

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-09-00305-CV**

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**RAFAEL ALVARO PRIETO, Appellant**

**V.**

**NATHANIEL QUARTERMAN, ET AL., Appellees**

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**On Appeal from the 258th District Court**  
**Polk County, Texas**  
**Trial Cause No. CIV24,727**

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**MEMORANDUM OPINION**

Rafael Alvaro Prieto, an indigent inmate, appeals the dismissal of his suit. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.003 (Vernon 2002). We affirm the trial court's order dismissing the suit.

Prieto alleged that he was transferred from the Coffield Unit to the Pack One Unit on June 2, 2008. Prieto alleged that his property arrived at the Pack One Unit on June 23, 2008. According to the averments in the petition, Department of Criminal Justice employees named Raymond and Collins opened the box containing Prieto's property, damaged Prieto's typewriter, and failed to return certain items of property to Prieto.

Prieto was transferred to the Polunsky Unit on June 26, 2008. Prieto made a claim for lost or damaged property through the inmate grievance system. TEX. GOV'T CODE ANN. § 501.007 (Vernon 2004); TEX. GOV'T CODE ANN. § 501.008 (Vernon 2004). Dissatisfied with the resolution of his grievance, Prieto filed suit that identified as defendants “Nathaniel Quarterman, and Officers Raymond and Clifford, Pack One Unit, TDCJ-ID.” Quarterman filed an answer and moved for dismissal. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.003. The trial court dismissed the suit as frivolous for failure to comply with the inmate-filing requirements.

On appeal Prieto contends that he exercised diligence in pursuing his claim to the best of his ability. Quarterman argues that Prieto failed to file sufficient documentation regarding either the exhaustion of his administrative remedies or his previous filings. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 14.004, 14.005 (Vernon 2005).

“Unless authorized by statute, an affidavit is insufficient unless the allegations contained therein are direct and unequivocal and perjury can be assigned upon it.” *Brownlee v. Brownlee*, 665 S.W.2d 111, 112 (Tex. 1984). It must “positively and unqualifiedly represent the ‘facts’ as disclosed in the affidavit to be true and within his personal knowledge.” *Id.* To function in place of an affidavit, an inmate’s unsworn declaration must be subscribed by the person making the declaration “as true under penalty of perjury.” *See* TEX. CIV. PRAC. & REM. CODE ANN. § 132.002 (Vernon 2005). The declaration must be in substantially the form set forth in Section 132.003. *See* TEX.

CIV. PRAC. & REM. CODE ANN. § 132.003 (Vernon Supp. 2009) (“I, (insert name and inmate identifying number from Texas Department of Criminal Justice or county jail), being presently incarcerated in (insert Texas Department of Criminal Justice 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)”

A person commits the criminal offense of perjury if “with intent to deceive and with knowledge of the statement’s meaning: (1) he makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath; or (2) he makes a false unsworn declaration under Chapter 132, Civil Practice and Remedies Code.” TEX. PEN. CODE ANN. § 37.02 (Vernon 2003).

A document titled “Affidavit” was attached to Prieto’s petition. At the beginning of the document, Prieto identifies himself and states that he is writing the affidavit to comply with Section 14.005. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.005 (Vernon 2002). Prieto states that he wrote a Step One grievance on July 2, 2008, and received the Step One response on July 22, 2008, and that he filed a Step Two grievance on July 23, 2008, and that he received the Step Two response on August 27, 2008. Prieto closes with the statement “I make this affidavit very aware of the consequences of PERJURY, being of sound mind, on September 20, 2008.”

The document filed by Prieto satisfies some of the requirements for a statement made under oath. For instance, Prieto's personal knowledge is evident from the face of the document. The dates he filed the Step One and Step Two grievances and received the responses are plainly matters within his personal knowledge. The statements regarding the exhaustion of his administrative remedies are direct and unequivocal. Prieto states that he is aware of the penalties for perjury. But missing from the document is any assertion that the facts stated by Prieto in the document are true. *See Brownlee*, 665 S.W.2d at 112; *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 132.002. Though it states that facts recited therein are within the maker's personal knowledge, a statement is not an affidavit if the person making the statement does not state that the facts therein recited are true. *See Gerstacker v. Blum Consulting Engineers, Inc.*, 884 S.W.2d 845, 848 (Tex. App.--Dallas 1994, writ denied).

Perjury may be assigned to a false statement in an inmate's unsworn declaration. TEX. PEN. CODE ANN. § 37.02. An inmate's unsworn declaration must "declare under penalty of perjury that the foregoing is true and correct." TEX. CIV. PRAC. & REM. CODE ANN. § 132.003. Although Prieto states that he is aware of the penalties for perjury, he neither acknowledges that he is placing himself under penalty of perjury by making the statement nor states that the facts set forth in the document are true and correct. Thus, the document does not satisfy the requirements of the statute. *Id.* Section 14.005 requires

that the inmate file an affidavit or an unsworn declaration. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.005. Prieto's filing meets neither requirement.

The document titled "Affidavit Relating to Previous Filings" contains similar substantive defects. Prieto states that "[t]his Affidavit is to comply with the Section 14.004," describes two suits that have been dismissed, and closes with the statement "I am, again, conscious of the consequences of PERJURY, since I am a man of sound mind and in full execution of my rights." Another page attached to the petition states that Prieto does have another suit filed, describes the subject matter of the suit, and closes with the statement, "Again, this is part of the AFFIDAVIT to comply with Section 14.004[.]" Prieto does not state that the facts contained in the document are true. *See Brownlee*, 665 S.W.2d at 112; *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 132.002. Like Section 14.005, Section 14.004 requires that the inmate file an affidavit or unsworn declaration. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.004. Prieto's 14.004 filing meets neither requirement.

Furthermore, this document does not include all of the information required by Section 14.004. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.004 (Vernon 2002). An inmate proceeding under a declaration of inability to pay must describe each suit that was previously brought by: (1) "stating the operative facts for which relief was sought;" (2) "listing the case name, cause number, and the court in which the suit was brought;" (3)

“identifying each party named in the suit;” and (4) “stating the result of the suit, including whether the suit was dismissed as frivolous or malicious[.]” *Id.*

Prieto states that in 1999 he filed a federal suit in the Southern District of Texas, Houston Division, against the Hurst Police Department, but he states that he cannot remember the number or what relief was sought. According to Prieto, the suit “was denied for being too late or something like that.”<sup>1</sup> Prieto provides the court, case number, and names of the parties for his second suit. According to Prieto, he filed the suit on July 19, 2000, his claims against one of the parties was dismissed “only a few weeks after I filed, for lack of prosecution,” and his claim against the other party was dismissed without explanation on May 1, 2008.<sup>2</sup> Prieto identifies the third suit by date and court of

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<sup>1</sup> Prieto may be referring to a suit titled *Rafael Alvaro Prieto v. United States of America; George W. Bush, Jr., President of the United States; State of Texas; Rick Perry, Governor; Janie Cockrell, Director, Texas Department of Criminal Justice; Institutional Division; City of Hurst, Texas Police Department; J. Meeks, Officer, Hurst Police Department; NFN Young, Officer, Hurst Police Department; NFN Reed, Officer, Hurst Police Department[;] Unknown Officers, Hurst Police Department*, 115 F. App’x 758 (5th Cir. 2004). Although the case matches part of the description provided by Prieto in his statement of previous filings, Prieto stated that “[the] suit was not dismissed as malicious either.” The suit cited here was dismissed as frivolous. *Id.*

<sup>2</sup> The appellate court affirmed the dismissal of this case after Prieto filed his affidavit. *See Prieto v. Shaw*, No. 02-08-224-CV, 2009 WL 4878712, \*1 (Tex. App.--Fort Worth Dec. 17, 2009, no pet.). The court’s opinion states that the trial court dismissed the suit against one defendant on January 8, 2002, and that the suit was dismissed for want of prosecution. *Id.* at \*1, n.2.

filing but does not identify the case number, the name of the case, or the name of the defendant.<sup>3</sup>

“The purpose of Section 14.004 is to curb the constant, often duplicative, inmate litigation, by requiring the inmate to notify the trial court of previous litigation and the outcome.” *Thomas v. Bush*, 23 S.W.3d 215, 218 (Tex. App.--Beaumont 2000, pet. denied). When an inmate files an affidavit that fails to comply with Section 14.004, “the trial court is entitled to assume the suit is substantially similar to one previously filed by the inmate, and therefore, frivolous.” *Hall v. Treon*, 39 S.W.3d 722, 724 (Tex. App.--Beaumont 2001, no pet.). In this case, Prieto did not establish his compliance with the statute.

The trial court did not abuse its discretion in dismissing the suit. We overrule the issue and affirm the trial court’s order of dismissal.

AFFIRMED.

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STEVE McKEITHEN  
Chief Justice

Submitted on March 3, 2010  
Opinion Delivered May 13, 2010

Before McKeithen, C.J., Gaultney and Horton, JJ.

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<sup>3</sup> Prieto may be referring to *Rafael Prieto v. Nathaniel Quarterman, et al.*, No. 6:08cv226, 2008 WL 5070977, \*1 (E.D.Tex. Nov. 24, 2008). In that case, the District Court dismissed a civil rights suit “without prejudice until such time as the disciplinary cases about which Prieto complains have been overturned, set aside, or otherwise expunged.” *Id.* at \*2.