

**Affirmed and Opinion filed August 10, 2000.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-99-00428-CV**  
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**CURTIS MACK LEWIS, Appellant**

**V.**

**WAYNE SCOTT, ET AL., Appellees**

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**On Appeal from the 12<sup>th</sup> District Court  
Walker County, Texas  
Trial Court Cause No. 19,682**

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**OPINION**

Appellant, Curtis Mack Lewis, 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.

Lewis is an inmate at the Ellis Unit of the Texas Department of Criminal Justice-Institutional Division ("TDCJ-ID"). Lewis filed a lawsuit against Wayne Scott, Bruce Thaler, R.J. Parker, and Thomas Merchant, along with several other TDCJ-ID employees, alleging that

his civil rights had been violated.<sup>1</sup> Defendants Scott, Thaler, Parker, and Merchant filed separate motions to dismiss on the grounds that Lewis’s claims were frivolous and malicious under Chapter 14 of the Texas Civil Practice and Remedies Code. The trial court ordered an evidentiary hearing to determine whether there was an arguable basis in fact or in law for any of Lewis’s claims. Following that hearing, the trial court found that Lewis’s claims were “frivolous.” Accordingly, the trial court granted the motions filed by Scott, Thaler, and Parker, and dismissed Lewis’s claims against them with prejudice. Lewis’s suit against Merchant was likewise dismissed with prejudice.<sup>2</sup> Lewis appeals and, in twelve points of error, argues that the trial court erred in dismissing his claims against Scott, Thaler, Parker, and Merchant.<sup>3</sup>

As an inmate, Lewis’s suit is governed by Chapter 14 of the Texas Civil Practice and Remedies Code. *See* Act of June 8, 1995, 74th Leg., ch. 378, § 2, 1995 Tex. Gen. Laws 2921-27; *see also Thompson v. Henderson*, 927 S.W.2d 323, 324 (Tex. App.—Houston [1st Dist.] 1996, no writ) (noting that, effective June 8, 1995, the dismissal of inmate lawsuits is governed by Sections 14.001–.014 of the 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. *See Martinez v. Thaler*, 931 S.W.2d 45, 46 (Tex. App.—Houston [14th Dist.] 1996, writ denied); *see also Lentworth v. Trahan*, 981 S.W.2d 720, 722 (Tex. App.—Houston [1st Dist.] 1998, no pet.) (citing TEX. CIV. PRAC. & REM. CODE

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<sup>1</sup> Lewis sued the following TDCJ-ID employees at the Ellis Unit: Wayne Scott, then “director” of TDCJ-ID; Bruce Thaler, an “executive warden”; R.J. Parker, an “assistant warden”; Thomas Merchant, a “major official”; Charles T. Spivey, a “captain official”; Frank Bachmann, a “physician’s assistant”; Sheryl Morgan, an “administrative tech. mail clerk”; and Sharon Roach, also an “administrative tech. mail clerk.”

<sup>2</sup> The record shows Lewis’s claims against Scott, Parker, and Thaler were dismissed in May of 1997. Lewis’s remaining claims were dismissed in March and April of 1999, for failure to comply with Chapter 14 of the Texas Civil Practice and Remedies Code. However, the notices of appeal filed by Lewis address only the dismissals entered in favor of Scott, Thaler, Parker, and Merchant. Accordingly, this opinion addresses those dismissals only.

<sup>3</sup> The brief filed by the Attorney General’s Office on behalf of the appellees insists that Merchant is not a proper appellee here because he is not listed in Lewis’s notice of appeal. However, a supplemental clerk’s record in this case shows that Lewis filed a separate notice of appeal to address the trial court’s dismissal of his claims against Merchant.

§ 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. *See 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. *See id.*

Because it is dispositive in this instance, we turn first to Lewis’s twelfth point of error, which addresses the trial court’s dismissal “for failure to comply” with Chapter 14 of the Texas Civil Practice and Remedies Code. Here, the appellees contend that Lewis’s claims were properly dismissed as frivolous under Section 14.003 of the Texas Civil Practice and Remedies Code because Lewis failed to fully comply with Texas Civil Practice and Remedies Code Section 14.004.

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. *See 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. *See id.* at § 14.003(b)(4). 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. 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. *See Bell v. Texas Dep't. of Criminal Justice-Institutional Div.*, 962 S.W.2d 156, 158 (Tex. App.—Houston [14th Dist.] 1998, no pet.). 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. *See id.*

In this case, the trial court dismissed Lewis's suit and found it was frivolous without giving a reason for that ruling. A review of the record shows, however, that Lewis's affidavit is plainly insufficient to meet the requirements of Section 14.004. While Lewis listed the case names and cause numbers for five previous lawsuits, he did not include the operative facts for which relief was sought in those suits, nor did he identify the courts in which the suits were brought or the result, if any, obtained therein. It is well settled that the dismissal of a suit for failure to comply with Section 14.004 is not an abuse of discretion. *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). Because Lewis did not comply with Section 14.004, we hold that the trial court did not abuse its discretion in dismissing his suit. Accordingly, Lewis's twelfth point of error is overruled.

Because of our disposition on Lewis's twelfth point of error, we need not reach the

remaining issues raised by Lewis. The trial court's decision is therefore affirmed.

PER CURIAM

Judgment rendered and Opinion filed August 10, 2000.

Panel consists of Fowler, Edelman, and Draughn.<sup>4</sup>

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<sup>4</sup> Senior Justice Joe L. Draughn sitting by assignment.