

Opinion issued October 6, 2011.



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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**NO. 01-10-00572-CV**

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**ABNER L. WASHINGTON Appellant**

**V.**

**SCHAMARIAN LAND, GLENN HOPSON, CODY GINSEL AND  
DEBORAH HURLEY, Appellees**

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**On Appeal from 1-A District Court  
Tyler County, Texas  
Trial Court Case No. 21,623**

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## MEMORANDUM OPINION

Abner Washington challenges the trial court's order dismissing his suit for trover and conversion against Schamarian Land, Glenn Hopson, Cody Ginsel, and Deborah Hurley. The trial court granted the defendant's Chapter 14 motion to dismiss with prejudice. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 14.001–14.014 (West 2002). Washington claims the trial court abused its discretion in granting the motion to dismiss his case with prejudice without deciding the case on the merits and dismissing the case without giving him the chance to amend or supplement his pleadings in response to the motion to dismiss. We affirm the trial court's dismissal.

### Background

Washington is an inmate with the Texas Department of Criminal Justice – Institutional Division, Gib Lewis Unit, Woodville, Texas. On September 20, 2009, Corrections Officer Land, while performing a property inventory in Washington's cell, confiscated eight personal books as contraband because they were not inscribed with Washington's name and TDCJ prisoner number. Land gave Washington a confiscation receipt which Washington is now unable to locate. On October 11, 2009, several days after the 15-day window in which to file a grievance for the confiscation had passed, Washington attempted to recover the books from the property officer but they were not located in the property room.

On October 19, 2009, 29 days after his books were confiscated, Washington filed a Step 1 offender grievance form against Land, requesting either that the books be returned or he be compensated for their value. The Step 1 grievance was returned to Washington on December 31, 2009. Washington filed his Step 2 grievance on January 11, 2010 and repeated his allegations against Land and included complaints against Hopson and Hurley. Washington's Step 2 grievance was signed by prison officials January 28, 2010, and returned to him on February 19, 2010.

Washington filed his original petition with the trial court on February 26, 2010, asserting claims of trover and conversion. Appellees filed a motion to dismiss on May 13, 2010. The motion to dismiss asserted that Washington's claims were frivolous or malicious, he failed to satisfy the statute's requirement to file an affidavit detailing his pro se lawsuit history, and he failed to exhaust administrative remedies. On May 19, 2010 Washington filed a motion for leave to amend his pleadings to include an affidavit required by section 14.005 of the Texas Civil Practices and Remedies Code and his affidavit regarding previous suits. On May 28, 2010, the trial court granted the motion to dismiss without specifying its rationale. Washington appeals.

## **Standard of Review**

Chapter 14 governs district, county, justice of the peace, or small claims court lawsuits filed by an inmate who claims indigence by filing an affidavit or unsworn declaration of an inability to pay costs. TEX. CIV. PRAC. & REM. CODE ANN. § 14.002(a) (West 2002). The trial court may dismiss a claim, either before or after service of process, on any number of grounds. *Id.* at § 14.003(a). We review a dismissal under Chapter 14 for an abuse of discretion. *Gross v. Carroll*, 339 S.W.3d 718, 723 (Tex. App.—Houston [1st Dist.] 2011, no pet.); *see Clark v. J.W. Estelle Unit*, 23 S.W.3d 420, 421 (Tex. App.—Houston [1st Dist.] 2000, pet. denied). A trial court abuses its discretion if it acts without reference to guiding rules or principles. *Gross*, 339 S.W.3d at 23.

## **Failure to Exhaust Administrative Remedies**

The legislature mandates that the Texas Department of Criminal Justice develop and maintain an inmate grievance system. TEX. GOV'T CODE ANN. § 501.008(a) (West 2005). The administrative grievance process established by the department begins with an informal attempt to resolve the problem. It is undisputed that the prison grievance system requires inmates to formally submit a Step 1 grievance within 15 days of the grievable event. *See Hamilton v. Williams* 298 S.W. 3d 334, 341 (Tex. App.—Fort Worth 2009, pet. denied.). Here, Washington's books were confiscated on September 20, 2009, which would make

his Step 1 grievance concerning the actions of Land due to the Unit Grievance Investigator by October 5, 2009. Although Washington concedes that his books were confiscated from his cell on September 20, he also contends that the 15 day window to submit a grievance instead began on October 11, the day he first spoke to Ms. Bryant, the property officer, about returning his books. We reject Washington's assessment because his complaints stem from the September 20 confiscation by Land, not from any actions of Ms. Bryant. By the time Washington submitted his Step 1 grievance, 29 days from the time of the grievable event had passed.

By not timely filing his initial Step 1 grievance Washington failed to follow the rules for prisoner grievances and therefore did not exhaust his administrative remedies before filing suit. *Leachman v. Dretke*, 261 S.W.3d 297, 311-312 (Tex. App.—Fort Worth 2008, no pet.) (trial court did not err in dismissing claims as frivolous where inmate did not file Step 1 grievance within 15 day window); *see also Pozo v. McCaughtry*, 286 F.3d 1022, 1023 (7th Cir. 2002) (“[U]nless the prisoner completes the administrative process by following the rules the state has established for that process, exhaustion has not occurred.”); *see also Whirty v. Grimes*, No. 07-08-0394-CV, 2009 WL 996987 at \*3 (Tex. App.—Amarillo Apr.14, 2009, pet. denied) (mem. op) (trial court did not abuse its discretion in dismissing a claim because the prisoner failed to comply with grievance procedure)

Because the time frame of the 15 day window to properly file the Step 1 grievance could not be remedied, the trial court correctly dismissed this case with prejudice. *Leachman*, 261 S.W.3d at 311–12 (inmate who failed to submit his Step 1 Grievance in the required time frame did not properly exhaust administrative remedies and because the window to file had closed, dismissal with prejudice was proper). We overrule Washington’s first issue.

Because we may affirm if dismissal was proper under any correct theory of law, we need not address Washington’s second issue. TEX. R. APP. P. 47.1

### **Conclusion**

We affirm the judgment of the trial court.

Rebeca Huddle  
Justice

Panel consists of Justices Radack, Bland, and Huddle.