

DISMISSED, and Opinion Filed July 6, 2021



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-21-00423-CV

IN RE WANDA BOWLING, Relator

**Original Proceeding from the 296th Judicial District Court
Collin County, Texas
Trial Court Cause No. 296-51274-2015**

MEMORANDUM OPINION

Before Justices Schenck, Nowell, and Garcia
Opinion by Justice Garcia

Before the Court are relator's petition for writ of mandamus and subsequent motion for emergency relief.

Relator has been declared a vexatious litigant and is prohibited from filing pro se any new litigation in a court of this State without first obtaining permission from the local administrative judge. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 11.102(a), 11.103(a). A petition for writ of mandamus is a civil action to which the vexatious litigant statute applies. *Cooper v. McNulty*, No. 05-15-00801-CV, 2016 WL 6093999, at *3 (Tex. App.—Dallas Oct. 19, 2016, no pet.) (mem. op.) (citing *Retzlaff v. GoAmerica Commc'ns Corp.*, 356 S.W.3d 689, 700 (Tex. App.—El Paso 2011, no pet.) (concluding under statutory definitions, “a person who seeks mandamus

relief commences a civil action in the appellate court”)); *see also* TEX. CIV. PRAC. & REM. CODE ANN § 11.001(2) (defining “litigation” as “a civil action commenced, maintained, or pending in any state or federal court.”); *id.* § 11.103(a) (the clerk of a court “may not file a litigation, original proceeding, appeal, or other claim presented, pro se, by a vexatious litigant subject to a prefiling order” unless the litigant first obtains permission).

Relator filed this original proceeding without first obtaining the required permission. By order dated June 18, 2021, we ordered relator to file a copy of an order from the local administrative judge giving her permission to file this original proceeding by June 28, 2021. We cautioned her that failure to provide the written verification of permission to file may result in dismissal of this original proceeding for want of jurisdiction without further notice.

On June 28, 2021, relator filed a motion for emergency relief and attached an order from the administrative judge denying her permission to file this original proceeding. In essence, relator’s motion complains about the administrative judge’s denial of permission to file this action.

Because relator has not provided this Court with a written order giving her permission to file this original proceeding, we dismiss the proceeding for lack of jurisdiction. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 11.1035(b) (the court “shall dismiss the litigation unless the [vexatious litigant subject to a prefiling order] . . . obtains an order from the appropriate local administrative judge described by

Section 11.102(a) permitting the filing of the litigation”); *see also In re Johnson*, No. 03-13-00531-CV, 2013 WL 4822489, at *1 (Tex. App.—Austin Aug. 30, 2013, orig. proceeding) (mem. op.) (dismissing petition for writ of mandamus when vexatious-litigant relator made no showing that he had obtained order from local administrative judge permitting filing thereof).

Relator’s motion for emergency relief is denied without prejudice to refile a challenge to administrative judge’s denial of the order in the manner permitted by statute. *See* TEX. CIV. PRAC. & REM. CODE ANN. §11.102 (f).

/Dennise Garcia/

DENNISE GARCIA
JUSTICE

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