

Affirmed and Memorandum Opinion filed January 27, 2011.



In The

**Fourteenth Court of Appeals**

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NO. 14-10-00674-CV

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**JERRY DONELL FUQUA, Appellant**

**V.**

**CHRISTOPHER T. HUESTIS, BRANDY L. MOSLEY, SCOTT A. STRINGER  
AND TIMOTHY LESTER, Appellees**

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**On Appeal from the 411th District Court  
Polk County, Texas  
Trial Court Cause No. CIV25552**

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**M E M O R A N D U M    O P I N I O N**

Appellant Jerry Donell Fuqua appeals the dismissal of his suit under Chapter 14 of the Texas Civil Practice and Remedies Code. *See* Tex. Civ. Prac. & Rem. Code Ann. §§ 14.001–.014. In two issues appellant argues the trial court erred in (1) dismissing his suit as frivolous, and (2) determining that his affidavit of previous filings under chapter 14 was deficient. We affirm.

## **Factual and Procedural Background**

Appellant is an inmate in the Institutional Division of the Texas Department of Criminal Justice (TDCJ). On December 21, 2009, he filed a pro se, *in forma pauperis* suit against several TDCJ employees challenging a disciplinary action rendered against him for fighting. On January 7, 2010, the trial court dismissed the suit for failure to comply with Chapter 14 of the Texas Civil Practice and Remedies Code. Appellant filed a motion to reconsider in which he alleged that he did not previously have access to certain documents. The trial court reinstated the suit and held a hearing pursuant to the attorney general's motion to dismiss. After the hearing, the trial court dismissed appellant's suit on January 22, 2010, for failure to comply with Chapter 14.

## **Issues and Analysis**

Compliance with section 14.003 of the Civil Practice and Remedies Code is a prerequisite to judicial review of inmate claims. A reviewing court evaluates a trial court's dismissal of an inmate's claims under this statute using an abuse-of-discretion standard. *Retzlaff v. Tex. Dep't of Criminal 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, or that the petition should otherwise be dismissed pursuant to section 14.003. *See Martinez v. Thaler*, 931 S.W.2d 45, 46 (Tex. App.—Houston [14th Dist.] 1996, writ denied).

Section 14.003 provides that a trial court may dismiss a claim before or after service of process if the court finds any of the following (1) that the allegation of poverty in the affidavit or unsworn declaration is false; (2) that the claim is frivolous or malicious; or (3) that the inmate filed an affidavit or unsworn declaration that the inmate knew was false. Tex. Civ. Prac. & Rem. Code Ann. § 14.003. 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 id.* § 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. *Hickman v. Adams*, 35 S.W.3d 120, 124 (Tex. App.—Houston [14th Dist.] 2000, no pet.); see Tex. Civ. Prac. & Rem. Code Ann. § 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 Ann. § 14.004(a).

The record reflects that appellant filed an affidavit of previous filings, but omitted the reasons for his dismissal or operative facts of those cases. Moreover, appellant omitted a previous suit filed in federal court styled *Fuqua v. Pierson*. The case was filed in the Northern District of Texas in 1998 and was dismissed because appellant has been identified as a “serial filer” in federal court and added to the federal “three-strikes list.” At the hearing, appellant participated via telephone and admitted that he omitted *Fuqua v. Pierson* from his affidavit of previous filings.

When, as in this case, an inmate files an affidavit or declaration that 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. *Bell v. Tex. Dep’t of Criminal 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 when an inmate fails to comply with the statutory requirements of section 14.004. *See Gowan v. Tex. Dep't of Criminal Justice*, 99 S.W.3d 319, 321 (Tex. App.—Texarkana 2003, no pet.).

### **Conclusion**

The trial court did not abuse its discretion in dismissing appellant's suit because he clearly failed to comply with the requirements of section 14.004. Accordingly, we overrule appellant's issues and affirm the trial court's judgment.

PER CURIAM

Panel consists of Chief Justice Hedges, and Justices Anderson and Jamison.