



**In The  
Court of Appeals  
Sixth Appellate District of Texas at Texarkana**

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No. 06-16-00049-CV

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LARRY JOE MORGAN, Appellant

V.

WILLIAM S. HARRIS, Appellee

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On Appeal from the 48th District Court  
Tarrant County, Texas  
Trial Court No. 048-284616-16

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Before Morriss, C.J., Moseley and Burgess, JJ.  
Memorandum Opinion by Chief Justice Morriss

## MEMORANDUM OPINION

The 48th Judicial District Court in Tarrant County<sup>1</sup> dismissed inmate Larry Joe Morgan's civil action numbered 048-284616-16 that had been filed against his former criminal appellate attorney, William S. Harris.<sup>2</sup> The trial court's subsequent findings of facts and conclusions of law detailed that the action had been dismissed on the bases (a) that Morgan failed to comply with the affidavit requirements of Chapter 14 of the Texas Civil Practice and Remedies Code, (b) that Morgan's claims were frivolous because they were substantially similar to at least two previous lawsuits Morgan had filed against Harris, and (c) that they were frivolous because they had no arguable basis in law and/or fact.

On appeal, Morgan contends that the trial court erred (a) in dismissing his suit without first allowing him an opportunity to amend, (b) in denying his demand for a jury trial, and (c) in denying his motion for disclosure and his requests for production and inspection. We affirm the trial court's order of dismissal because (1) Morgan has failed to challenge on appeal two independent reasons for dismissal and (2) Morgan was not entitled to a jury trial or discovery.<sup>3</sup>

A little background is in order.

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<sup>1</sup>Originally appealed to the Second Court of Appeals in Fort Worth, this case was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. *See* TEX. GOV'T CODE ANN. § 73.001 (West 2013). We are unaware of any conflict between precedent of the Second Court of Appeals and that of this Court on any relevant issue. *See* TEX. R. APP. P. 41.3.

<sup>2</sup>In this lawsuit, Morgan had asserted various causes of action based on errors Harris allegedly committed during his representation of Morgan on appeal of an earlier criminal case.

<sup>3</sup>Morgan also argued that the trial court erred by denying his motion to preserve the court reporter's record. However, the pleadings and motions filed in this case were taken and ruled on by submission, and because no court reporter's record or notes were made, this point of error is moot.

After Morgan had been convicted of aggravated assault with a deadly weapon, he had fully exhausted his appeals from that conviction, and his application for a writ of habeas corpus had been denied,<sup>4</sup> he then began to seek satisfaction against his appellate counsel Harris through civil actions.

In January 2016, Morgan filed a civil lawsuit against Harris in the 236th Judicial District Court of Tarrant County, asserting claims for fraud, violations of the Texas Deceptive Trade Practices Act, violations of the Texas Disciplinary Rules of Professional Conduct, breach of fiduciary duty, breach of contract, conversion, unjust enrichment, collusion, and conspiracy, all stemming from Harris's court-appointed legal representation of him on appeal of his conviction.

Morgan also filed a lawsuit against Harris in the United States District Court for the Northern District of Texas, in a case styled cause number 4:14-CV-537-A; *Larry Joe Morgan v. Tarrant County Fort Worth, et al.*, wherein Morgan complained of the same alleged actions or failures by Harris during his legal representation of Morgan, but couched them as federal civil-rights claims, which the federal district court dismissed with prejudice. *See* 42 U.S.C. § 1983 (West, Westlaw through P.L. 114-327) .

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<sup>4</sup>On or about March 22, 2013, a Tarrant County jury found Morgan guilty of aggravated assault with a deadly weapon, and he was sentenced to twenty years in prison. Following Morgan's conviction, William Harris was appointed to represent Morgan on appeal. Harris met with Morgan and discussed Morgan's numerous complaints relating to the representation of Morgan's trial attorney during Morgan's criminal trial. Morgan's motion for new trial was denied.

On appeal to the Seventh Court of Appeals in Amarillo, Harris filed an *Anders* brief in Morgan's case, indicating his desire to withdraw from the case on appeal because he believed it to be frivolous. *See Anders v. California*, 386 U.S. 738, 739 (1967); *Morgan v. State*, No. 07-13-00136-CR, 2014 WL 2553376, at \*1 (Tex. App.—Amarillo June 4, 2014, pet. ref'd) (mem. op., not designated for publication). Morgan filed a brief in response, urging the court of appeals to reverse his conviction for various reasons, including several complaints regarding his trial counsel's representation. *Morgan*, 2014 WL 2553376, at \*1. The court of appeals found that the appeal was frivolous, allowed Harris to withdraw, and affirmed the district court's judgment. *Id.* Morgan's subsequent petition for discretionary review was refused, and his pro se application for writ of habeas corpus asserting many of the same claims was denied.

In March 2016, Morgan filed this lawsuit in the 48th Judicial District Court of Tarrant County, and in this suit stated essentially the same claims as were asserted in his prior Tarrant County lawsuit. As stated above, the trial court dismissed the lawsuit because: (a) Morgan's affidavit did not meet the legal requirements, (b) Morgan's claims were frivolous as duplicating prior claims, and (c) they were frivolous as lacking a basis in law or fact.

(1) *Morgan Has Failed to Challenge on Appeal Two Independent Reasons for Dismissal*

Before the dismissal of this lawsuit, Morgan had attempted to cure his Chapter 14<sup>5</sup> affidavit by filing an amended affidavit with his first amended petition. Morgan argues that the trial court erred in dismissing his lawsuit without first allowing him an opportunity to amend his pleading.

The problem with Morgan's argument is that he fails to challenge two other independent grounds for the dismissal.

In addition to dismissal for a failure of the affidavit requirement, a court may dismiss a claim by an indigent inmate, either before or after service of process, if the court finds that the claim is frivolous or malicious. TEX. CIV. PRAC. & REM. CODE ANN. § 14.003(a)(2); *Comeaux v. Tex. Dep't of Criminal Justice*, 193 S.W.3d 83, 86 (Tex. App.—Houston [1st Dist.] 2006, pet. denied); *Lentworth v. Trahan*, 981 S.W.2d 720, 722 (Tex. App.—Houston [1st Dist.] 1998, no pet.). We may affirm the dismissal if it was proper under any applicable legal theory. *Hamilton v. Pechacek*, 319 S.W.3d 801, 809 (Tex. App.—Fort Worth 2010, no pet.).

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<sup>5</sup>To control frivolous, malicious, and excessive inmate litigation, the Legislature enacted Chapter 14 of the Texas Civil Practice and Remedies Code. See TEX. CIV. PRAC. & REM. CODE ANN. §§ 14.001–.014 (West 2002 & West Supp. 2016). Chapter 14 applies to any lawsuit filed by an inmate in a district, county, justice of the peace, or small claims court in which an affidavit or unsworn declaration of inability to pay costs is filed by the inmate, other than an action brought under the Texas Family Code. TEX. CIV. PRAC. & REM. CODE ANN. § 14.002.

In determining whether a claim is frivolous or malicious, the trial court may consider whether (1) the claim's realistic chance of ultimate success is slight, (2) the claim has no arguable basis in law or in fact, (3) it is clear that the plaintiff cannot prove facts in support of the claim, or (4) the claim is substantially similar to a previous claim filed by the inmate because the claim arises from the same operative facts. TEX. CIV. PRAC. & REM. CODE ANN. § 14.003(b). Here, the trial court granted Harris's motion and dismissed Morgan's lawsuit because (1) Morgan's affidavit failed to meet the requirements of Section 14.004, and (2) his claims were frivolous under Section 14.003(a)(2) because they had no arguable basis in law and were substantially similar to those raised in two previous lawsuits Morgan had filed against Harris arising from the same facts. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.003(a)(2), (b)(2), (4).

On appeal, Morgan challenges the dismissal only on the basis that the trial court did not give him a chance to amend his affidavit. Because Morgan does not challenge the court's findings and conclusions that his claims are frivolous on two different grounds, we must accept them as conclusively established. *See Hall v. Treon*, 39 S.W.3d 722, 724 (Tex. App.—Beaumont 2001, no pet.); *Looney v. Gibraltar Sav. Ass'n.*, 695 S.W.2d 336, 340 (Tex. App.—Amarillo 1985, no writ). Therefore, even if Morgan were given an opportunity to provide an affidavit that complied with Section 14.004, his failure to challenge the remaining grounds for dismissal render his argument moot. *See id.* Accordingly, we overrule this point of error.

(2) *Morgan Was Not Entitled to a Jury Trial or Discovery*

Morgan also argues that the trial court erred by denying his demand for a jury trial and by denying his motion for disclosure and requests for production and inspection. However, under

Chapter 14, a trial court may summarily dismiss a prisoner's *in forma pauperis* complaint without notice or an opportunity to be heard, let alone a jury trial, and once Harris requested a hearing on his motion to dismiss, the trial court was required to "suspend discovery relating to the claim." See TEX. CIV. PRAC. REM. CODE ANN. §14.003(a), (d); see *Timmons v. Luce*, 840 S.W.2d 582, 586 (Tex. App.—Tyler 1992, no writ). Accordingly, we overrule these points of error.

We affirm the trial court's order dismissing Morgan's petition.

Josh R. Morriss, III  
Chief Justice

Date Submitted: February 14, 2017  
Date Decided: March 23, 2017