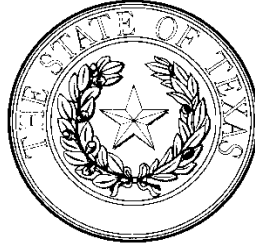


Opinion issued December 8, 2011



In The
Court of Appeals
For The
First District of Texas

NO. 01-09-00031-CV

IN RE JEFFREY YATES, Appellant

**On Appeal from the 113th District Court
Harris County, Texas
Trial Court Cause No. 2008-44159**

MEMORANDUM OPINION

A jury acquitted appellant Jeffrey Yates of the offense of “Disorderly Conduct–Peeping.” *See* TEX. PENAL CODE ANN. § 42.01 (Vernon Supp. 2011). Yates filed a “Petition for Expunction,” in which he asked the trial court to “order the expunction of all records and files arising out of the charge” that may be on file

with certain agencies.¹ The trial court dismissed the suit, and Yates appealed. We affirm the trial court's judgment, as modified.

Background

On April 10, 2001, Yates, an inmate confined at the Texas Department of Criminal Justice, was acquitted of the offense of disorderly conduct. On July 7, 2008, Yates filed a pro se petition, seeking to expunge the matter from the records of certain named entities.² In his petition, Yates asserted that he was unable to pay the trial court costs, as follows:

Pursuant to the [Texas Rules of Civil Procedure] and Title 6, Chap. 132 of the [Civil Practice and Remedies Code], I declare that I am unable to pay any costs in this matter; I have no control or ownership of any assets, property, or cash; have been incarcerated since June 19, 2002; and have no attorney assistance.

On October 6, 2008, the trial court issued an order stating that Yates's "Motion for [l]eave to proceed in forma pauperis" was denied. Two weeks later, on October 20, 2008, Yates filed a second motion to proceed in forma pauperis and an affidavit of indigence, on which the trial court did not rule. On December 18, 2008, the trial court dismissed the suit, without stating specific grounds.

¹ Appellant named the Texas Department of Public Safety; the Harris County District Clerk; the Harris County Pct. 4 Constable; the Texas Department of Criminal Justice; the Federal Bureau of Investigations; the Harris County Sheriff's Office; the Clerk of the Court; Texas Board of Pardons and Paroles; and the Texas Department of Criminal Justice.

² *Id.*

Standard of Review

We review the trial court's dismissal of an in forma pauperis suit under an abuse of discretion standard. *Scott v. Gallagher*, 209 S.W.3d 262, 265 (Tex. App.—Houston [1st Dist.] 2006, no pet.). A trial court abuses its discretion if it acts arbitrarily, capriciously, and without reference to any guiding rules or principles. *Jackson v. Tex. Bd. of Pardons & Paroles*, 178 S.W.3d 272, 275 (Tex. App.—Houston [1st Dist.] 2005, no pet.).

The trial courts are given broad discretion to determine whether a suit brought by an inmate 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 Williams v. Tex. Dep't of Criminal Justice*, 176 S.W.3d 590, 593 (Tex. App.—Tyler 2005, pet. denied). When a trial court does not state the basis for its dismissal, we will affirm the dismissal if it is proper under any legal theory. *Walker v. Gonzales Cnty. Sheriff's Dep't*, 35 S.W.3d 157, 162 (Tex. App.—Corpus Christi 2000, pet. denied).

Legal Principles

A party who is unable to afford trial court costs may file an affidavit of indigence that conforms with the requirements of Rule 145 of the Texas Rules of Civil Procedure. TEX. R. CIV. P. 145(a), (b). An inmate who brings a suit in which he has filed an affidavit of indigence or an unsworn declaration of inability to pay costs must also comply with the procedural requirements set forth in Texas Civil Practice and Remedies Code Chapter 14. TEX. CIV. PRAC. & REM. CODE ANN. § 14.002(a) (Vernon Supp. 2011); *Scott*, 209 S.W.3d at 265.

Civil Practice and Remedies Code sections 14.004 and 14.006 require that an inmate file in the trial court, along with his affidavit of indigence or unsworn declaration of inability to pay costs, a certified copy of his inmate trust account statement. TEX. CIV. PRAC. & REM. CODE ANN. §§ 14.004(c) (Vernon Supp. 2011), 14.006(f) (Vernon 2002). Section 14.006(f) requires that the inmate file a 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. § 14.006(f).

“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.” *Id.* (citing TEX. CIV. PRAC. & REM. CODE ANN. § 14.006(b)(1)). An inmate’s trust funds may be utilized for payment of costs. *Id.*

Failure to fulfill the Chapter 14 procedural requirements may result in the dismissal of the inmate’s suit before or after service of process. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.003(a)(1), 14.006(h) (Vernon 2002); *Scott*, 209 S.W.3d at 265 (“A trial court may dismiss an inmate’s lawsuit for failing to comply with the procedural requirements of Chapter 14.”); *Bell v. Texas Dep’t of Criminal Justice*, 962 S.W.2d 156, 158 (Tex. App.—Houston [14th Dist.] 1998, pet. denied)).

Dismissal

The record before us does not reflect that Yates filed a certified copy of his inmate trust account statement with his declaration of inability to pay costs in the trial court, as required. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.004(c), 14.006(f). The requirement to file a statement of the inmate trust account is mandatory, and Yates’s failure to file the statement is sufficient grounds for the trial court’s dismissal of his suit. *See id.* § 14.003(a); *Williams v. Brown*, 33 S.W.3d 410, 412 (Tex. App.—Houston [1st Dist.] 2000, no pet.); *see also Jedkins v. Varghese*, No. 14-08-00895-CV, 2009 WL 5149877, at *2 (Tex. App.—Houston [14th Dist.] Dec. 31, 2009, no pet.) (mem.op., not designated for publication)

(“Chapter 14 does not provide an inmate with the right to file a suit without the trust account statement, no matter the reason that the inmate has not provided it.”).

Yates complains that the trial court did not rule on his second affidavit of indigence, which he filed October 20, 2008. The record reflects, however, that the trial court had just days before, on October 6, 2008, ruled on Yates’s first declaration of indigence. *See* TEX. CIV. PRAC. & REM.CODE ANN. § 14.004(c) (allowing unsworn declaration of inability to pay costs). In his brief on appeal, appellant acknowledges that his first “request to proceed without costs contained in [the] Petition was recognized by the trial court.” Moreover, the record reflects that Yates also failed to attach a copy of his inmate trust account to his second affidavit of indigence. After the trial court’s dismissal, appellant filed a statement of his inmate trust account in conjunction with his affidavit of indigence for costs *on appeal*.

In addition, appellant complains that the trial court failed to notify him of a deficiency in his declaration of inability to pay costs prior to dismissing his suit. Because a trial court may dismiss a suit that fails to comply with Chapter 14 either before or after service of process and without a hearing, a trial court has no duty to suggest or recommend that an appellant amend his pleading. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.003(c); *Hickman v. Adams*, 35 S.W.3d 120, 125 (Tex. App.—Houston [14th Dist.] 2000, no pet.).

Because the trial court did not specify the grounds for dismissal, we will affirm the decision if any theory is meritorious. *See Walker*, 35 S.W.3d at 162. Because Yates failed to file a certified copy of his inmate trust account statement with his declaration of inability to pay costs in the trial court, as required, we hold that the trial court did not abuse its discretion by dismissing Yates’s suit. *See* TEX. CIV. PRAC. & REM.CODE ANN. § 14.004(c), 14.006(f); *Brown*, 33 S.W.3d at 412.

Accordingly, we overrule appellant’s issue.

The dismissal order does not, however, state whether the dismissal is with or without prejudice. “Dismissal with prejudice constitutes adjudication on the merits and operates as if the case had been fully tried and decided.” *Brown*, 33 S.W.3d at 412 (quoting *Lentworth v. Trahan*, 981 S.W.2d 720, 722 (Tex. App.—Houston [1st Dist.] 1998, no pet.)). In the present case, dismissal without prejudice is proper. We modify the judgment to reflect that the cause is dismissed “without prejudice.”

Conclusion

As modified, the judgment is affirmed. We dismiss pending motions as moot.

PER CURIAM

Panel consists of Justices Jennings, Sharp, and Brown.