

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-16-00324-CV

MICHAEL WAYNE OSBORNE, Appellant

V.

WARDEN SININGAL, ET AL, Appellees

On Appeal from the 58th District Court
Jefferson County, Texas
Trial Cause No. A-197,743

MEMORANDUM OPINION

Michael Wayne Osborne (Osborne or Plaintiff or Appellant), an inmate housed with the Texas Department of Criminal Justice (“TDCJ”) and incarcerated at the Larry Gist Unit, filed a pro se “Class Action Suit Original Petition,” on behalf of himself and another inmate, against Defendants Charles Siringi, Warden Siningal,

and former Executive Director of TDCJ Brad Livingston in their official capacities.¹ Osborne sought to proceed *in forma pauperis* in the suit. Osborne alleged that on or about February 27, 2015, the Defendants negligently supervised Osborne's medical needs and violated his constitutional rights by placing him in a cell at the Larry Gist Unit with no emergency call button or officer monitoring his cell block when he had a "prior health condition . . . and other life changing diagnoses."

Livingston filed his "Motion to Dismiss Plaintiff's Original Petition and Amicus Curiae Brief on Behalf of Defendant Siningal[.]" and Siringi filed his "Motion to Dismiss Plaintiff's Original Petition and Amicus Curiae Brief on Behalf of Other Defendants[.]" Their motions asserted, among other things, that dismissal of Osborne's suit was appropriate because the requirements of class certification could not be satisfied and because Osborne failed to comply with Chapter 14's requirements.

On April 12, 2016, Osborne filed a "Motion for Prohibitory Injunction Against Retaliation of Being Moved to another Unit[.]" a "Motion for Leave to Amend Original Petition and File Plaintiff's First Supplemental Complaint[.]" and "Plaintiff's First Supplemental Complaint[.]" In "Plaintiff's First Supplemental

¹ Charles Siringi was not named in Plaintiff's original petition, but Siringi was served as a defendant in connection with the lawsuit.

Complaint” Osborne alleged the same facts and claims as his original petition, but he did not include a “class action” reference in the title of the pleading, and the supplemental pleading appears to state that it is solely on behalf of Osborne.

After a hearing on August 23, 2016, the trial court signed a final judgment ordering “that Plaintiff’s claims against all Defendants are DISMISSED AS FRIVOLOUS for failure to comply with Chapter 14 of the Texas Civil Practices and Remedies Code.” Osborne filed a pro se appeal, arguing that the trial court “failed to consider [his] amended motion for leave of court” and “Plaintiff’s First Supplemental Petition.”² We affirm the trial court’s judgment.

We review a trial court’s dismissal of an inmate’s suit for abuse of discretion. *See Hickson v. Moya*, 926 S.W.2d 397, 398 (Tex. App.—Waco 1996, no pet.). Under Chapter 14, an indigent inmate must file an affidavit or unsworn declaration that is accompanied by the certified copy of the trust account statement required by section 14.006(f). Tex. Civ. Prac. & Rem. Code Ann. §§ 14.004(c), 14.006(f) (West 2017). Additionally, Chapter 14 requires inmates who file a declaration or affidavit asserting they are unable to pay costs to file a separate affidavit or declaration that:

² Osborne also asserted that the trial court abused its discretion in failing to consider his “Prohibition Injunction[.]” We note that the record indicates that on May 5, 2016, the trial court considered and denied “Plaintiff’s Motion for Prohibitory Injunction[.]”

- (1) identif[ies] each action, other than an action 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 action was brought; and
- (2) describ[es] each action 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 action was brought;
 - (C) identifying each party named in the action; and
 - (D) stating the result of the action, including whether the action or a claim that was a basis for the action was dismissed as frivolous or malicious under Section 13.001 or Section 14.003 or otherwise.

Id. § 14.004(a). Further, 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. *Id.* § 14.005 (West 2017). The filings required under Chapter 14 are “an essential part of the process by which courts review inmate litigation.” *Amir-Sharif v. Mason*, 243 S.W.3d 854, 857 (Tex. App.—Dallas 2008, no pet.) (quoting *Hickson*, 926 S.W.2d at 399).

The record reflects that Osborne failed to comply with Chapter 14 in a number of respects. As to both his original petition and his supplemental petition, Osborne failed to attach any grievances, failed to provide the trial court with a copy of the written decision that resulted from any grievances, and failed to file a separate affidavit demonstrating that he had exhausted his administrative remedies. *See Tex.*

Civ. Prac. & Rem. Code Ann. § 14.005; *see also* *Garrett v. Borden*, 283 S.W.3d 852, 853 (Tex. 2009) (explaining that the purpose of section 14.005 is for an inmate to demonstrate he has exhausted his administrative remedies). Osborne also failed to attach a separate affidavit or declaration of previous filings to his petition or his amended petition. *See* Tex. Civ. Prac. & Rem. Code Ann. § 14.004(a). When an inmate does not comply with the affidavit requirements of Chapter 14, the trial court may assume the suit is substantially similar to another of the inmate’s prior suits and that the pending suit before the court is 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). Although Defendants’ motions to dismiss noted these deficiencies and these deficiencies were discussed at the hearing on the motions, Osborne did not argue in the trial court that he complied with Chapter 14 nor did he attempt to cure any of these deficiencies in the trial court. On appeal, Osborne also fails to identify evidence in the record that establishes that he complied with Chapter 14.

Osborne’s failure to file a copy of the written grievance decisions, along with his failure to file an affidavit of previous filings that contained all the information required by Chapter 14, justified the trial court’s dismissal of his lawsuit. *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[.]”). We conclude that the trial court did not abuse its discretion by dismissing Osborne’s lawsuit based on his failure to comply with the requirements of Chapter 14. *See id.*; *see also Bell*, 962 S.W.2d at 158. We overrule Osborne’s issue and affirm the trial court’s judgment.

AFFIRMED.

LEANNE JOHNSON
Justice

Submitted on February 2, 2017
Opinion Delivered May 11, 2017

Before McKeithen, C.J., Horton and Johnson, JJ.