

NO. 12-13-00123-CV
IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS

JESSE PAUL SKINNER,
APPELLANT

§ **APPEAL FROM THE 349TH**

V.

§ **JUDICIAL DISTRICT COURT**

TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, ANGELA
BRICE AND JEREMY LARUE,
APPELLEE

§ **HOUSTON COUNTY, TEXAS**

MEMORANDUM OPINION

Jesse Paul Skinner, an inmate in the Texas Department of Criminal Justice-Institutional Division (TDCJ), proceeding pro se, filed an *in forma pauperis* suit against TDCJ and TDCJ employees Angela Brice and Jeremy Larue (collectively Appellees). Skinner raises two issues on appeal. We affirm.

BACKGROUND

Skinner is an inmate. While incarcerated, Skinner filed a civil suit against Appellees alleging that they are liable in tort to him for injuries he sustained when, despite his medical work restriction, he was ordered by Brice and Larue to push a cart on which rested two fifty-five gallon drums full of water. By his suit, Skinner sought recovery of compensatory damages from Appellees for their negligence.

On March 26, 2013, without conducting a hearing, the trial court found that Skinner's suit was "frivolous or malicious" and dismissed it without prejudice. Thereafter, Skinner sought leave to amend his petition, but the trial court declined to grant him leave. This appeal followed.

DISMISSAL PURSUANT TO TEXAS CIVIL PRACTICE AND REMEDIES CODE CHAPTER 14

In his first issue, Skinner argues that the trial court improperly dismissed his suit pursuant to Texas Civil Practice and Remedies Code, Section 14.003. In his second issue, he contends that the trial court improperly refused to permit him to amend his pleadings. We review the trial court's dismissal of an *in forma pauperis* suit under an abuse of discretion standard. **Hickson v. Moya**, 926 S.W.2d 397, 398 (Tex. App.–Waco 1996, no writ). A trial court abuses its discretion if it acts arbitrarily, capriciously, and without reference to any guiding rules or principles. **Lentworth v. Trahan**, 981 S.W.2d 720, 722 (Tex. App.–Houston [1st Dist.] 1998, no pet.). The trial courts are given broad discretion to determine whether a case should be dismissed because (1) prisoners have a strong incentive to litigate; (2) the government bears the cost of an *in forma pauperis* suit; (3) sanctions are not effective; and (4) the dismissal of unmeritorious claims accrues to the benefit of state officials, courts, and meritorious claimants. See **Montana v. Patterson**, 894 S.W.2d 812, 814–15 (Tex. App.–Tyler 1994, no writ).

In the instant case, the trial found that Skinner's claim is "frivolous or malicious." However, we will affirm a trial court's dismissal under Chapter 14 if it was proper under any legal theory. See **Birdo v. Ament**, 814 S.W.2d 808, 810 (Tex. App.–Waco 1991, writ denied).

Chapter 14 of the Texas Civil Practice and Remedies Code controls suits brought by an inmate in which the inmate has filed an affidavit or unsworn declaration of inability to pay costs.¹ TEX. CIV. PRAC. & REM. CODE ANN. § 14.002(a) (West Supp. 2012); **Hickson**, 926 S.W.2d at 398. Texas Rule of Civil Procedure 145 sets forth the requirements of an affidavit on indigency as follows:

(a) *Affidavit.* In lieu of paying or giving security for costs of an original action, a party who is unable to afford costs must file an affidavit as herein described. A "party who is unable to afford costs" is defined as a person who is presently receiving a governmental entitlement based on indigency or any other person who has no ability to pay costs

(b) *Contents of Affidavit.* The affidavit must contain complete information as to the party's identity, nature and amount of governmental entitlement income, nature and amount of employment income, other income, (interest, dividends, etc.), spouse's income if available to the party, property owned (other than homestead), cash or checking account, dependents, debts, and monthly expenses. The affidavit shall contain the following statements: "I am unable to pay the court costs. I verify that the statements made in this affidavit are true and correct."

¹ Chapter 14 does not apply to suits brought under the Family Code. TEX. CIV. PRAC. & REM. CODE ANN. § 14.002(b) (West Supp. 2012).

TEX. R. CIV. P. 145(a), (b) (emphasis added). To enable the court to determine whether an inmate is indigent, Sections 14.004(c) and 14.006(f) require the inmate to file a certified copy of his inmate trust account statement that “reflect[s] the balance of the account at the time the claim is filed and activity in the account during the six months preceding the date on which the claim is filed.” TEX. CIV. PRAC. & REM. CODE ANN. §§ 14.004(c), 14.006(f) (West 2002 & Supp. 2012). Section 14.003 provides that a trial court may dismiss a claim before or after service of process if the court finds that the inmate’s allegation of poverty in the affidavit or unsworn declaration is false. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.003(a)(1) (West 2002).

Generally, the test for determining entitlement to proceed *in forma pauperis* is whether the preponderance of the evidence shows that the appellant would be unable to pay the costs of his suit if he wanted to and made a good faith effort to do so. *See Griffin Indus. v. Thirteenth Court of Appeals*, 934 S.W.2d 349, 351 (Tex. 1996). A prisoner at a Texas Department of Criminal Justice facility who has no money or property is considered indigent. *McClain v. Terry*, 320 S.W.3d 394, 397 (Tex. App.–El Paso 2010, no pet.) (citing *Allred v. Lowry*, 597 S.W.2d 353, 355 (Tex. 1980)). However, “[a]n inmate who has funds in his trust account is not indigent.” *Terry*, 320 S.W.3d at 397 (citing TEX. CIV. PRAC. & REM. CODE ANN. § 14.006(b)(1)). The statute outlines a formula by which an inmate’s trust funds can be utilized for payment of costs. *Terry*, 320 S.W.3d at 397 (citing TEX. CIV. PRAC. & REM. CODE ANN. § 14.006(b)(1)).

In the case at hand, in his sworn declaration of inability to pay costs, Skinner stated, in pertinent part, as follows: “This declaration is being filed pursuant to [Section]14.002 Texas Civil Practice & Remedies Code[] and Rule 145[,] Texas Rule of Civil Procedure I am unable to pay the court cost at this time because I am incarcerated and my expenses exceed my income.”² As required, Skinner also filed a certified copy of his inmate trust account statement. At the time the trust account statement was prepared, Skinner had a balance of \$8.31, and the average monthly balance in the six month period preceding his suit was \$10.36. Further, the average amount deposited each month in the preceding six months was \$65.83. Moreover, in the six months preceding the filing of his lawsuit, \$395.00 had been deposited in Skinner’s account,

² Skinner earlier stated in his declaration that he had “another source of income” sent to him by family and a friend that amounted to \$65 per month. Skinner further set forth that he had \$8.31 in his prison trust account. Skinner also stated that he has received an average of \$215 in the past six months.

\$215.00 of which had been deposited in the three month period prior to the date Skinner filed suit.

In sum, because Skinner had funds in his inmate trust account, he is not considered indigent, and his allegation of indigency was, therefore, false.³ See *Terry*, 320 S.W.3d at 397; see also *Foster v. Comal Cnty. Sheriff*, No. 03-08-00539-CV, 2009 WL 2476652, at *2 (Tex. App.—Austin Aug. 13, 2009, no pet.) (mem. op.) (citing TEX. R. CIV. P. 145(a) (defining “party who is unable to afford costs” as “a person who is presently receiving a governmental entitlement based on indigency or any other person who has no ability to pay costs” (emphasis added)); see also TEX. GOV’T CODE ANN. § 501.014(e)(4) (West 2012) (authorizing withdrawal of money from inmate trust accounts “as payment in full for all orders for court fees and costs”). Accordingly, we hold that the trial court did not abuse its discretion when it dismissed Skinner’s suit and when it declined to grant him leave to amend his pleadings after the suit had been dismissed because Skinner made a false allegation of indigency in his declaration of inability to pay costs. See TEX. CIV. PRAC. & REM. CODE ANN. § 14.003(a)(1); *McClain*, 320 S.W.3d at 398. Skinner’s first and second issues are overruled.

DISPOSITION

Having overruled Skinner’s first and second issues, we *affirm* the trial court’s judgment.

JAMES T. WORTHEN
Chief Justice

Opinion delivered August 30, 2013.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(PUBLISH)

³ Skinner did not use the word “indigent” in his declaration. However, he stated that the declaration was filed pursuant to Texas Rule of Civil Procedure 145, which outlines the requisites of an Affidavit on Indigency. See TEX. R. CIV. P. 145(a), (b).



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

AUGUST 30, 2013

NO. 12-13-00123-CV

JESSE PAUL SKINNER,
Appellant
V.
TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ANGELA BRICE AND JEREMY
LARUE,
Appellees

Appeal from the 349th District Court
of Houston County, Texas (Tr.Ct.No. 13-0042)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

James T. Worthen, Chief Justice.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.