

Affirmed and Memorandum Opinion filed April 26, 2011.



In The

Fourteenth Court of Appeals

NO. 14-10-00055-CV

RALPH O. DOUGLAS, Appellant

V.

LINDA PORTER and MARCELYN CURRY, Appellees

**On Appeal from the 129th District Court
Harris County, Texas
Trial Court Cause No. 2001-55507**

MEMORANDUM OPINION

Appellant Ralph O. Douglas, an inmate confined in the Institutional Division of the Texas Department of Criminal Justice who is appearing *pro se* and *in forma pauperis*, appeals the dismissal of his suit. Because we conclude that the trial court did not abuse its discretion in dismissing Douglas's suit pursuant to Chapter 14 of the Texas Civil Practice and Remedies Code, we affirm. *See* Tex. Civ. Prac. & Rem. Code §§ 14.001—.014.

BACKGROUND AND PROCEDURAL POSTURE

On March 22, 1999, Linda Porter sued Douglas for clouding title to property that Porter owned by allegedly forging a warranty deed and filing it in the real property records. Douglas had attempted to evict Porter from the home, placed a mortgage lien on the property, and later conveyed the property to a third party. On July 2, 2001, the trial court entered judgment for Porter, cancelling the forged warranty deed and awarding Porter \$50,000 in damages, plus \$5,000 in attorney's fees and post-judgment interest. The judgment was affirmed on appeal. *See Douglas v. Porter*, No. 01-01-00747-CV (Tex. App.—Houston [1st Dist.] Nov. 27, 2002, pet. denied) (not designated for publication).

In 2000, a jury convicted Douglas of theft of property in the aggregate amount of between \$1000 and \$200,000 from Porter and other victims. Due to enhancement of the punishment for prior theft convictions, Douglas was sentenced to life in prison and assessed a \$10,000 fine. This court affirmed the judgment of conviction. *See Douglas v. State*, No. 14-00-01226-CR, 2002 WL 1988163 (Tex. App.—Houston [14th Dist.] Aug. 29, 2002, pet. ref'd) (not designated for publication).

Douglas has a long history of cases in this court and the First Court of Appeals.¹ On May 23, 2008, in cause number 2006-39052, the 127th District Court declared Douglas

¹ Cases that Douglas has appealed to the Houston Courts of Appeals, excluding numerous petitions for writs of mandamus, include the following: *Douglas v. Owens*, No. 14-10-00177-CV, 2010 WL 1487444 (Tex. App.—Houston [14th Dist.] Apr. 15, 2010, no pet.)(mem. op.); *Douglas v. Ingersoll*, No. 14-09-00930-CV, 2010 WL 1077420 (Tex. App.—Houston [14th Dist.] Mar. 25, 2010, no pet.)(mem. op.); *Douglas v. Amer. Title Co.*, No. 14-08-00676-CV, 2009 WL 3851674 (Tex. App.—Houston [14th Dist.] Nov. 19, 2009, no pet.) (mem. op.); *Douglas v. Amer. Title Co.*, No. 01-07-00358-CV, 2009 WL 3930994 (Tex. App.—Houston [1st Dist.] Nov. 19, 2009, no pet.) (mem. op.); *Douglas v. Douglas*, No. 14-08-00277-CV, 2009 WL 783332 (Tex. App.—Houston [14th Dist.] Mar. 26, 2009, pet. denied)(mem. op.); *Douglas v. Adamo*, No. 14-07-00406-CV, 2009 WL 783346 (Tex. App.—Houston [14th Dist.] Mar. 26, 2009, pet. denied)(mem. op.); *Douglas v. Jones*, No. 01-08-00542-CV, 2009 WL 522723 (Tex. App.—Houston [1st Dist.] Feb. 20, 2009, no pet.)(mem. op.); *Douglas v. Booker*, No. 01-06-01069-CV, 2008 WL 5263240 (Tex. App.—Houston [1st Dist.] Dec. 18, 2008, no pet.)(mem. op.); *Douglas v. Ingersoll*, No. 14-07-00041-CV, 2007 WL 763803 (Tex. App.—Houston [14th Dist.] Mar. 15, 2007, pet. denied)(mem. op.); *Douglas v. Douglas*, No. 01-06-00925-CV, 2008 WL 5102270 (Tex. App.—Houston

a vexatious litigant under Chapter 11 of the Texas Civil Practice and Remedies Code. *See* Tex. Civ. Prac. & Rem. Code § 11.101—11.056 (defining vexatious litigants as persons who abuse the legal system by filing numerous, frivolous lawsuits).² The order noted that Douglas had sued the victims of his fraudulent schemes, along with the title companies and lending institutions, numerous times, and these suits were repeatedly determined to have no basis in law. The First Court of Appeals affirmed that order, and discretionary review is pending. *See In re Douglas*, ___ S.W.3d ___, No. 01-08-00542-CV, 2010 WL 3448031 (Tex. App.—Houston [1st Dist.] Aug. 31, 2010, pet. filed).

The suit that is the subject of this appeal was filed October 25, 2001, before the vexatious litigant finding had been made. Douglas named both Porter and her attorney,

[1st Dist.] Dec. 4, 2008, pet. denied)(mem. op.); *Douglas v. Amer. Title Co.*, 196 S.W.3d 876 (Tex. App.—Houston [1st Dist.] 2006, no pet.); *Douglas v. Washington Mut. Bank*, No. 14-05-00282-CV, 2006 WL 2862115 (Tex. App.—Houston [14th Dist.] Oct. 10, 2006, pet. denied)(mem. op.); *Douglas v. Ingersoll*, No. 14-05-00666-CV 2006 WL 2345968 (Tex. App.—Houston [14th Dist.] Aug. 14, 2006, no pet.)(mem. op.); *Douglas v. Unity Nat. Bank*, No. 14-05-00112-CV, 2005 WL 728246 (Tex. App.—Houston [14th Dist.] Mar. 31, 2005, pet. dismissed)(mem. op.); *Douglas v. Amer. Title Co.*, No. 14-04-00265-CV, 2005 WL 568290 (Tex. App.—Houston [14th Dist.] Mar. 10, 2005, no pet.)(mem. op.); *Douglas v. Alamo Title Co.*, No. 14-04-01107-CV, 2005 WL 171477 (Tex. App.—Houston [14th Dist.] Jan. 27, 2005, pet. denied)(mem. op.); *Douglas v. Jones*, No. 14-04-01102-CV, 2005 WL 66899 (Tex. App.—Houston [14th Dist.] Jan. 13, 2005, pet. denied)(mem. op.); *Douglas v. Alamo Title Co.*, No. 14-04-00919-CV, 2004 WL 3202879 (Tex. App.—Houston [14th Dist.] Nov. 24, 2004, no pet.)(mem. op.); *Douglas v. Amer. Title Co.*, No. 01-04-00669-CV, 2004 WL 211558 (Tex. App.—Houston [1st Dist.] Sept. 23, 2004, no pet.)(mem. op.) *Douglas v. Quaker Home Fin. Servs.*, No. 14-04-00362-CV, 2004 WL 1688281 (Tex. App.—Houston [14th Dist.] Jul. 29, 2004, no pet.)(mem. op.); *Douglas v. King*, No. 14-04-00103-CV, 2004 WL 908934 (Tex. App.—Houston [14th Dist.], Apr. 29, 2004, pet. denied)(mem. op.); *Douglas v. Willis*, No. 01-03-01148-CV, 2004 WL 305974 (Tex. App.—Houston [1st Dist.] Feb. 17, 2004, no pet.)(mem. op.); *Douglas v. Booker*, No. 14-03-01336-CV, 2004 WL 100409 (Tex. App.—Houston [14th Dist.] Jan. 22, 2004, pet. denied)(mem. op.); *Douglas v. Adamo*, No. 14-03-01192-CV, 2003 WL 22996954 (Tex. App.—Houston [14th Dist.] Dec. 23, 2003, no pet.)(mem. op.); *Douglas v. Porter*, No. 14-03-00132-CV, 2003 WL 21193041 (Tex. App.—Houston [14th Dist.] May 22, 2003, no pet.)(mem. op.); *Douglas v. Adamo*, No. 14-02-01156-CV, 2003 WL 1088163 (Tex. App.—Houston [14th Dist.] Mar. 13, 2003, no pet.)(not designated for publication); *Douglas v. Porter*, No. 01-01-00747-CV, 2002 WL 31682357 (Tex. App.—Houston [1st Dist.] Nov. 27, 2002, pet. denied)(not designated for publication).

² A court may properly take judicial notice of a prior finding that the plaintiff is a vexatious litigant. *Scott v. Mireles*, 294 S.W.3d 306, 308 (Tex. App.—Corpus Christi 2009, no pet.). We also note that Douglas had been found to be a vexatious litigant in 2004, but that finding was later reversed. *See Douglas v. Amer. Title Co.*, 196 S.W.3d 876, 882-83 (Tex. App.—Houston [1st Dist.] 2006, no pet.).

Marcelyn Curry, as defendants. In 2002, and again in 2006, the trial court ordered Douglas to demonstrate his right to proceed *in forma pauperis*. Douglas failed to comply with these orders. On July 20, 2006, the trial court signed an order requiring Douglas to file an affidavit in a good faith effort to comply with Chapter 14 of the Texas Civil Practice and Remedies Code or file an oath stating his intention to pay the costs incurred in the suit. The order stated that unless Douglas complied with the order by September 1, 2006, the suit would be dismissed for want of prosecution. Our record contains no response to the order. Curry filed a motion to dismiss on December 2, 2009. The trial court signed an order dismissing the suit on December 15, 2009. The order refers to Curry's motion to dismiss, but it purports to be final by including the following language:

The Court further ORDERS that this case and all related claims be and hereby are dismissed with prejudice. All relief not expressly granted herein is hereby DENIED. This order disposes of all claims and all parties.

Because the 2009 order finally disposes of all issues and parties, it is final for purposes of appeal. See *Lehmann v. Har-Con*, 39 S.W.3d 191, 200 (Tex. 2001) (if intent to finally dispose of the case is unequivocally expressed in the words of the order, then the order is final and appealable).

The trial court's order also incorporated for all purposes the May 23, 2008 order determining Douglas to be a vexatious litigant, and attached a copy of that order. The May 23, 2008 order also made findings under Chapter 14 of the Texas Civil Practice and Remedies Code. See *In re Douglas*, ___ S.W.3d ___, No. 01-08-00542-CV, 2010 WL 3448031. The court in *In re Douglas* determined that Douglas's suit was governed by Chapter 14, found that the suit was frivolous and malicious, and ordered it dismissed. *Id.* Based on the trial court's incorporation of this language in the order in this case, we conclude that this suit was also dismissed pursuant to Chapter 14.

ANALYSIS

Chapter 14 of the Texas Civil Practice and Remedies Code governs inmate litigation. *See* Tex. Civ. Prac. & Rem. Code §§ 14.001—.014. We review a trial court’s Chapter 14 dismissal of an inmate’s claims under an abuse of discretion standard. *Retzlaff v. Tex. Dep’t of Crim. Justice*, 94 S.W.3d 650, 654 (Tex. App.—Houston [14th Dist.] 2002, pet. denied). A trial court has broad discretion to dismiss an inmate’s suit if it finds that the claim asserted is frivolous or malicious. *Martinez v. Thaler*, 931 S.W.2d 45, 46 (Tex. App.—Houston [14th Dist.] 1996, writ denied). A trial court abuses this broad discretion if it acts arbitrarily, capriciously, or without reference to any guiding rules or principles. *Id.*

In determining whether a suit is frivolous or malicious, the court may consider, among other things, whether the claim is substantially similar to a previous claim filed by the inmate because the claim arises from the same operative facts. *See* Tex. Civ. Prac. & Rem. Code § 14.003(b)(4). To enable the trial court to determine whether a claim arises from the same operative facts as a previous claim, the legislature enacted section 14.004. *See Hickman v. Adams*, 35 S.W.3d 120, 124 (Tex. App.-Houston [14th Dist.] 2000, no pet); *see also* Tex. Civ. Prac. & Rem. Code. § 14.004.

Section 14.004, entitled “Affidavit Relating to Previous Filings,” requires an inmate who files an affidavit or unsworn declaration of inability to pay costs to file a separate affidavit or declaration setting out the following information:

- (1) identifying each suit, other than a suit under the Family Code, previously brought by the person and in which the person was not represented by an attorney, without regard to whether the person was an inmate at the time the suit was brought; and
- (2) describing each suit that was previously brought by:

- (A) stating the operative facts for which relief was sought;
- (B) listing the case name, cause number, and the court in which the suit was brought;
- (C) identifying each party named in the suit; and
- (D) stating the result of the suit, including whether the suit was dismissed as frivolous or malicious under Section 13.001 or Section 14.003 or otherwise.

Tex. Civ. Prac. & Rem. Code § 14.004(a). According to our record, Douglas filed an affidavit of indigence pursuant to Texas Rule of Civil Procedure 145 when he filed suit. The record does not contain an affidavit or unsworn declaration in compliance with section 14.004, however. When, as in this case, an inmate fails to comply with the requirements of section 14.004, the trial court is entitled to presume that the suit is substantially similar to one previously filed by the inmate, and therefore, frivolous. *See Bell v. Tex. Dep't of Crim. Justice-Inst. Div.*, 962 S.W.2d 156, 158 (Tex. App.—Houston [14th Dist.] 1998, pet. denied). Accordingly, a trial court may dismiss an indigent inmate's suit as frivolous or malicious without holding a hearing when an inmate fails to comply with the statutory requirements of section 14.004. *See Gowan v. Tex. Dep't of Crim. Justice*, 99 S.W.3d 319, 321 (Tex. App.—Texarkana 2003, no pet.).

Douglas has not challenged dismissal of his suit as frivolous under Chapter 14.³ An appellant must attack all independent bases or grounds that support the trial court's judgment. *See Britton v. Texas Dep't of Crim. Justice*, 95 S.W.3d 676, 681 (Tex. App.—Houston [1st Dist.] 2002, no pet.). If an independent ground fully supports the judgment, but the appellant assigns no error to that independent ground, we must affirm the judgment on that basis. *Id*; *see also Cooper v. Texas Dep't of Crim. Justice*, No.

³ In his brief, Douglas asserts that the trial court abused its discretion in failing to rule on his motions for summary judgment and for continuance, failing to rule on his objections, and in taking judicial notice of another cause of action. He also asserted that dismissal was improper on the grounds of *res judicata*, failure to file a mandatory counterclaim, malicious prosecution, and conspiracy.

14–07–00741–CV, 2009 WL 1312944 * 1 (Tex. App.—Houston [14th Dist.] May 12, 2009, no pet.) (mem. op.) (affirming dismissal when grounds on which suit was dismissed were not briefed).

We conclude that the trial court’s dismissal is fully supported by the law governing inmate litigation under Chapter 14. We therefore overrule Douglas’s issues and affirm the trial court’s judgment.

PER CURIAM

Panel consists of Justices Anderson, Brown, and Christopher.