obtained permission from the local administrative judge to file it despite being subject to a vexatious-litigant prefiling order.
STANDARD OF REVIEW	The court did not expressly state a standard of review; it applied the statutory filing restrictions governing vexatious litigants and reviewed the adequacy of the mandamus filing.
PRECEDENTIAL VALUE	memorandum opinion; nonprecedential
PARTIES	Barry Dwayne Minnfee

TOPICS

- appellate procedure
- civil procedure
- remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the court could entertain Minnfee's original proceeding when the petition failed to identify clearly the challenged actions, respondent, real parties in interest, or requested relief.
2. Whether a vexatious litigant subject to a prefiling order may file an original proceeding without permission from the local administrative judge.

HOLDINGS

1. A clerk may not file an original proceeding presented by a vexatious litigant subject to a prefiling order unless the litigant obtains an order from the local administrative judge permitting the filing, subject to limited statutory exceptions. Because Minnfee failed to show that he obtained the required permission, the proceeding was dismissed as improvidently filed.
2. The petition was insufficiently clear because it did not identify the specific actions or orders complained of, the respondent or real parties in interest, or the nature of the requested extraordinary relief.

KEY QUOTATIONS

“a clerk of a court may not file a litigation, original proceeding, appeal, or other claim presented by a vexatious litigant subject to a prefiling order under Section 11.101 unless the litigant obtains an order from the local administrative judge permitting the filing.” (at 3)

FACTUAL BACKGROUND

Barry Dwayne Minnfee, proceeding pro se, filed a petition for writ of mandamus in the Thirteenth Court of Appeals. The petition was unclear as to the complained-of actions or orders, the respondent and real parties in interest, and the nature of the requested relief. Minnfee was listed as a vexatious litigant and was subject to a prefiling order requiring permission from a local administrative judge before filing new litigation in Texas courts.

PROCEDURAL HISTORY

Minnfee filed the petition for writ of mandamus on December 27, 2012. The petition did not clearly identify the complained-of actions or orders, the respondent or real parties in interest, or the extraordinary relief sought. The court additionally determined that Minnfee had not obtained the permission required for a vexatious litigant to file the proceeding and dismissed it as improvidently filed.

DISPOSITION

dismissed

CASES CITED

- In re Minnfee, No. 13-12-00701-CV, 2012 Tex. App. LEXIS 9584, at **4-5 (Tex. App.—Corpus Christi Nov. 16, 2012, orig. proceeding) (mem. op. per curiam)
- Minnfee v. Jackson, No. 13-12-00508-CV, 2012 Tex. App. LEXIS 7465, at *2 (Tex. App.—Corpus Christi Aug. 31, 2012, no pet.) (mem. op. per curiam)
- In re Minnfee, No. 13-12-00337-CV, 2012 Tex. App. LEXIS 4230, at *4 (Tex. App.—Corpus Christi May 24, 2012, orig. proceeding) (mem. op. per curiam)
- In re Minnfee, No. 13-12-00313-CV, 2012 Tex. App. LEXIS 4419, at *4 (Tex. App.—Corpus Christi May 10, 2012, orig. proceeding) (mem. op. per curiam)
- In re Minnfee, No. 13-12-00183-CV, 2012 Tex. App. LEXIS 2253, at *4 (Tex. App.—Corpus Christi Mar. 21, 2012, orig. proceeding) (mem. op. per curiam)
- In re Minnfee, No. 13-11-00579-CV, 2011 Tex. App. LEXIS 8024, at *4 (Tex. App.—Corpus Christi Oct. 6, 2011, orig. proceeding) (mem. op. per curiam)
- In re Minnfee, No. 13-11-00569-CV, 2011 Tex. App. LEXIS 8023, at *4 (Tex. App.—Corpus Christi Oct. 5, 2011, orig. proceeding) (mem. op. per curiam)
- In re Minnfee, No. 13-11-00530-CV, 2011 Tex. App. LEXIS 6929, at **3-4 (Tex. App.—Corpus Christi Aug. 24, 2011, orig. proceeding) (mem. op. per curiam)
- Minnfee v. Sweetin, No. 13-11-00152-CV, 2011 Tex. App. LEXIS 4972, at **1-2 (Tex. App.—Corpus Christi June 30, 2011, no pet.) (mem. op. per curiam)
- In re Minnfee, No. 13-11-00399-CV, 2011 Tex. App. LEXIS 4973, at **1-2 (Tex. App.—Corpus Christi June 30, 2011, orig. proceeding) (mem. op. per curiam)
- In re Minnfee, No. 13-11-00368-CV, 2011 Tex. App. LEXIS 4498, at **1-2 (Tex. App.—Corpus Christi June 13, 2011, orig. proceeding) (mem. op. per curiam)
- In re Minnfee, No. 13-11-00360-CV, 2011 Tex. App. LEXIS 4373, at **1-2 (Tex. App.—Corpus Christi June 9, 2011, orig. proceeding) (mem. op. per curiam)
- In re Minnfee, No. 13-09-00429-CV, 2009 Tex. App. LEXIS 5836, at **1-2 (Tex. App.—Corpus Christi July 28, 2009, orig. proceeding) (mem. op. per curiam)
- In re Minnfee, No. 13-09-00268-CV, 2009 Tex. App. LEXIS 5030, at **1-2 (Tex. App.—Corpus Christi May 18, 2009, orig. proceeding) (mem. op. per curiam)
- In re Minnfee, No. 13-09-108-CV, 2009 Tex. App. LEXIS 4933 (Tex. App.—Corpus Christi Apr. 2, 2009, orig. proceeding) (mem. op. per curiam)
- In re Minnfee, No. 13-09-00108-CV, 2009 Tex. App. LEXIS 1559, at *1 (Tex. App.—Corpus Christi Feb. 27, 2009, orig. proceeding) (mem. op. per curiam)
- In re Minnfee, No. 13-08-00561-CV, 2008 Tex. App. LEXIS 7946, at **1-2 (Tex. App.—Corpus Christi Oct. 15, 2008, orig. proceeding) (mem. op. per curiam)

OPINION

PER CURIAM.

NUMBER 13-12-00785-CV COURT OF APPEALS THIRTEENTH DISTRICT OF TEXAS
CORPUS CHRISTI - EDINBURG IN RE BARRY DWAYNE MINNFEE On Petition for Writ of

Mandamus. MEMORANDUM OPINION Before Justices Garza, Benavides, and Perkes Memorandum Opinion Per Curiam¹ Relator, Barry Dwayne Minnfee, proceeding pro se, filed a petition for writ of mandamus on December 27, 2012.² The petition for writ of mandamus is unclear ¹ See TEX. R. APP.

P. 52.8(d) (“When denying relief, the court may hand down an opinion but is not required to do so.”); TEX. R. APP. P. 47.4 (distinguishing opinions and memorandum opinions). ² The Court has considered and dismissed or denied numerous other pro se original proceedings or pro se appeals filed by relator. See generally *In re Minnfee*, No. 13-12-00701-CV, 2012 Tex. App.

LEXIS 9584, at **4–5 (Tex. App.—Corpus Christi Nov. 16, 2012, orig. proceeding) (mem. op. per curiam); *Minnfee v. Jackson*, No. 13-12-00508-CV, 2012 Tex. App. LEXIS 7465, at *2 (Tex. App.—Corpus Christi Aug. 31, 2012, no pet.) (mem. op. per curiam); *In re Minnfee*, No. 13-12-00337-CV, 2012 Tex. App. LEXIS 4230, at *4 (Tex. App.—Corpus Christi May 24, 2012, orig. proceeding) (mem. op. per curiam); *In re Minnfee*, No. 13-12-00313-CV, 2012 Tex. App.

LEXIS 4419, at *4 (Tex. App.—Corpus Christi May 10, 2012, orig. proceeding) (mem. op. per curiam), *In re Minnfee*, No. 13-12-00183-CV, 2012 Tex. App. LEXIS 2253, at *4 (Tex. App.—Corpus Christi Mar. 21, 2012, orig. proceeding) (mem. op. per curiam); *In re Minnfee*, No. 13-11-00579-CV, 2011 Tex. App. LEXIS 8024, at *4 (Tex. App.—Corpus Christi Oct. 6, regarding the specific actions or orders complained of in this original proceeding, the identity of the respondent or the real parties in interest, or the nature of the extraordinary relief sought by relator.

A court may enter an order prohibiting a person from filing a new litigation in a court in this state if the court finds, after notice and hearing, that the person is a vexatious litigant and the local administrative judge of the court in which the person intends to file the litigation has not granted permission to file the new litigation. See TEX. CIV. PRAC. & REM.

CODE ANN. § 11.101(a) (West Supp. 2011). A local administrative judge may grant permission to a person found to be a vexatious litigant under Section 11.101 to file a litigation only if it appears to the judge that the litigation: (1) has merit; and (2) has not been filed for the purposes of harassment or delay." Id. § 11.102(a) (West Supp. 2011). Relator is on the list of vexatious litigants compiled by the Office of the Court Administration of the Texas Judicial System, and he has been prohibited from filing any more litigation in Texas courts without permission of a local administrative judge.

See 2011, orig. proceeding) (mem. op. per curiam); *In re Minnfee*, No. 13-11-00569-CV, 2011 Tex. App. LEXIS 8023, at *4 (Tex. App.—Corpus Christi Oct. 5, 2011, orig. proceeding) (mem. op. per curiam); *In re Minnfee*, No. 13-11-00530-CV, 2011 Tex. App. LEXIS 6929, at **3–4 (Tex. App.—Corpus Christi Aug. 24, 2011, orig. proceeding) (mem. op. per curiam); *Minnfee v. Sweetin*, No. 13-11-00152-CV, 2011 Tex. App.

LEXIS 4972, at **1–2 (Tex. App.—Corpus Christi June 30, 2011, no pet.) (mem. op. per curiam); In re Minnfee, No. 13-11-00399-CV, 2011 Tex. App. LEXIS 4973, at **1–2 (Tex. App.—Corpus Christi June 30, 2011, orig. proceeding) (mem. op. per curiam); In re Minnfee, No. 13-11-00368-CV, 2011 Tex. App. LEXIS 4498, at **1–2 (Tex. App.—Corpus Christi June 13, 2011, orig. proceeding) (mem. op. per curiam); In re Minnfee, No. 13-11-00360-CV, 2011 Tex. App.

LEXIS 4373, at **1–2 (Tex. App.—Corpus Christi June 9, 2011, orig. proceeding) (mem. op. per curiam); In re Minnfee, No. 13-09-00429-CV, 2009 Tex. App. LEXIS 5836, at **1–2 (Tex. App.—Corpus Christi July 28, 2009, orig. proceeding) (mem. op. per curiam); In re Minnfee, No. 13-09-00268-CV, 2009 Tex. App. LEXIS 5030, at **1–2 (Tex. App.—Corpus Christi May 18, 2009, orig. proceeding) (mem. op. per curiam); In re Minnfee, No. 13-09-108-CV, 2009 Tex. App.

LEXIS 4933 (Tex. App.—Corpus Christi Apr. 2, 2009, orig. proceeding) (mem. op. per curiam); In re Minnfee, No. 13-09-00108-CV, 2009 Tex. App. LEXIS 1559, at *1 (Tex. App.—Corpus Christi Feb. 27, 2009, orig. proceeding) (mem. op. per curiam); In re Minnfee, No. 13-08-00561-CV, 2008 Tex. App. LEXIS 7946, at **1–2 (Tex. App.—Corpus Christi Oct. 15, 2008, orig. proceeding) (mem. op. per curiam).

2 id. § 11.104 (West Supp. 2011); see generally <http://www.txcourts.gov/oca/vexatiouslitigants.asp>. The petition for writ of mandamus filed in this cause fails to show that relator obtained the permission of the local administrative judge to file this original proceeding. With limited exceptions not applicable to this case, "a clerk of a court may not file a litigation, original proceeding, appeal, or other claim presented by a vexatious litigant subject to a prefiling order under Section 11.101 unless the litigant obtains an order from the local administrative judge permitting the filing."

Id. § 11.103(a) (West Supp. 2011). Accordingly, we dismiss this original proceeding as improvidently filed. PER CURIAM Delivered and filed this 15th day of January, 2013. 3