

CAUSE NO. 2024-35747

ABELARDO G. GONZALEZ,
Plaintiff

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IN THE DISTRICT COURT

V.
TEXAS
NELSON S. EBAUGH
ATTORNEY AT LAW,
Defendant

OF HARRIS COUNTY,

151ST JUDICIAL DISTRICT

ORDER

On this day, the Court considered Nelson S. Ebaugh’s motion to find Plaintiff, Abelardo G. Gonzalez, a vexatious litigant under Texas Civil Practice & Remedies Code § 11.051 *et seq.*, the response, if any, and the evidence presented and finds that the motion should be and is GRANTED.

The Court notes Chapter 11 of the Texas Civil Practice and Remedies Code governs suits brought by vexatious litigants and specifies that a court may, on defendant’s motion or *sua sponte*, designate a party as a vexatious litigant. *See* TEX. CIV. PRAC. & REM. CODE § 11.101. A court may declare a party to be a vexatious litigant if there is not a reasonable probability that he will prevail in litigation and the party has a history of filing or repeatedly re-litigating unsuccessful or frivolous suits. *See* TEX. CIV. PRAC. & REM. CODE § 11.054.

Here, there is not a reasonable probability Plaintiff will prevail in litigation against Nelson S. Ebaugh. The outcome in the litigation in which Nelson S. Ebaugh represented Plaintiff was favorable to Plaintiff. Further, there is no evidence Nelson S. Ebaugh breached any duty to Plaintiff. Plaintiff’s breach of fiduciary duty claim is a fractured legal malpractice claim and cannot succeed. *See Goffney v. Rabson*, 56 S.W.3d 186, 190 (Tex. App.—Houston [1st Dist.] 2001, pet. denied). Plaintiff’s only declaratory judgment sought as to Nelson S. Ebaugh is a factual dispute for which

a declaratory judgment is not the proper remedy. *Hill v. Heritage Res., Inc.*, 964 S.W.2d 89, 140 (Tex. App.—El Paso 1997, pet. denied)

During the seven-year period immediately preceding the date Nelson S. Ebaugh filed its motion to declare Plaintiff a vexatious litigant, Plaintiff has “commenced, prosecuted, or maintained at least five litigations as a pro se litigant” that have been “finally determined adversely to the plaintiff” or have been “determined by a trial or appellate court to be frivolous or groundless under state or federal law or rules of procedure.” *See id.* Those litigations include, but are not limited to:

1. *Gonzalez v. Sarabia*, 720 Fed. Appx. 213 (5th Cir. April 23, 2018);
2. *In re Gonzalez*, 2018 WL 1610916 (Tex. App.—San Antonio April 4, 2018, orig. proceeding);
3. *Gonzalez v. Alaniz*, 2022 WL 849776, at *1 (Tex. App.—San Antonio March 23, 2022, no pet.);
4. *Gonzalez v. Degollado*, No. 5:20-CV-30, 2021 WL 5564430, at *1 (S.D. Tex. Nov. 29, 2021);
5. *Gonzalez v. Moore*, 2022 WL 22607174 (S.D. Tex. Jan. 18, 2022);
6. *Gonzalez v. Gonzalez*, 2024 WL 1079234, at *1 (Tex. App.—San Antonio March 13, 2024, no pet.); and
7. *Gonzalez v. Gonzalez*, No. 04-23-00669-CV, 2025 WL 611594, at *1 (Tex. App.—San Antonio Feb. 26, 2025, n.p.h.).

It is evident from the record and the pleadings that during the seven-year period immediately preceding the date Nelson S. Ebaugh filed his Motion to declare Plaintiff a vexatious litigant, Plaintiff “commenced, prosecuted, or maintained at least five litigations as a pro se litigant” that have been “finally determined adversely to the plaintiff” or have been determined “by a trial or appellate court to be frivolous or groundless under state or federal law or rules of procedure.” TEX. CIV. PRAC. & REM. CODE § 11.054. The cases noted above were prosecuted

or maintained in courts other than small claims court and may be considered when determining whether a pro se plaintiff meets the criteria for a being declared a vexatious litigant. *See id.*

The Court finds Abelardo G. Gonzalez is a vexatious litigant under TEX. CIV. PRAC. & REM. CODE § 11.054. It is further

ORDERED Plaintiff must pay security and post a cost bond or pay into the registry of the court the amount of \$ 10,000 as security for costs within ten (10) days from the date of this Order. It is further

ORDERED if Plaintiff does not furnish the security within ten days as required above, all Plaintiff's claims against Nelson S. Ebaugh are dismissed with prejudice. It is further

ORDERED Abelardo G. Gonzalez cannot file, *pro se*, a new suit in a Texas court without first getting the permission of the appropriate local administrative judge to file the suit. TEX. CIV. PRAC. & REM. CODE § 11.101(a). Such permission shall be granted only if the litigation appears to have merit and is not filed for purposes of harassment or delay; such permission may also be conditioned on the furnishing of security.

The Court ORDERS the Harris County District Clerk to refuse the filing of any new litigation by Abelardo G. Gonzalez unless he first obtains written permission from the appropriate local administrative judge.

The Court further ORDERS the Harris County District Clerk to forward a copy of this Order to the Office of Court Administration. *See* TEX. CIV. PRAC. & REM. CODE §11.104(a).

Signed this _____ day of _____, 2025.

Signed: Erica R. Hughes
5/28/2025

Judge Presiding



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this May 29, 2025

Certified Document Number: 120787950 Total Pages: 3

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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