

**Affirmed and Opinion filed August 31, 2000.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-99-00427-CV**  
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**ALFRED LEE STONE, Appellant**

**V.**

**GARY I. JOHNSON, Appellee**

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**On Appeal from the 278<sup>th</sup> District Court  
Walker County, Texas  
Trial Court Cause No. 20, 343C**

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**OPINION**

Appellant's complaint was dismissed by the trial court because he failed to file a proper and complete affidavit relating to previous filings. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.004<sup>1</sup>. On appeal, he argues the court may not dismiss his complaint without giving him an opportunity to amend the affidavit. For authority, he cites *Foman v. Davis*, 371 U.S. 178, 83 S. Ct. 227(1962), presumably for the proposition that the Federal Rules of Civil Procedure

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<sup>1</sup> This chapter applies to all inmate litigation, except those in family court wherein a declaration of inability to pay costs is filed. *See id.* at 14.002.

require that, in the interest of justice, leave to amend a pleading be freely given. *See id.* at 182. That proposition is immaterial to the present case.

The trial court may, in its discretion, dismiss an inmate's complaint for failure to file a proper affidavit. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 14.003 & 14.004; *Hickson v. Moya*, 926 S.W.2d 397, 399 (Tex. App.—Waco 1996, no writ). Appellant offers no reason why the court's action was an abuse of discretion other than to conclude that the court "acted without reference to any guiding principles." We find that the court did not abuse its discretion and affirm the order of dismissal.

/s/ J. Harvey Hudson  
Justice

Judgment rendered and Opinion filed August 31, 2000.

Panel consists of Chief Justice Murphy and Justices Hudson and Wittig.

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