

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-40949



In Re: ERIC DRAKE, also known as E.V. Drake,

Plaintiff - Appellant

A True Copy
Certified order issued Nov 23, 2018

Lyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

Appeals from the United States District Court for the
Eastern District of Texas

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeals are dismissed as of November 23, 2018, for want of prosecution. The appellant failed to timely comply with this court's notice of October 16, 2018 by filing a financial affidavit.

LYLE W. CAYCE
Clerk of the United States Court
of Appeals for the Fifth Circuit

Christina Gardner

By: _____
Christina A. Gardner, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

****NOT FOR PRINTED PUBLICATION****

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

IN THE MATTER OF ERIC DRAKE

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CIVIL ACTION NO. 2:18-CV-00400-JRG

ORDER DENYING MOTION TO PROCEED IN FORMA PAUPERIS

Pro se Plaintiff Eric Drake moves for leave to proceed with his Notice of Appeal *in forma pauperis*. (Dkt. No. 4.) Plaintiff intends to appeal this Court's Order denying Plaintiff's request to file the underlying suit *in forma pauperis*. (See Dkt. No. 2.)


Plaintiff has previously been found to be a **vexatious litigant** having filed numerous frivolous lawsuits in both this District and other districts across the United States. Memorandum Opinion, Dkt. No. 11, *Drake v. Travelers Indemnity Co. & Cnty. Mut. Ins.*, 2:11-cv-318-MHS-CMC (E.D. Tex. Mar. 16, 2012).¹ As such, Judge Folsom found that the only protection against Plaintiff's ability "to continue to file frivolous pleadings in the future" was to require that he seek permission before proceeding *in forma pauperis* with any civil action. See *id.* at 5. Having continued to file lawsuits in the Eastern District of Texas, Magistrate Judge Bush recommended that "any further suits filed by this Plaintiff in this District whether removed or not, *In Forma Pauperis* or not, be prohibited unless Plaintiff seeks permission from the Chief Judge of this

¹ See also *In re Eric Drake*, No. 4:17-MC-69-ALM-CAN, 2018 WL 912894, at *1 n.2 (E.D. Tex. Jan. 10, 2018), *rec. adopted*, 2018 WL 905560 (E.D. Tex. Feb. 15, 2018) (listing cases filed by Plaintiff over the last seven years in the Eastern and Western Districts of Texas); Order Denying Motion Requesting Permission to File Suit, Dkt. No. 2, *In the Matter of Eric Drake*, 4:16-mc-37-RC (E.D. Tex. May 8, 2016); *Drake v. Nordstrom Dep't Stores*, No. 3:18-cv-471-D-BN, 2018 WL 1399179, at *2 (N.D. Tex. Mar. 1, 2018), *rec. adopted*, 2018 WL 1404320 (N.D. Tex. Mar. 19, 2018) (recognizing and honoring the sanctions imposed on Plaintiff by the Eastern District of Texas when denying Plaintiff's motion for leave to proceed *in forma pauperis*); Order Regarding Motion to Proceed In Forma Pauperis on Appeal, Dkt. No. 42, *Drake v. Hecht et al.*, 7:15-cv-141-O (N.D. Tex. Apr. 1, 2016) (noting that Plaintiff is a vexatious litigant and certifying that the appeal is not taken in good faith).

District, and furnishes under oath a list of any similar filings, present or past, and provides satisfactory evidence that the case has arguable merit and that the District and Division are a proper venue for the dispute.” Memorandum Opinion and Order and Report and Recommendation of United States Magistrate Judge, Dkt. No. 119, *Drake v. Penske Truck Leasing Co., et al.*, 4:12-cv-264-RAS-DDB (E.D. Tex. Sept. 13, 2013) (dismissed on Plaintiff’s Motion to Dismiss before adopted). Both the Northern District of Texas and the Western District of Texas have adopted similar directives as to Mr. Drake based on his similar filing practices in those districts. *See Nordstrom Dep’t Stores*, 2018 WL 1404320, at *1; Order, Dkt. No. 10, *Drake v. State Farm Mut. Auto. Ins. Co., et al.*, 5:18-cv-854-OLG (W.D. Tex. Sept. 10, 2018).

The Court does not respond, nor finds it worthy to respond, to Plaintiff’s inflammatory allegations made in his Notice of Appeal. However, based on Plaintiff’s repetitious and frivolous litigation history, this District has imposed certain hurdles Plaintiff must meet before filing suit, which include requiring that Plaintiff demonstrate his potential lawsuit will be non-frivolous. Plaintiff has failed to meet and overcome such reasonable hurdles. Accordingly, the Court **DENIES** permission to proceed on appeal *in forma pauperis*. Based on the foregoing, the Court certifies that the appeal is not taken in good faith pursuant to 28 U.S.C. § 1915(a)(3).

So ORDERED and SIGNED this 4th day of October, 2018.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

****NOT FOR PRINTED PUBLICATION****

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

IN THE MATTER OF ERIC DRAKE


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CIVIL ACTION NO. 2:18-CV-00400-JRG

ORDER DENYING MOTION REQUESTING PERMISSION TO FILE SUIT

Pro se Plaintiff Eric Drake has requested permission to file suit against Harrison County, the City of Hallsville, East Texas Bridge, Inc., Caroline M. Craven, Richard Schell, Thad Heartfield, Ron Clark, Marcia A. Crone, Amos L. Mazzant, III, Robert W. Schroeder III, John D. Love, Zack Hawthorn, Roy Payne, K. Nicole Mitchell, Christine A. Nowak, and Kimberly C. Priest Johnson. (Dkt. No. 1.) Plaintiff has not met his non-onerous burden of showing the court why permission should be granted, accordingly, the Court **DENIES** permission for such new action to be filed by Eric Drake in this District, *in forma pauperis*.

So ORDERED and SIGNED this 19th day of September, 2018.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**