



**IN THE
TENTH COURT OF APPEALS**

No. 10-09-00393-CV

DONALD FOSTER,

Appellant

v.

RICK THALER,

Appellee

**From the 278th District Court
Walker County, Texas
Trial Court No. 24,769**

MEMORANDUM OPINION

Donald Foster appeals the dismissal of his lawsuit as frivolous under Chapter 14 of the Civil Practice and Remedies Code. He contends in two issues that the court erred because: (1) his pending recusal motion should have first been addressed; and (2) his lawsuit is not frivolous. We will affirm.

Rule of Civil Procedure 18a(b) states in pertinent part, "On the day the motion [to recuse] is filed, copies shall be served on all other parties or their counsel of record, together with a notice that movant expects the motion to be presented to the judge three

days after the filing of such motion unless otherwise ordered by the judge.” TEX. R. CIV. P. 18a(b). If a party fails to provide this notice, he waives the right to complain of a judge’s failure to recuse himself. *Carson v. Serrano*, 96 S.W.3d 697, 698 (Tex. App.—Texarkana 2003, pet. denied). Because Foster failed to provide this notice, he waived the right to complain of the judge’s failure to recuse himself. *Id.* Thus, we overrule his first issue.

Chapter 14 of the Civil Practice and Remedies Code applies to suits filed by an inmate and accompanied by an affidavit or unsworn declaration of inability to pay costs.¹ TEX. CIV. PRAC. & REM. CODE ANN. § 14.002(a) (Vernon 2002); *Hamilton v. Williams*, 298 S.W.3d 334, 339 (Tex. App.—Fort Worth 2009, pet. denied). The trial court may dismiss such a suit if the inmate fails to comply with the requirements of Chapter 14. *See Hamilton*, 298 S.W.3d at 339.

Section 14.004 requires the inmate to file an affidavit or unsworn declaration listing each suit (other than suits under the Family Code) the inmate previously filed. TEX. CIV. PRAC. & REM. CODE ANN. § 14.004 (Vernon 2002). Because Foster did not comply with section 14.004, the court did not abuse its discretion by dismissing his suit. *See Hamilton*, 298 S.W.3d at 339. Thus, we overrule his second issue.

We affirm the judgment.

FELIPE REYNA
Justice

¹ Chapter 14 does not apply to suits filed under the Family Code. TEX. CIV. PRAC. & REM. CODE ANN. § 14.002(b) (Vernon 2002).

Before Chief Justice Gray,
Justice Reyna, and
Justice Davis

Affirmed

Opinion delivered and filed October 13, 2010

[CV06]