

Affirmed and Opinion filed December 21, 2000.



In The

Fourteenth Court of Appeals

NO. 14-99-00122-CV

ALTON SIMMONS, Appellant

V.

DANNY YOUNG, Appellee

**On Appeal from the 149th District Court
Brazoria County, Texas
Trial Court Cause No. 6917*I99**

O P I N I O N

Alton Simmons appeals the dismissal of his suit on the ground that it is not frivolous or malicious because the claims have an arguable basis in law, the assignment of the claim to Simmons is valid, and Simmons satisfied all requirements for filing a lawsuit under the pauper statutes. We affirm.

Simmons, a prison inmate, filed suit, *pro se* and *in forma pauperis*, against Danny Young, a fellow inmate, alleging claims for assault, battery, and intentional infliction of emotional distress. Simmons alleged that these claims had been assigned to him by Troy Wayne Johnson, a third inmate, whom Young had allegedly assaulted on two separate occasions, without provocation, by throwing a cup of urine on him and by spitting on him. Simmons alleged that, as a result of Young's assaults, Johnson suffered "significant

psychological injury, including severe mental suffering, anguish, emotional distress, and prolonged depression and feelings of stress.”

The trial court, on its own motion, dismissed Simmons’s suit as “frivolous or malicious” because it “failed to state a claim that has an arguable basis in law or in fact,” and/or that Simmons “failed to follow” the provisions of section 14.004 of the Texas Civil Practice and Remedies Code which govern suits by inmates.

A trial court may dismiss a claim brought by an indigent inmate if the court finds that the claim is frivolous or malicious. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 14.001(1), 14.002(a), 14.003(a)(2) (Vernon Supp. 2000). A claim is frivolous or malicious if, among other things, its realistic chance of success is slight or it has no arguable basis in law or fact. *See id.* § 14.003(b)(1), (2). A trial court’s dismissal of an action as frivolous or malicious is subject to review under an abuse of discretion standard. *See Martinez v. Thaler*, 931 S.W.2d 45, 46 (Tex. App.—Houston [14th Dist.] 1996, writ denied).

This lawsuit amounts to a dispute between two prison inmates over harassing behavior that produced no physical injury or economic loss. Although the conduct alleged cannot be approved or condoned, we believe that the trial court would have been within its discretion to determine that expending the scarce resources of our judicial system in conducting civil litigation over such tenuous claims between inmates cannot be justified. To that extent, we agree that the claim was frivolous in lacking an arguable basis in law or fact. Accordingly, the trial court’s order of dismissal is affirmed.

/s/ Richard H. Edelman
 Justice

Judgment rendered and Opinion filed December 21, 2000.

Panel consists of Justices Anderson, Fowler, and Edelman.

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