

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-16-00298-CV

RONALD DEAN GILBERT, Appellant

V.

**TEXAS DEPARTMENT OF CRIMINAL
JUSTICE – INSTITUTIONAL DIVISION, Appellee**

**On Appeal from the 411th District Court
Polk County, Texas
Trial Cause No. CIV29976**

MEMORANDUM OPINION

Ronald Dean Gilbert, Appellant, appeals from the dismissal of his civil suit. On May 23, 2016, Gilbert, an inmate in the Texas Department of Criminal Justice – Correctional Institutional Division (“TDCJ”), filed a pro se petition against TDCJ, the University of Texas Medical Branch (“UTMB”), seven TDCJ employees, and four UTMB employees (collectively, “Defendants”). Gilbert alleged in his petition that he is incarcerated at the Allan B. Polunsky Unit of the TDCJ. Gilbert alleged

that his medical care at the Polunsky Unit is controlled by UTMB. Gilbert alleged that the Defendants violated Gilbert's rights under the Eighth and Fourteenth Amendments to the United States Constitution and under the Texas Tort Claims Act (TTCA). Gilbert contends that Defendants violated his federal constitutional rights when his bottom bunk and walking cane restrictions were removed. According to the petition, Gilbert requires a bottom bunk because he uses a sleep apnea machine. In his petition, Gilbert also alleged that the Defendants wrongfully deducted a \$100 health services fee from his inmate trust account. According to the petition, Gilbert had already submitted several I-60 grievances and thereby exhausted his administrative remedies. Gilbert's petition sought injunctive relief and damages.

On May 24, 2016, the trial court signed and entered an order requiring the Attorney General to review the pleadings, affidavits, unsworn declarations, and exhibits for compliance with Chapter 14 of the Civil Practice and Remedies Code and to file an amicus brief addressing whether Gilbert had satisfied all statutory requirements. On June 16, 2016, Gilbert filed a motion to compel. Attached to the motion was a document styled as a "Declaration of Inability to Pay Cost" signed by Gilbert.

On July 22, 2016, the Office of the Attorney General (AG) filed "The Attorney General's Amicus Curiae Advisory to Dismiss Pursuant to Chapter

Fourteen[.]” Among the attachments to the AG’s advisory was a copy of the order in *Gilbert v. Quarterman*, No. 3:06-CV-1981-N ECF, 2008 WL 2378152 (N.D. Tex. June 6, 2008), a federal lawsuit in which Ronald Dean Gilbert, as petitioner, brought a claim against the director of TDCJ. The AG characterized *Gilbert v. Quarterman* as evidence of a previous pro se filing by Gilbert that Chapter 14 requires Gilbert to disclose with Gilbert’s current petition. In its advisory, the AG argued that (1) Gilbert’s petition is time-barred; (2) Gilbert failed to exhaust his administrative remedies for most claims; (3) Gilbert failed to submit multiple documents required by Chapter 14; and (4) Gilbert’s claims are frivolous and lack any arguable basis in law. The AG’s advisory recommended dismissal for failure to comply with the requirements of Chapter 14.

On July 27, 2016, the trial court signed and issued an order dismissing Gilbert’s claims against the defendants as frivolous and for failure to comply with Chapter 14. Gilbert filed his Notice of Appeal on August 29, 2016.

Issues on Appeal

On appeal, Gilbert argues that the trial court erred in dismissing his lawsuit. He makes several arguments, which we have consolidated and reordered into three issues. First, Gilbert argues that he did not fail to exhaust his administrative remedies and that copies of his Step 1 grievances submitted with his petition are “some type

of evidence to the court on how he tried to resolve or exhaust his administrative remedies regarding the \$100 health services fee and bottom bunk assignment.” Gilbert acknowledges the two-step TDCJ grievance system but he argues that he never received a response from one of his Step 1 grievances. Second, Gilbert argues that dismissal without holding a hearing was improper because, under Chapter 14, a trial court may not dismiss a claim without a hearing on the grounds that it lacked an “arguable basis in fact.” Finally, Gilbert argues that a pro se petitioner is held to a “less stringent” standard and dismissal is only proper if it appears beyond doubt that the petitioner can prove no set of facts in support of his claim that would entitle him to relief.

Standard of Review

We review a trial court’s dismissal of an inmate’s suit for abuse of discretion. *See Amir-Sharif v. Mason*, 243 S.W.3d 854, 856 (Tex. App.—Dallas 2008, no pet.) (citing *Hickman v. Adams*, 35 S.W.3d 120, 123 (Tex. App.—Houston [14th Dist.] 2000, no pet.)); *Retzlaff v. Tex. Dep’t of Criminal Justice*, 94 S.W.3d 650, 654 (Tex. App.—Houston [14th Dist.] 2002, pet. denied). Because the order in this case does not specify the sections of Chapter 14 upon which the trial court relied in granting the dismissal, we will affirm the order if any of the grounds presented to the trial court were meritorious. *See Garza v. Garcia*, 137 S.W.3d 36, 37 (Tex. 2004); *Turner*

v. TDCJ–ID Allen B. Polunsky Unit, No. 09-12-00517-CV, 2013 WL 3355768, at *1 (Tex. App.—Beaumont 2013, pet. denied) (mem. op.) (“We will affirm the trial court’s dismissal if it was proper under any legal theory.”). An appellant bears the burden of overcoming the presumption that the trial court’s action was justified. *See Retzlaff*, 94 S.W.3d at 654.

We construe an appellant’s pro se brief liberally. *See Giddens v. Brooks*, 92 S.W.3d 878, 880 (Tex. App.—Beaumont 2002, pet. denied) (“pro se pleadings and briefs are to be liberally construed[.]”); *see also Sterner v. Marathon Oil Co.*, 767 S.W.2d 686, 690 (Tex. 1989) (a reviewing court construes points of error liberally to obtain a just, fair, and equitable adjudication of the parties’ rights). Nevertheless, a pro se litigant is held to the same standards as licensed attorneys and must comply with applicable laws and rules of procedure. *Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 184-85 (Tex. 1978).

Chapter 14 Requirements

Chapter 14 of the Civil Practice and Remedies Code governs inmate litigation when the inmate claims an inability to pay costs. *See Tex. Civ. Prac. & Rem. Code Ann. § 14.002(a)* (West 2017). An inmate proceeding pro se and *in forma pauperis* must comply with the statutory requirements outlined in Chapter 14. The Chapter 14 provisions are “an essential part of the process by which courts review inmate

litigation.”” *Douglas v. Moffett*, 418 S.W.3d 336, 339 (Tex. App.—Houston [14th Dist.] 2013, no pet.) (quoting *Douglas v. Turner*, 441 S.W.3d 337, 339 (Tex. App.—Waco 2013, no pet.)); *Amir-Sharif*, 243 S.W.3d at 857; *Hickson v. Moya*, 926 S.W.2d 397, 399 (Tex. App.—Waco 1996, no pet.). Should the inmate fail to comply with the Chapter 14 filing requirements, his suit will be dismissed. *See Lilly v. Northrep*, 100 S.W.3d 335, 336 (Tex. App.—San Antonio 2002, no pet.) (citing *Bell v. Tex. Dep’t of Criminal Justice—Inst. Div.*, 962 S.W.2d 156, 158 (Tex. App.—Houston [14th Dist.] 1998, pet. denied)).

Exhaustion of Administrative Remedies

Chapter 14 requires the inmate filing the suit to demonstrate that he exhausted the administrative remedies available to him for grievances when his complaint is subject to the inmate grievance system, and to provide the trial court with a copy of the written decision on the grievance. Tex. Civ. Prac. & Rem. Code Ann. § 14.005 (West 2017). An inmate may not file a claim in state court regarding operative facts for which the grievance system provides the exclusive administrative remedy until he receives a written decision issued by the highest authority provided in the grievance system. *See* Tex. Civ. Prac. & Rem. Code Ann. § 14.005(a); Tex. Gov’t Code Ann. § 501.008(d)(1) (West 2012) (“Inmate Grievance System”). The grievance system provides the exclusive administrative remedy for inmate claims

arising under the TTCA. *See Retzlaff*, 94 S.W.3d at 654 (citing *Wallace v. Tex. Dep't Criminal Justice—Inst. Div.*, 36 S.W.3d 607, 611 (Tex. App.—Houston [1st Dist.] 2000, pet. denied)). A trial court does not err in dismissing an inmate's claim as frivolous where the inmate's pleading lacks documentation of exhaustion of administrative remedies. *See Scott v. Menchaca*, 185 S.W.3d 543, 545 (Tex. App.—Corpus Christi 2006, no pet.) (exhaustion of administrative remedies under section 14.005 is “mandatory”); *Smith v. Tex. Dep't of Criminal Justice—Inst. Div.*, 33 S.W.3d 338, 341 (Tex. App.—Texarkana 2000, pet. denied) (affirming trial court's dismissal of inmate's lawsuit for failure to provide documentation of exhaustion of remedies through grievance system). Moreover, dismissal is mandatory if the inmate fails to file his claim “before the 31st day after the date the inmate receives the written decision from the grievance system.” *See* Tex. Civ. Prac. & Rem. Code Ann. § 14.005(b).

Inmate Trust Account Statement

An indigent inmate must also file a certified copy of the inmate's “trust account statement.” Tex. Civ. Prac. & Rem. Code Ann. §§ 14.004(c), 14.006(f) (West 2017). The trust account statement “must reflect 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.* § 14.006(f); *see also McLean v. Livingston*,

486 S.W.3d 561, 562 (Tex. 2016). When an inmate litigant fails to file the required inmate trust account statement, the court is entitled to assume that the allegation of indigency is false and may dismiss the suit under section 14.003(a)(1) without notice or hearing. *See Moffett*, 418 S.W.3d at 340; *Douglas*, 441 S.W.3d at 339 (“The failure to file the affidavit with the required information or the inmate account statement can result in dismissal without notice or hearing.”); *Amir-Sharif*, 243 S.W.3d at 857; *Thompson v. Rodriguez*, 99 S.W.3d 328, 330 (Tex. App.—Texarkana 2003, no pet.).

Previous Filings by the Inmate

“When an inmate litigant files an affidavit or unsworn declaration of inability to pay costs, Chapter 14 requires the inmate to file an *additional* affidavit or declaration setting forth specific details on all previous actions filed *pro se*, other than a suit brought under the Texas Family Code.” *Moffett*, 418 S.W.3d at 339 (citing Tex. Civ. Prac. & Rem. Code Ann. § 14.004(a)). For each *pro se* lawsuit an inmate has previously filed, other than one filed under the Family Code, Chapter 14 requires the inmate to specify the operative facts for which relief was sought, the case name, the cause number, the court in which it was brought, the names of the parties, and the result of the suit, including whether it was dismissed as frivolous or malicious. *See* Tex. Civ. Prac. & Rem. Code Ann. § 14.004(a)(2)(A)-(D). When the inmate fails

to comply with the affidavit requirements, the court may assume that the current action is substantially similar to one previously filed by the inmate and is frivolous. *See Moffett*, 418 S.W.3d at 340. Failure to file the required affidavit or declaration of previous filings can result in dismissal of the appeal. *See id.*; *Bell*, 962 S.W.2d at 158.

Failure to Comply with Chapter 14

The appellate record indicates Gilbert failed to provide evidence that he submitted his complaints to the grievance system, received a decision thereon, and timely filed his lawsuit. To satisfy the exhaustion requirement of section 14.005, an inmate must file both a Step 1 and a Step 2 grievance against each defendant. *Jones v. Alford*, No. 09-12-00251-CV, 2013 WL 4774090, at *2 (Tex. App.—Beaumont Sept. 5, 2013, no pet.) (mem. op.). In addition, every claim that an inmate brings against a defendant must have been raised in both the Step 1 and Step 2 grievances. *Id.* Gilbert only submitted one Step 2 grievance with his petition. This Step 2 grievance concerned his cane. The record reflects no Step 2 grievance concerning the \$100 health services fee or Gilbert's bunk assignment. The Step 2 grievance in the record includes a written decision dated October 29, 2015, and the decision was returned to Gilbert on November 16, 2015.

Pursuant to section 14.005(b), Gilbert had thirty-one days from the date he received the written decision in which to file his complaint. Tex. Civ. Prac. & Rem. Code Ann. § 14.005(b) (“A court shall dismiss a claim if the inmate fails to file the claim before the 31st day after the date the inmate receives the written decision from the grievance system.”). Gilbert did not file his petition until May 23, 2016, more than thirty-one days following the receipt of the written Step 2 decision. Therefore, Gilbert failed to exhaust his administrative remedies pursuant to section 14.005, and the trial court did not err in dismissing the lawsuit under Chapter 14. *See id.*; *Garrett v. Nunn*, 275 S.W.3d 604, 607 (Tex. App.—Amarillo 2008, no pet.) (explaining that section 14.005(b) instructs the court to dismiss a claim if it is filed after the thirty-first day after the written grievance decision was received by the inmate).

The record also reflects that although Gilbert filed a “Declaration of Inability to Pay Cost[,]” he did not file an affidavit or declaration identifying all of his previous pro se lawsuits. *See* Tex. Civ. Prac. & Rem. Code Ann. § 14.004(a). For example, Gilbert should have reported his prior pro se case, *Gilbert v. Quarterman*. When an inmate does not comply with the affidavit requirement of section 14.004, the trial court is entitled to assume the suit is substantially similar to one previously filed by the inmate and, therefore, is frivolous. *Obadele v. Johnson*, 60 S.W.3d 345, 348 (Tex. App.—Houston [14th Dist.] 2001, no pet.); *Bell*, 962 S.W.2d at 158. Thus,

because Gilbert did not meet the affidavit requirement of section 14.004, the trial court would not have erred in concluding this case was substantially similar to one previously filed by Gilbert and dismissing his claims.

The record also reflects that Gilbert failed to provide the trial court with a certified copy of the statement of his inmate trust account. *See* Tex. Civ. Prac. & Rem. Code Ann. § 14.006(f). A district court does not abuse its discretion in dismissing a suit for failure to comply with procedural requirements of Chapter 14, including the requirement to file a certified copy of the inmate trust account statement. *See Amir-Sharif*, 243 S.W.3d at 857 (Because Chapter 14’s filing requirements “enable the court to determine whether an indigent inmate’s suit should be dismissed, . . . the failure to file the affidavit with the required information or the inmate trust account statement can result in dismissal[.]”); *Hunt v. Rodriguez-Mendoza*, No. 03-06-00117-CV, 2007 WL 2462041, at *3 (Tex. App.—Austin Aug. 29, 2007, pet. denied) (mem. op.), *cert. denied*, 555 U.S. 857 (2008) (citing *Scott v. Gallagher*, 209 S.W.3d 262, 265 (Tex. App.—Houston [1st Dist.] 2006, no pet.); *Williams v. Brown*, 33 S.W.3d 410, 412 (Tex. App.—Houston [1st Dist.] 2000, no pet.)).

We conclude that the trial court did not abuse its discretion in dismissing Gilbert’s lawsuit under Chapter 14. Gilbert failed to comply with the requirements

of Chapter 14. *See Amir-Sharif*, 243 S.W.3d at 857-58; *see also Bell*, 962 S.W.2d at 158.

Lack of a Hearing

A trial court does not err under Chapter 14 in dismissing an inmate's claim without a hearing if the inmate's claim has no arguable basis in law. *See Sawyer v. Tex. Dep't of Criminal Justice*, 983 S.W.2d 310, 311 (Tex. App.—Houston [1st Dist.] 1998, pet. denied). A claim has no arguable basis in law if an inmate has failed to exhaust his administrative remedies. *Pedraza v. Tibbs*, 826 S.W.2d 695, 699 (Tex. App.—Houston [1st Dist.] 1992, writ dism'd w.o.j.); *see also Hughes v. Massey*, 65 S.W.3d 743, 746 (Tex. App.—Beaumont 2001, no pet.) (explaining that a dismissal for failure to comply with the rules governing the filing of suits brought pursuant to Chapter 14 is not a ruling on the merits). In this case, the trial court dismissed for “failure to comply with Chapter 14[.]” The trial court did not err in dismissing Gilbert's lawsuit for his failure to comply with Chapter 14, including his failure to demonstrate that he had exhausted his administrative remedies. We also conclude that the trial court did not err in failing to hold a hearing prior to dismissal.

Gilbert's “Less Stringent” Pleading Argument

Citing to *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972) and *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957), Gilbert's brief argues that a pro se petitioner is

held to a “less stringent” standard and dismissal is only proper if it appears beyond doubt that the petitioner can prove no set of facts in support of his claim that would entitle him to relief. We find *Haines* and *Conley* inapposite. *Haines* addressed the application of Federal Rule of Evidence 12(b)(6) in a lawsuit asserting a federal claim in federal court. 404 U.S. at 519-21. *Conley* also involved the pleading requirements for a federal claim litigated in federal court. *See generally* 355 U.S. at 41. Neither *Haines* nor *Conley* applies to a dismissal for failure to comply with Chapter 14 requirements.

The filing requirements of Chapter 14 are “an essential part of the process by which courts review inmate litigation[]” and were designed “to control the flood of frivolous lawsuits” by prison inmates. *Douglas*, 441 S.W.3d at 339 (quoting *Hickson*, 926 S.W.2d at 399). Any “less stringent” standard would be contrary to the purpose of Chapter 14. Moreover, a “less stringent” pleading standard would not overcome Gilbert’s noncompliance with Chapter 14. We overrule all of Gilbert’s issues, and we affirm the trial court’s judgment.

AFFIRMED.

LEANNE JOHNSON
Justice

Submitted on June 20, 2017
Opinion Delivered August 31, 2017

Before Kreger, Horton, and Johnson, JJ.