

Affirmed and Opinion filed October 21, 1999.



In The

## Fourteenth Court of Appeals

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NO. 14-98-01116-CV  
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JESUS F. VALENZUELA, SR., Appellant

V.

TDCJ-INSTITUTIONAL DIVISION, ET AL., Appellees

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On Appeal from the 149th District Court  
Brazoria County, Texas  
Trial Court Cause No. 5120\*I98

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### OPINION

Appellant, Jesus Valenzuela, Sr., appeals from an order dismissing his *pro se, in forma pauperis* suit under Chapters 13 and 14 of the Texas Civil Practice and Remedies Code. Finding no abuse of discretion by the trial court, we affirm.

Appellant is an inmate in the Ramsey I Unit of the Texas Department of Criminal Justice-Institutional Division (TDCJ-ID). Appellees are the TDCJ-ID and various employees of the TDCJ-ID. On July 16, 1998, appellant sued appellees under 42 U.S.C. § 1983 and the Texas Tort Claims Act in connection with an assault by another inmate, revocation of his law library privileges, and his participation in the grievance process. On July 30, 1998, the trial

court, on its own motion, dismissed appellant's suit as frivolous. In the dismissal order, the court found that appellant "failed to state a claim that has an arguable basis in law or in fact as required by section 13.001(b)(2) and/or section 14.003" and "failed to follow the provisions of section 14.004." *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 13.001(b)(2), 14.003(b)(2), 14.004 (Vernon Supp. 1999).

Where, as here, the dismissal order specifies the grounds for dismissal, our review is limited to whether the dismissal was proper on the grounds specified by the trial court. *See Shook v. Gilmore & Tatge Mfg. Co.*, 951 S.W.2d 294, 296 (Tex. App.--Waco 1997, writ denied). We must affirm the dismissal if it was proper on any ground stated in the order, even if it was granted on an improper ground. *See Polk v. Braddock*, 864 S.W.2d 78, 79 (Tex. App.--Dallas 1992, no writ). As we stated, the trial court dismissed appellant's action, in part, because of the failure to comply with section 14.004. That provision requires an inmate to file a separate affidavit or declaration identifying each prior suit brought by the inmate, specifying the operative facts, the case name, the cause number, the court in which it was brought, the names of the parties, and stating the result of the suit. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.004(a)(1), (2). This provision enables the trial court to determine if a suit is frivolous because of previous, similar claims filed by the inmate. *See Bell v. Texas Dept. of Criminal Justice- Institutional Div.*, 962 S.W.2d 156, 158 (Tex. App.--Houston [14th Dist.] 1998, no writ).

The "affidavit" filed with appellant's petition does not comply with section 14.004 because it identifies only the court and cause number of a previous suit filed by appellant. *See id.* (holding that affidavit was insufficient because it did not identify the operative facts or parties to previous litigation filed by the inmate). Further, appellant's "affidavit" does not meet the definition of an affidavit under section 312.011(1) of the Government Code,<sup>1</sup> nor does it substantially comply with the requirements of an unsworn declaration under sections 132.001-

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<sup>1</sup> "Affidavit" means a statement in writing of a fact or facts signed the party making it, sworn to before an officer authorized to administer oaths, and officially certified to by the officer under his seal of office." TEX. GOV'T CODE ANN. § 312.011(1) (Vernon 1998).

132.003 of the Civil Practice and Remedies Code.<sup>2</sup> *See Gutierrez v. Johnson*, 934 S.W.2d 809, 810-11 (Tex. App.--Houston [1st Dist.] 1996, orig. proceeding).

The dismissal of a suit for failure to comply with section 14.004 is not an abuse of discretion. *See id.*; *see also Hickson*, 926 S.W.2d at 398. Because appellant did not comply with section 14.004, we hold that the trial court did not abuse its discretion in dismissing appellant's suit.

PER CURIAM

Judgment rendered and Opinion filed October 21, 1999.

Panel consists of Amidei, Edelman, and Wittig.

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<sup>2</sup> "An unsworn declaration made as provided by this chapter by an inmate in the Texas Department of Corrections or in a county jail may be used in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by statute or required by a rule, order, or requirement adopted as provided by law." TEX. CIV. PRAC. & REM. CODE ANN. § 132.001. "An unsworn declaration made under this chapter must be: (1) in writing; and (2) subscribed by the person making the declaration as true under penalty of perjury." TEX. CIV. PRAC. & REM. CODE ANN. § 132.002. "The form of a declaration under this chapter must be substantially as follows:

I, (insert name and inmate identifying number from the Texas Department of Corrections or county jail), being presently incarcerated in (insert Texas Department of Corrections unit name or county jail name) in \_\_\_\_ County, Texas, declare under penalty of perjury that the foregoing is true and correct. Executed on (date).  
(signature)."

TEX. GOV'T CODE ANN. § 132.003.