

Opinion issued March 29, 2022



In The
Court of Appeals
For The
First District of Texas

NO. 01-21-00151-CV

IN THE COMMITMENT OF RICHARD DUNSMORE

**On Appeal from the 412th Judicial District Court
Brazoria County, Texas
Trial Court Case No. 84023-CV**

MEMORANDUM OPINION

Richard A. Dunsmore, proceeding pro se, filed a notice of appeal challenging orders denying motions pertaining to his biennial review. Appellee, the State of Texas, has filed a motion to dismiss the appeal for lack of jurisdiction. More than ten days have passed since the filing of the motion and Dunsmore has not responded. *See* TEX. R. APP. P. 10.3(a). We grant the State's motion to dismiss.

Analysis

The State's motion to dismiss asserts that we lack jurisdiction over the appeal because (1) the orders are interlocutory and an appeal is not authorized; and (2) Dunsmore is a vexatious litigant subject to a pre-filing order and failed to obtain the required authorization to pursue this appeal. We agree on both grounds.

The Orders Are Not Appealable

Dunsmore was civilly committed under the sexually violent predator statute. *See* TEX. HEALTH & SAFETY CODE § 841.081. The statute provides for appeal from the initial determination that a person is a sexually violent predator. *See* TEX. HEALTH & SAFETY CODE § 841.062(a). Once a sexually violent predator is committed, Chapter 841 provides for periodic commitment reviews, including a biennial examination. *Id.* § 841.101(a). Dunsmore seeks to appeal orders denying certain motions he filed regarding his biennial review.

Courts addressing appeals of orders under the sexually violent predator statute have generally determined that, with the exception of initial commitment orders, such orders are interlocutory and not appealable. *See In re Commitment of Adams*, 408 S.W.3d 906, 909 (Tex. App.—Beaumont 2013, no pet.) (dismissing appeal from order modifying commitment order as interlocutory and not appealable); *In re Commitment of Cortez*, 405 S.W.3d 929, 932, 936 (Tex. App.—Beaumont 2013, no pet.) (dismissing appeal of modification order because statute does not provide for

appeal, order contains no finality language, and further holding that appellant had not shown himself entitled to mandamus relief); *In re Commitment of Richards*, 395 S.W.3d 905, 909–10 (Tex. App.—Beaumont 2013, pet. denied) (dismissing appeal from order after biennial review as interlocutory and not appealable because the order did not follow trial on the merits or reflect trial court intent that order was final).

In civil cases generally, an order is final and appealable if it follows a trial on the merits. *N.E. Indep. Sch. Dist. v. Aldridge*, 400 S.W.2d 893, 897–98 (Tex. 1966). A judgment issued without a conventional trial on the merits is final if it actually disposes of all claims and parties then before the court. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 192 (Tex. 2001). An otherwise interlocutory order may be made final through severance, or if it “states with unmistakable clarity that it is a final judgment as to all claims and all parties.” *Id.* at 192–93, 208. Here, the orders Dunsmore seeks to appeal do not contain such finality language.

Because the orders Dunsmore seeks to appeal are interlocutory, we have jurisdiction to hear an appeal from the orders only if authorized by statute. *See* TEX. CIV. PRAC. & REM. CODE § 51.014; *Stary v. DeBord*, 967 S.W.2d 352, 352–53 (Tex. 1998). The orders are not ones for which an interlocutory appeal is statutorily authorized, either by Chapter 841 or by Section 51.014. *See* TEX. HEALTH & SAFETY

CODE §§ 841.122, 841.123, 841.124; TEX. CIV. PRAC. & REM. CODE § 51.014.

Accordingly, we lack jurisdiction over these appeals.

The Appeal Lacks Necessary Approval for Vexatious Litigant

We further lack jurisdiction because Dunsmore has been declared a vexatious litigant and did not receive the necessary approval to file the appeal.

“A court may, on its own motion or the motion of any party, enter an order prohibiting a person from filing, pro se, a new litigation in a court to which the order applies under this section without permission of the appropriate local administrative judge described by Section 11.102(a) to file the litigation if the court finds, after notice and hearing . . . that the person is a vexatious litigant.” TEX. CIV. PRAC. & REM. CODE § 11.101(a). A vexatious litigant order signed by a district court applies to every court in the State of Texas. *Id.* § 11.101(e)

Dunsmore was declared a vexatious litigant and is the subject of a pre-filing order signed on December 12, 2018 in *In re Commitment of Richard A. Dunsmore*, Cause No. 84023-CV in the 412th District Court of Brazoria County, Texas. *See* Office of Court Administration List of Vexatious Litigants Subject to Pre-Filing Orders under Section 11.101, Civil Practice and Remedies Code, available at <https://www.txcourts.gov/judicial-data/vexatious-litigants> (list last updated January 20, 2022); *see also* TEX. CIV. PRAC. & REM. CODE § 11.104(b) (requiring Office of Court Administration to maintain and post list of vexatious litigants on agency’s

website); *Douglas v. Am. Title Co.*, 196 S.W.3d 876, 878 n.2 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (taking judicial notice of Harris County record of vexatious litigants).

The Clerk of this Court may not file an appeal presented by a vexatious litigant subject to a pre-filing order unless (1) the litigant first obtains an order from the local administrative judge permitting the filing, or (2) the appeal is from a pre-filing order designating the person a vexatious litigant. *See* TEX. CIV. PRAC. & REM. CODE § 11.103(a). Here, Dunsmore is not appealing from a pre-filing order designating him a vexatious litigant and the record does not contain an order from the local administrative judge permitting the filing of this appeal.¹ Our Court dismissed, on the same grounds, an earlier appeal by Dunsmore seeking review of his Biennial Review Order of November 20, 2018. *See Commitment of Dunsmore*, 01-19-00101-CV, 2019 WL 3917585, at *1 (Tex. App.—Houston [1st Dist.] Aug. 20, 2019, no pet.) (dismissing appeal for lack of jurisdiction because Dunsmore is vexatious litigant and failed to obtain required approval). We similarly lack jurisdiction over the present appeal.

¹ Although counsel was appointed to represent Dunsmore at his biennial review, Dunsmore’s notice of appeal was filed pro se and included a request for appointment of counsel on appeal. *See* TEX. CIV. PRAC. & REM. CODE § 11.102 (vexatious litigant subject to pre-filing order “is prohibited from filing, pro se, new litigation in a court which the order applies without seeking the permission of” the local administrative judge).

Conclusion

For the foregoing reasons, we grant the State's motion and dismiss this appeal for want of jurisdiction. Any other pending motions are dismissed as moot.

PER CURIAM

Panel consists of Justices Landau, Rivas-Molloy, and Guerra.