

Affirmed and Opinion filed May 31, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-01170-CV

WARREN CANADY, Appellant

V.

J. T. MORGAN AND M. B. THALER, Appellees

**On Appeal from the 12th District Court
Walker County, Texas
Trial Court Cause No. 20,664**

OPINION

Appellant, Warren Canady, appeals from an order dismissing his *pro se*, *in forma pauperis* suit under Chapter 14 of the Texas Civil Practice and Remedies Code. Finding no abuse of discretion by the trial court, we affirm.

Appellant is an inmate of the Texas Department of Criminal Justice–Institutional Division. Appellant filed suit seeking damages pursuant to 42 U.S.C. § 1983 claiming his civil rights were violated. Specifically, appellant contends appellees intentionally and knowingly denied him the right to freely exercise his religion in violation of his First Amendment rights. Appellant claims he was denied access to religious services. Appellant sought preliminary and

permanent injunctions, declaratory relief, compensatory damages, and punitive damages.

Appellees filed a motion to dismiss appellant's suit alleging: (1) appellant did not comply with the requirements applicable to the affidavit of previous filings as required by section 14.004 of the Texas Civil Practice and Remedies Code; (2) appellant did not file a certified copy of his trust account statement as required by sections 14.004(c) and (f) of the Texas Civil Practice and Remedies Code; (3) appellant did not file an affidavit regarding exhaustion of administrative grievance procedures as required by section 14.005(b) of the Texas Civil Practice and Remedies Code; (5) appellant did not attach a copy of the grievance decision as required by section 14.005 of the Texas Civil Practice and Remedies Code; and (6) appellant's suit was frivolous in that it has no arguable basis in law or fact.

The trial court ordered an evidentiary hearing. Following that hearing, the trial court dismissed appellant's lawsuit because "the petition filed by the plaintiff [appellant] is frivolous and not in compliance with the requirements set forth in Texas Civil Practices [sic] and Remedies Code, Chapter 14." This appeal followed.

As an inmate, appellant's suit is governed by Chapter 14 of the Texas Civil Practice and Remedies Code. Act of June 8, 1995, 74th Leg., ch. 378, § 2, 1995 Tex. Gen. Laws 2921-27; *Thompson v. Henderson*, 927 S.W.2d 323, 324 (Tex. App.—Houston [1st Dist.] 1996, no writ) (noting that, effective June 8, 1995, dismissal of inmate lawsuits is governed by sections 14.001–.014 of Texas Civil Practice and Remedies Code). Under this chapter, a trial court has "broad discretion" to dismiss an inmate's suit if it finds that the claim is frivolous or malicious. *Martinez v. Thaler*, 931 S.W.2d 45, 46 (Tex. App.—Houston [14th Dist.] 1996, writ denied); *Lentworth v. Trahan*, 981 S.W.2d 720, 722 (Tex. App.—Houston [1st Dist.] 1998, no pet.) (citing TEX. CIV. PRAC. & REM. CODE ANN. § 14.003(a)(2)). Therefore, a trial court's dismissal of an action as frivolous or malicious is subject to review under an abuse of discretion standard. *Martinez*, 931 S.W.2d at 46. In that regard, a trial court abuses its discretion if it acts arbitrarily, capriciously, and without reference to any guiding rules or principles. *Id.*

In three points of error, appellant alleges the trial court erred in dismissing his suit without ruling on the merits. We disagree.

Section 14.003 of the Texas Civil Practice and Remedies Code provides that a trial court may dismiss a claim if the court finds that it is frivolous or malicious. TEX. CIV. PRAC. & REM. CODE ANN. § 14.003(a)(2) (Vernon Supp. 2000). In determining whether a suit is frivolous or malicious, the court may consider, among other things, whether the claim is substantially similar to a previous claim filed by the inmate because the claim arises from the same operative facts. *Id.* at § 14.003(b)(4); *see Bell v. Texas Dep't. of Criminal Justice-Institutional Div.*, 962 S.W.2d 156, 158 (Tex. App.—Houston [14th Dist.] 1998, pet. denied). To allow the trial court to determine whether a claim arises from the same operative facts as a previous claim, the legislature enacted section 14.004 of the Texas Civil Practice and Remedies Code. *Bell*, 962 S.W.2d at 158. Section 14.004 requires an inmate who files an affidavit or unsworn declaration of inability to pay costs to file a separate affidavit or declaration setting out the following information:

- (1) identifying each suit, other than a suit under the Family Code, previously brought by the person and in which the person was not represented by an attorney, without regard to whether the person was an inmate at the time the suit was brought; and
- (2) describing each suit that was previously brought by:
 - (A) stating the operative facts for which relief was sought;
 - (B) listing the case name, cause number, and the court in which the suit was brought;
 - (C) identifying each party named in the suit; and
 - (D) stating the result of the suit, including whether the suit was dismissed as frivolous or malicious under Section 13.001 or Section 14.003 or otherwise.

TEX. CIV. PRAC. & REM. CODE ANN. § 14.004(a) (Vernon Supp. 2000). The purpose of sections 14.003 and 14.004 is to curb constant, often duplicative, inmate litigation, by requiring the inmate to notify the trial court of previous litigation and the outcome. *Bell*, 962

at 158. If provided with the information required by section 14.004, the trial court can determine, based on the previous filings, whether the suit was frivolous because the inmate already filed a similar claim. *Id.*

In this case, appellant actually filed two affidavits. In the first affidavit, which was filed with the petition, appellant lists four prior suits. In the second, appellant lists two prior federal court suits. In the first affidavit, appellant merely states the cause numbers, the style of the suits, and the basic causes of action alleged in each petition. He failed to state any *operative facts* for which that relief was sought, as required by section 14.004(2)(A). *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.004(2)(A) (Vernon Supp. 2000). Moreover, appellant did not provide the name of the court in which the suit was brought, nor, according to his testimony at the hearing, did he identify each party named in the suit in some cases. Listing the courts and identifying each party to the suit is specifically required by section 14.004(2)(B) and (C). *See id.* at § 14.004(2)(B), (C).

Appellant's second affidavit was filed more than six months after his petition. In this affidavit, appellant lists two suits previously filed in the federal courts. These suits were not listed in his first affidavit. This second affidavit was not attached to any petition or other document. It states that it was filed pursuant to 28 U.S.C. § 1915(g), rather than section 14.004 of the Civil Practice and Remedies Code and does not state that it is a supplement to the first affidavit. Assuming that deciding that an affidavit that is not attached to the petition, or filed contemporaneously with the petition, is permissible under section 14.004¹, we find appellant failed to comply with section 14.004(A)(2) with regard to the second affidavit because he again failed to list the operative facts for which relief was sought. As before, he merely listed the basic allegations contained in the federal petitions contrary to the requirements of section 14.004(A)(2). *See id.* at § 14.004(2)(A).

¹ *But see Clark v. J.W. Estelle Unit*, 23 S.W.2d 420, 422 (Tex. App.—Houston [1st Dist.] 2000, pet. denied) (refusing to hold that trial court must sift through cumbersome documents supplied by inmate to find information required by section 14.004). Here, appellant filed numerous documents with attachments. The second affidavit appears to have been filed as a single document amidst all the other filings.

Because appellant did not list the operative facts of his previous suits, provide the names of the courts in which the previous suits were filed, nor identify each party named in the previous suits, the trial court was entitled to assume the present suit was substantially similar to one or more suits previously filed by appellant and, therefore, did not abuse its discretion by dismissing it as frivolous. *See Samuels v. Strain*, 11 S.W.3d 404, 406-07 (Tex. App.—Houston [1st Dist.] 2000, no pet.); *Bell*, 962 S.W.2d at 158; *Hickson v. Moya*, 926 S.W.2d 397, 398 (Tex. App.—Waco 1996, no writ).

Accordingly we hold the trial court did not err in dismissing appellant's suit as frivolous under section 14.003 because appellant's affidavit relating to previous filings was inadequate. We affirm the trial court's judgment.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed May 31, 2001.

Panel consists of Justices Anderson, Hudson, and Seymore.

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