

NO. 12-16-00064-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

**TRACEY W. MURPHY,
APPELLANT**

§ **APPEAL FROM THE 369TH**

V.

**SHERRI L. MILLIGAN, JOHN
BECRAFT, VICKIE BARROW,
WARDEN CALHOUN STUART AND
TODD HARRIS,
APPELLEES**

§ **JUDICIAL DISTRICT COURT**

§ **ANDERSON COUNTY, TEXAS**

**MEMORANDUM OPINION
PER CURIAM**

Tracey W. Murphy appeals the trial court's order dismissing his bill of review. Texas Civil Practice and Remedies Code Chapter 14 applies to this appeal. We dismiss the appeal as frivolous.

INMATE LITIGATION—CHAPTER 14

Effective January 1, 2012, Chapter 14 of the Texas Civil Practice and Remedies Code was amended to apply to an action, including an appeal or an original proceeding, brought by an inmate in a trial court or in an appellate court, in which an affidavit of indigence is also filed. TEX. CIV. PRAC. & REM. CODE ANN. § 14.002 (West Supp. 2015). This means that the requirements of Chapter 14 apply when inmates file an appeal or an original proceeding in an appellate court just as when they file an action in a trial court. *See id.*

Chapter 14 requires an inmate to file an affidavit or declaration "relating to previous filings" in which the inmate must detail all previous actions filed pro se, other than a suit under the Texas Family Code. *Id.* § 14.004(a) (West Supp. 2015). The affidavit or declaration must be accompanied by 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.” *Id.* § 14.004(c) (West Supp. 2015). The filings required under Chapter 14 are “an essential part of the process by which courts review inmate litigation.” *Hickson v. Moya*, 926 S.W.2d 397, 399 (Tex. App.–Waco 1996, no writ).

The failure to file the affidavit or declaration with the required information about previous filings or the inmate trust account statement can result in dismissal without notice or hearing. *See, e.g., Amir–Sharif v. Mason*, 243 S.W.3d 854, 857 (Tex. App.–Dallas 2008, no pet.); *Thompson v. Rodriguez*, 99 S.W.3d 328, 330 (Tex. App.–Texarkana 2003, no pet.). Further, when an inmate fails to comply with the requirement for the affidavit or declaration of previous filings, the trial court may assume that the current action is substantially similar to one previously filed by the inmate and thus is frivolous. *Bell v. Tex. Dep’t of Criminal Justice–Institutional Div.*, 962 S.W.2d 156, 158 (Tex. App.–Houston [14th Dist.] 1998, pet. denied). We conclude that this caselaw interpreting the Chapter 14 requirements as they apply to actions filed in trial courts now applies to actions filed in appellate courts. *See Douglas v. Turner*, 441 S.W.3d 337, 338 (Tex. App.–Waco 2013, no pet.); *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 14.002.

In this appeal, Murphy did not file an affidavit or declaration of previous filings accompanied by an inmate trust account statement showing the balance for the six months preceding the date his notice of appeal was filed. Because the requirements of Chapter 14 now apply to inmate proceedings in the courts of appeals, caselaw permits us to dismiss Murphy’s appeal without notice.

DISPOSITION

Because Murphy did not file an affidavit or declaration of previous filings accompanied by an inmate trust account statement as required by section 14.004(c), we *dismiss* this appeal as *frivolous*. *See Bell*, 62 S.W.2d at 158.

Opinion delivered March 9, 2016.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

MARCH 9, 2016

NO. 12-16-00064-CV

TRACEY W. MURPHY,

Appellant

V.

SHERRI L. MILLIGAN, JOHN BECRAFT, VICKIE BARROW,

WARDEN CALHOUN STUART AND TODD HARRIS,

Appellees

Appeal from the 369th District Court
of Anderson County, Texas (Tr.Ct.No. DC CV-15-037-369)

THIS CAUSE came to be heard on the appellate record; and the same being considered, it is the opinion of this court that this court is without jurisdiction of the appeal, and that the appeal should be dismissed.

It is therefore ORDERED, ADJUDGED and DECREED by this court that this appeal be, and the same is, hereby **dismissed as frivolous**; and that this decision be certified to the court below for observance.

By *per curiam* opinion.

Panel consisted of Worthen, C.J., Hoyle, J. and Neeley, J.