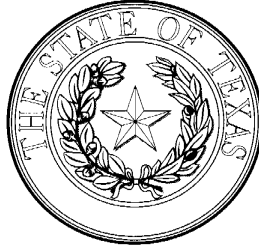


Opinion issued December 4, 2018



In The
Court of Appeals
For The
First District of Texas

NO. 01-17-00455-CV

ALI YAZDCHI, Appellant

V.

**MAKANSAM INC. D/B/A IDEAL TOWING, OAKS CONDOMINIUM
ASSC., AREA 5 VEHICLE STORAGE, Appellees**

**On Appeal from County Civil Court at Law No. 2
Harris County, Texas
Trial Court Case No. 1085537**

MEMORANDUM OPINION

Ali Yazdchi appealed a judgment from a justice court to County Civil Court at Law No. 2. Because of his designation as a vexatious litigant, Yazdchi had to file a bond to continue the suit. After he failed to file a proper bond, the trial court

dismissed the suit. In three issues on appeal, Yazdchi argues that the trial court erred by dismissing his suit and by awarding sanctions against him.

We affirm.

Background

On September 2, 2016, two cars owned or possessed by Yazdchi were towed. The first was a 2000 Mercedes Benz S500. The second was a 2003 Mercedes Benz SL500. Yazdchi initiated two separate actions before a justice court for each car in November 2016. The justice court found probable cause to tow each car.

Yazdchi filed notices of appeals for both actions. The action for the first car was assigned to County Court at Law No. 2 and is the subject of the underlying case in this appeal. The action for the second car was assigned to County Court at Law No. 3.

Two of the defendants in the underlying case filed a motion for sanctions and a motion to stay. In the motions, the defendants presented proof that Yazdchi had been declared a vexatious litigant by three separate trial courts. Because of this designation, Yazdchi was required to obtain permission to file suit from an administrative judge before proceeding. The defendants sought sanctions against Yazdchi for filing suit without having obtained permission and sought a stay of proceedings until Yazdchi obtained permission.

The trial court granted the motions. It awarded sanctions against Yazdchi. The court also stayed the case for ten days to give Yazdchi a chance to obtain permission to continue with the suit. A similar motion was filed in the case before County Court at Law No. 3 with a similar result.

For each case, Yazdchi went before an administrative judge seeking permission to continue the suits. The administrative judge gave Yazdchi retroactive permission to file suit in each case, provided he posted a \$2,000 surety bond in each case.

Yazdchi obtained one security bond. He filed it with County Court at Law No. 3 on February 27, 2017, pledging the bond for that case. The next day, he filed the same bond in the underlying case, attempting to pledge it in that case as well. The bond was rejected in the underlying case, and the trial court dismissed the suit.

Standard of Review

Cases brought by persons declared vexatious litigants are governed by chapter 11 of the Texas Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE §§ 11.001–11.104. “We apply an abuse of discretion standard when reviewing a trial court’s determinations under Chapter 11.” *Jackson v. Vaughn*, 546 S.W.3d 913, 917 (Tex. App.—Amarillo 2018, no pet.); *see also Douglas v. Am. Title Co.*, 196 S.W.3d 876, 879 (Tex. App.—Houston [1st Dist.] 2006, no pet.). The trial court abuses its discretion by acting arbitrarily, unreasonably, or without

consideration of guiding principles. *Walker v. Gutierrez*, 111 S.W.3d 56, 62 (Tex. 2003).

Dismissal of Suit

In his first issue, Yazdchi argues that the trial court erred by dismissing his suit because he filed a security bond. In his third issue, Yazdchi argues he has a right to file suit.

When a plaintiff has been designated a vexatious litigant, a trial court is required to dismiss the suit on the motion of a defendant if the plaintiff does not timely file an adequate security. CIV. PRAC. & REM. § 11.056. Here, the undisputed facts show that, while Yazdchi filed a security in the underlying case, he first pledged that security in another case. Yazdchi was required by the administrative judge to file two separate securities. By attempting to use the same security after pledging it in another case, Yazdchi did not comply with the order of the administrative judge or the order of the trial court in the underlying case.

Yazdchi suggests the bond was erroneously filed first in the other case and that it properly belonged in the underlying case. Nothing in the record suggests that, when he filed the bond in the other case, Yazdchi filed the bond erroneously or that he took any steps to call the error to the attention of either court.

Yazdchi also suggests that the two cases should have only been one case and, therefore, he only should have had to file one security. Regardless of what he should

have done, the record shows that Yazdchi initiated two separate actions in the justice court, separately appealed the judgments in both cases, sought permission to proceed in both cases, and sought to separately appeal the judgments from both county courts. There is no indication that Yazdchi ever attempted to consolidate the cases. Accordingly, the two cases were separate, the administrative judge ordered Yazdchi to file two separate security bonds, and Yazdchi failed to comply.

In his third issue, Yazdchi argues he should not be subject to the vexatious litigant requirements because he has a constitutional right to file suits. Such an argument constitutes a collateral attack on the three prior determinations that Yazdchi is a vexatious litigant. Collateral attacks on vexatious-litigant determinations are not permissible. *In re Johnson*, No. 11-13-00059-CV, 2013 WL 655231, at *1 (Tex. App.—Eastland Feb. 21, 2013, no pet.); *Spain v. Black*, 333 S.W.3d 270, 272–73 (Tex. App.—El Paso 2010, pet. denied). To have his designation removed, Yazdchi must seek removal from the courts that made the initial designations.¹ See CIV. PRAC. & REM. § 11.104(c).

We overrule Yazdchi’s first and third issues.

¹ For the same reason, Yazchi’s claim that a federal trial court recently declared he was not a vexatious litigant in that court has no bearing on our analysis.

Sanctions

In his second issue, Yazdchi argues that we should reverse the sanctions awarded against him. He asserts that, at the time the trial court awarded sanctions against him, he was not aware that he had been designated a vexatious litigant or, accordingly, that he was required to obtain permission before filing suit. This argument was not presented to the trial court. *See* TEX. R. APP. P. 33.1. Accordingly, this cannot be a ground for establishing the trial court abused its discretion. *See Plotkin v. Joekel*, 304 S.W.3d 455, 486 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) (holding review of trial court’s order generally extends to evidence that was before court when it ruled).

Moreover, it is a matter of public record that Yazchi knew by at least April 2015 that he had been declared a vexatious litigant, and he subsequently challenged the designation on appeal. *See Yazdchi v. Jones*, 499 S.W.3d 564, 566 (Tex. App.—Houston [1st Dist.] 2016, pet. denied). Yazdchi has no credible basis to argue that he was not aware in November 2016 that he had been declared a vexatious litigant when he initiated the two actions concerning the towing of his cars.

We overrule Yazdchi’s second issue.

Conclusion

We affirm the judgment of the trial court.

Laura Carter Higley
Justice

Panel consists of Justices Higley, Lloyd, and Caughey.