

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BRANDY LEIGH WEDEKIND,)	CASE NO. CV 2012-7208
)	
Plaintiff,)	
vs.)	<u>PROPOSED PREFILING</u>
)	FINDINGS AND ORDER
)	DESIGNATING SCOTT
SCOTT WILLIAM SMITH,)	WILLIAM SMITH A
)	VEXATIOUS LITIGANT
Defendant.)	
_____)	

IT IS HEREBY ORDERED that Scott William Smith be designated as a vexatious litigant. Mr. Smith may not file any new litigation in the courts of this state pro se without first obtaining leave of a judge of the court where the litigation is proposed to be filed.

The court finds sufficient facts in the record to conclude Mr. Smith has repeatedly filed unmeritorious motions and other papers, and has engaged in other tactics that are frivolous or solely intended to cause unnecessary delay. As such, the Court finds that Mr. Smith is a vexatious litigant pursuant to I.C.A.R. 59(d)(3). The facts supporting this finding are laid out below.

I. Standard

I.C.A.R. 59 governs the designation of vexatious litigants and states in relevant part:

(d) An administrative judge may find a person to be a vexatious litigant based on a finding that a person has done any of the following:

...

(3) In any litigation while acting pro se, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

I.C.A.R. 59(d)(3).

II. Findings of Fact and Conclusions of Law

Defendant attempted to have Plaintiff held in contempt for violating the divorce Decree by denying him contact with their children, although the Decree clearly and obviously gave Plaintiff the discretion to control when and whether Defendant communicates with their children. See Affidavit of Plaintiff in Support of Motion for Finding Defendant is a Vexatious Litigant and in Support of Motion to Dismiss, Ex. 1, p. 1 (Order granting Plaintiff's Motion to Dismiss and denying Defendant's Motion for Contempt, filed November 28, 2016 in Nebraska). On December 14, 2016, Defendant appealed the Court's ruling. See *id.* at p. 18.

On December 29, 2016 in Kootenai County, Defendant attempted to modify the divorce Decree to give him the ability to contact the children without positing a substantial and material change in circumstances. Instead, Defendant complained about the lack of contact with his children and that it is in their best interest to have a relationship with him even though he is incarcerated for a sex offense. See *id.* at pp. 4 – 6.

On January 14, 2016, Defendant served Plaintiff with discovery in the 2012 divorce action. These requests asked about things such as Plaintiff's phone number, what pre-school one of their children attended, and what items Plaintiff took when she left Idaho. See *id.* at Ex. C pp.2 – 5. He also filed a Motion to Compel. See *id.* at p.1.

On January 28, 2016, Defendant attempted to enjoin the divorce Decree in Kootenai County because he had not been allowed contact with his children. See *id.* at pp. 12 – 13.

On May 17, 2016, Defendant attempted to enjoin the divorce decree in Nebraska because he had not been allowed contact with his children. See *id.* at Ex. B, pp. 3 – 5.

The Court finds that these filings are meritless and were brought and pursued frivolously, unreasonably, and without a foundation in law or fact.

Dated 22 May, 2017.

Lansing L. Haynes
ADMINISTRATIVE DISTRICT JUDGE
LANSING L. HAYNES

CERTIFICATE OF SERVICE

I certify that on this _____ day of May, 2017, I caused a true and correct copy of this document to be served, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Erik Smith
311-B Coeur d'Alene Avenue
Coeur d'Alene, Idaho
83814

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Via Fax: (208) 765-9110
- E-mail:

Scott Smith, Inmate # 77701
Nebraska State Penitentiary
P.O. Box 2500
Lincoln, NE
68542-2500

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Via Fax:
- E-mail: