

Affirmed and Opinion filed June 1, 2000.



In The

Fourteenth Court of Appeals

NO. 14-99-00734-CV

ELZIA RICHARDSON, Appellant

V.

M.S. WALLACE, Appellee

**On Appeal from the 12th District Court
Walker County, Texas
Trial Court Cause No. 18,946**

OPINION

In his sole point of error, Elzia Richardson, an inmate, appeals the trial court's decision to dismiss his case against M.S. Wallace, a prison guard, for want of prosecution. We affirm.

Richardson is an inmate at the Ellis I Unit of the Texas Department of Criminal Justice-Institutional Division, and Wallace is a guard at that facility. On December 5, 1994, Richardson filed suit against Wallace, *pro se* and *in forma pauperis*, alleging that Wallace had stolen some items from Richardson's cell. In April of 1999, Wallace filed a motion to dismiss Richardson's case under Rule 165a of the Texas Rules of Civil Procedure for "failure to prosecute his claim with due diligence and for failure to comply with

the applicable time standards.” The trial court agreed with Wallace and dismissed Richardson’s case on June 1, 1999, for want of prosecution. On appeal, Richardson complains that the trial court’s decision to dismiss his petition was erroneous.

The standard for reviewing a dismissal for want of prosecution is whether the trial court committed a clear abuse of discretion. *See Seigle v. Hollech*, 892 S.W.2d 201, 203 (Tex. App.—Houston [14th Dist.] 1994, no writ) (citing *Ellmossallamy v. Huntsman*, 830 S.W.2d 299, 300 (Tex. App.—Houston [14th Dist.] 1992, no writ)). With respect to suits brought by inmates *in forma pauperis*, the discretion to dismiss a suit is broad. *See Kendrick v. Lynaugh*, 804 S.W.2d 153, 155 (Tex. App.—Houston [14th Dist.] 1990, no writ).

The trial court’s authority to dismiss for want of prosecution stems from two sources: (1) Rule 165a of the Texas Rules of Civil Procedure, and (2) the court’s inherent power. *See Villareal v. San Antonio Truck & Equip.*, 994 S.W.2d 628, 630 (Tex. 1999). A trial court may dismiss a case under Rule 165a on the “failure of any party seeking affirmative relief to appear for any hearing or trial of which the party had notice,” TEX. R. CIV. P. 165a(1), or when a case is “not disposed of within the time standards promulgated by the Supreme Court . . .” TEX. R. CIV. P. 165a(2). In addition, common law vests the trial court with the inherent power to dismiss a case independently of the rules of procedure when a plaintiff fails to prosecute his or her case with due diligence. *See Villareal*, 994 S.W.2d at 630.

In his April, 1999, motion to dismiss, Wallace noted that, since filing his original petition in December of 1994, Richardson had taken no action to litigate his suit. As a result, Richardson’s case against Wallace was almost completely dormant for over four years. Wallace argued therefore that Richardson had failed to pursue his claim with due diligence and asked the court to dismiss for want of prosecution.

In response to Wallace’s motion, Richardson offered no explanation for his failure to pursue the case. Richardson merely explained that he had not requested a trial setting because he believed the trial court would set one for him. On June 1, 1999, the trial court granted Wallace’s motion and dismissed Richardson’s case for want of prosecution. Richardson did not seek reinstatement and elected, instead,

to appeal the trial court's decision to dismiss his petition. On appeal, Richardson offers no further explanation for his want of due diligence.¹

As a *pro se* litigant, appellant was responsible to prosecute his action with diligence like any other litigant. *See Coleman v. Lynaugh*, 934 S.W.2d 837, 838 (Tex. App.—Houston [1st Dist.] 1996, no writ). Given the lengthy period of inactivity in this case, the dismissal was not an abuse of discretion. Accordingly, Richardson's point of error is overruled and the trial court's decision to dismiss his petition for want of prosecution is affirmed.

PER CURIAM

Judgment rendered and Opinion filed June 1, 2000.

Panel consists of Justices Yates, Fowler, and Edelman.

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¹ Instead, Richardson argues that a “dismissal for failure to exhaust state remedies” under § 13.001 of the Texas Civil Practice and Remedies Code was improper in his case. Because the dismissal was entered under Rule 165a of the Texas Rules of Civil Procedure, and not Section 13.001 of the Texas Civil Practice and Remedies Code, Richardson's reliance on Section 13.001 is misplaced.