

**Affirmed and Opinion filed December 13, 2001.**



**In The**  
**Fourteenth Court of Appeals**

---

**NO. 14-00-01195-CV**

---

**WESLEY T. DIXON, Appellant**

**V.**

**SHARON ROACH, Appellee**

---

---

**On Appeal from the 12<sup>th</sup> District Court  
Walker County, Texas  
Trial Court Cause No. 20,778**

---

---

**OPINION**

Appellant appeals from a judgment dismissing his lawsuit against appellee. In three issues, appellant contends the trial court erred in (1) granting the motion to dismiss; (2) denying the motion to reinstate; and (3) imposing costs on appellant. We affirm.

Appellant is an inmate in the Ellis Unit of the Texas Department of Criminal Justice—Institutional Division. He filed suit against appellee, the mail room supervisor at the Ellis Unit, alleging she failed to deliver or cause to be delivered, a package containing legal materials intended for appellant’s attorney. The trial court dismissed appellant’s suit because he failed to comply with the requirements of section 14.005 of the Texas Civil

Practice and Remedies Code governing exhaustion of administrative remedies. Appellant failed to file his claim before the thirty-first day after the date he received the written decision from the grievance system as required by section 14.005. Under section 14.005(b) of the Civil Practice and Remedies Code, a trial court may dismiss an inmate's suit if he fails to timely file it.

In his first issue, appellant claims the trial court erred in granting appellee's motion to dismiss. Appellant filed a step one grievance on October 28, 1999, claiming his mail had not been delivered. On November 12, 1999, the response to the grievance contained a recommendation that appellant file a tracer form with the United States Postal Service. Appellant then appealed that response by filing a step two grievance form. The response to his appeal was issued on December 12, 1999. That response also directed appellant to submit the tracer form to the Postal Service. Appellant submitted the trace request and received a letter from the United States Postal Service instructing him that the trace process could take as long as three months. On April 25, 2000, appellant filed suit against appellee.

Appellant does not dispute the fact his lawsuit was filed more than thirty-one days after he received the response to his step two grievance. He claims the time between his receipt of the step two grievance decision and the time he filed his lawsuit should be tolled because he was waiting for the post office to trace his lost mail. Appellant attempts to invoke the equitable tolling principles available when a strict application of a statute of limitations would be inequitable. Section 14.005(b), however is not a statute of limitations. The legislature set forth specific provisions for claims that are subject to the grievance system established under Texas Government Code section 501.088. Appellant's claim was such a claim. *See* TEX. GOV'T CODE ANN. § 501.008(a) (Vernon 1998) (stating that remedy provided by grievance system is exclusive administrative remedy available to inmate for claim of relief against department of corrections that arises while inmate housed in facility operated by department). Under the provisions applicable to claims subject to the grievance system, the trial court "shall dismiss a claim" if the inmate does not file it before the thirty-

first day after he receives the decision from the grievance system. TEX. CIV. PRAC. & REM. CODE ANN. § 14.005(b) (Vernon Supp. 2000).

The review of a trial court's dismissal of an inmate's suit under Chapter 14 of the Texas Civil Practice and Remedies Code is controlled by the abuse of discretion standard. *Hickson v. Moya*, 926 S.W.2d 397, 398 (Tex. App.—Waco 1996, no writ). Here, the trial court did not abuse its discretion in dismissing appellant's suit. Appellant's first issue is overruled.

In his second issue, appellant claims the trial court abused its discretion in denying his motion to reinstate. Under this issue, appellant argues section 14.005 violates the open courts provision of the Texas and United States constitutions because it shortens the time to file a lawsuit. Appellant further contends section 14.005 violates the equal protection clauses of the federal and state constitutions because it applies only to indigent inmates. This court has previously held that the reasonable restrictions set out in section 14.005 on the ability of inmates to proceed *in forma pauperis* do not constitute a denial of the constitutional right of access to the courts and that section 14.005 does not violate equal protection. *Sanders v. Palunsky*, 36 S.W.3d 222, 227 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2001, no pet.). Appellant's second issue is overruled.

In his third issue appellant claims the trial court erred in assessing costs against him under section 14.006 of the Texas Civil Practice and Remedies Code. Under section 14.006, a court may order an inmate who has filed a claim to pay court costs in accordance with chapter 14. After determining that appellant had incurred court costs and fees in the amount of \$165.00, the trial court ordered him to pay that amount from his Inmate Trust Account as follows:

Pay an initial amount equal to the lesser of:

- (1) 20% of the preceding six month's deposits in the Inmates' Trust Account; or

- (2) The total amount of fees and costs.

In each month following in which the initial payment is made above, the inmate shall pay an amount equal to the lesser of:

- (1) 10% of that month's deposit to the inmate Trust Account; or
- (2) the total amount of fees that remain unpaid.

Payments are to continue until the total amount certified is paid, or the inmate is released from confinement.

Although the trial court's order follows sections 14.006(b),(c), and (d) of the Civil Practice and Remedies Code, appellant claims the prison system took all of his funds from his prison trust fund account, which left him completely destitute. Appellant presented no evidence in the record before this court to show that his prison trust fund was completely depleted. Without evidence in the record that appellant's account was depleted, we cannot conclude the trial court abused its discretion in ordering appellant to pay costs incurred in the underlying suit. Accordingly, appellant's third issue is overruled.

The judgment of the trial court is affirmed.

PER CURIAM

Judgment rendered and Opinion filed December 13, 2001.

Panel consists of Chief Justice Brister and Justices Fowler and Seymore.

Do Not Publish — TEX. R. APP. P. 47.3(b).