

NO. 12-11-00117-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

KIRK WAYNE MCBRIDE, SR., § *APPEAL FROM THE 369TH*
APPELLANT

V.

TEXAS DEPARTMENT OF CRIMINAL § *JUDICIAL DISTRICT COURT*
JUSTICE—CORRECTIONAL
INSTITUTIONS DIVISION, R. PRICE,
J. SMITH, D. WARD, E. BROWN, C. KISER,
A. SHABBAZZ, AND V. BRAXTON,
APPELLEES § *ANDERSON COUNTY, TEXAS*

MEMORANDUM OPINION

Kirk Wayne McBride, Sr., appeals from the trial court's dismissal of his suit under Chapter Fourteen of the Texas Civil Practice and Remedies Code. He raises five issues on appeal. We affirm.

BACKGROUND

McBride is an inmate in the Texas Department of Criminal Justice. In 2010, proceeding pro se, McBride filed this lawsuit against Appellees, Texas Department of Criminal Justice-Correctional Institutions Division, R. Price, J. Smith, D. Ward, E. Brown, C. Kiser, A. Shabbazz, and V. Braxton. In his suit, McBride complained that he was improperly denied (1) religious materials shipped from Iran, (2) daily and special holiday meals based on his religion, (3) participation in Ramadan due to prison lockdowns, and (4) suitable facilities to conduct certain Islamic religious practices. McBride sought injunctive and monetary relief.

The trial court found that this lawsuit was governed by Chapter Fourteen of the Texas Civil Practice and Remedies Code. The trial court found McBride's suit to be frivolous, rendering a judgment that his suit should be dismissed without prejudice. This appeal followed.

JURISDICTION

In his first issue, McBride contends that he was deprived of his choice of forum under the open courts provision of the Texas Constitution. Specifically, he complains that he directed the clerk to file his suit in the Anderson County Court at Law, but instead, the 369th District Court in Anderson County, Texas, exercised jurisdiction over the case. In a related second issue, he contends that because the trial court did not have subject matter jurisdiction over his case, the judgment dismissing his suit was void.

First, the district court had jurisdiction over McBride's lawsuit. TEX. CONST. art. V, § 8; TEX. GOV'T CODE ANN. § 24.007 (West Supp. 2012) (stating that district court has jurisdiction in civil matters where amount in controversy exceeds \$500.00, exclusive of interest). The Anderson County Court at Law (a statutory county court) has concurrent jurisdiction with the district court in civil matters in which the matter in controversy exceeds \$500 but does not exceed \$200,000, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs, as alleged on the face of the petition. TEX. GOV'T CODE ANN. §§ 25.003 (West Supp. 2012) (granting concurrent jurisdiction between county courts at law and district courts in certain civil matters), 25.0042 (West Supp. 2012) (discussing general Anderson County Court at Law jurisdiction provisions). The district court and the county court at law may preside over civil suits governed by Chapter Fourteen of the Texas Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.002(a) (West Supp. 2012) (stating Chapter Fourteen suits apply to district courts and county court suits brought by inmate when inmate filed an affidavit or unsworn declaration of inability to pay costs).

As applied here, the district court and the county court at law had concurrent jurisdiction over McBride's suit. Contrary to McBride's instructions, the case was filed in the district court. McBride has cited no authority demonstrating that he was entitled to file his suit in a particular court having concurrent jurisdiction with another court within the county. Nor did he cite any authority for the proposition that an open courts violation occurs when a plaintiff is not allowed

to designate the trial court in which his suit must be filed. And we are not aware of any such authority for either of these propositions.

McBride's first and second issues are overruled.

DISMISSAL OF SUIT

In his third issue, McBride argues that the trial court abused its discretion in dismissing his suit under Chapter Fourteen of the Texas Civil Practice and Remedies Code.

Standard of Review

We review the trial court's dismissal of an *in forma pauperis* suit under an abuse of discretion standard. *Hickson v. Moya*, 926 S.W.2d 397, 398 (Tex. App.—Waco 1996, no writ). A trial court abuses its discretion if it acts arbitrarily, capriciously, and without reference to any guiding rules or principles. *Lentworth v. Trahan*, 981 S.W.2d 720, 722 (Tex. App.—Houston [1st Dist.] 1998, no pet.). We will affirm a dismissal if it was proper under any legal theory. *Johnson v. Lynaugh*, 796 S.W.2d 705, 706–07 (Tex. 1990); *Birido v. Ament*, 814 S.W.2d 808, 810 (Tex. App.—Waco 1991, writ denied). The trial courts are given broad discretion to determine whether a case should be dismissed because (1) prisoners have a strong incentive to litigate; (2) the government bears the cost of an *in forma pauperis* suit; (3) sanctions are not effective; and (4) the dismissal of unmeritorious claims accrue to the benefit of state officials, courts, and meritorious claimants. See *Montana v. Patterson*, 894 S.W.2d 812, 814–15 (Tex. App.—Tyler 1994, no writ).

Applicable Law

Chapter Fourteen of the Texas Civil Practice and Remedies Code applies to a lawsuit brought by a pro se inmate who has filed an affidavit or unsworn declaration of inability to pay costs (*in forma pauperis*) and imposes several procedural requirements for those lawsuits.¹ See TEX. CIV. PRAC. & REM. CODE ANN. §§ 14.002–.006; *Garrett v. Borden*, 283 S.W.3d 852, 853 (Tex. 2009). Generally, an inmate's lawsuit may be dismissed if it fails to meet the procedural requirements imposed by Chapter Fourteen. See *Thompson v. Rodriguez*, 99 S.W.3d 328, 330

¹ Chapter Fourteen does not apply to an action brought under the Texas Family Code. TEX. CIV. PRAC. & REM. CODE ANN. § 14.002(b) (West Supp. 2012).

(Tex. App.—Texarkana 2003, no pet.); *Lilly v. Northrep*, 100 S.W.3d 335, 336 (Tex. App.—San Antonio 2002, pet. denied).

One such procedural requirement is that the inmate must properly exhaust his administrative remedies by completing the grievance process. TEX. CIV. PRAC. & REM. CODE ANN. § 14.005 (West 2002); *Leachman v. Dretke*, 261 S.W.3d 297, 308–10 (Tex. App.—Fort Worth 2008, no pet.) (op. on reh’g) (describing grievance process). Section 14.005, entitled Grievance System Decision; Exhaustion of Administrative Remedies, provides as follows:

(a) An inmate who files a claim that is subject to the grievance system established under Section 501.008, Government Code, shall file with the court:

(1) an affidavit or unsworn declaration stating the date that the grievance was filed and the date the written decision described by Section 501.008(d), Government Code, was received by the inmate; and

(2) a copy of the written decision from the grievance system.

(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.

Id. § 14.005(a), (b).

These requirements serve two purposes. First, the inmate will demonstrate through compliance that he has exhausted his administrative remedies, and second, the information provided by the inmate will enable the court to determine whether the inmate has filed his claim within the requisite time period. *See Garrett v. Borden*, 283 S.W.3d 852, 853 (Tex. 2009); *Addicks v. Quarterman*, No. 12-09-00098-CV, 2011 WL 597148, at *2 (Tex. App.—Tyler Feb. 16, 2011, no pet.). An inmate’s failure to provide the required information subjects his suit to dismissal. *Addicks*, 2011 WL 597148, at *2. TDCJ’s inmate grievance procedure is a two step process outlined in its Offender Orientation Handbook,² which is distributed to inmates upon their confinement within the corrections system. *See id.* The step one grievance must be filed within fifteen days from the date of the alleged incident or occurrence. *Id.* If the inmate receives an adverse step one decision, the inmate has fifteen days to file a step two grievance. *Id.* The grievance system restricts the issues that are grievable, and it provides for the return of

² *See* http://www.tdcj.state.tx.us/publications/pubs_cid_offender_orientation_handbook.html.

grievances if the inmate fails to meet certain requirements, but grievances generally may be corrected and resubmitted. *Id.*

Another procedural requirement, Section 14.006(f), requires the inmate to file a certified copy of his inmate's trust account statement with the trial court. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.006(f) (West 2002). A trial court may dismiss a lawsuit that does not comply with Section 14.006(f). *See Thompson v. Rodriguez*, 99 S.W.3d 328, 330 (Tex. App.—Texarkana 2003, no pet.); *Hughes v. Massey*, 65 S.W.3d 743, 746 (Tex. App.—Beaumont 2001, no pet.). The 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.” TEX. CIV. PRAC. & REM. CODE ANN. § 14.006(f). The attachment of a statement that covers activity for some period other than the six month period preceding the date on which the suit is filed is improper and may result in dismissal of the suit. *See, e.g., Geiger v. Williams*, No. 12-07-00198-CV, 2007 WL 4328438, at *1 (Tex. App.—Tyler Dec. 12, 2007, pet. denied) (mem. op.) (holding inmate's attachment of trust account statement not covering appropriate period of time was valid basis to dismiss lawsuit); *Ramirez v. Dietz*, No. 07-04-0476-CV, 2005 WL 1866082, at *2 (Tex. App.—Amarillo Aug. 8, 2005, pet. denied) (holding inmate failed to comply with trust account requirement when his attached statement reflected activity from January to June 2004, but suit was filed on April 14, 2004; inmate was required to reflect activity in November and December 2003); *Stuart v. Johnson*, No. 01-04-00143-CV, 2004 WL 2677083, at *1 (Tex. App.—Houston [1st Dist.] Nov. 24, 2004, no pet.) (mem. op.) (holding inmate failed to comply with trust account requirement when he attached a statement, but it did not reflect activity for the “entire six month period preceding the date on which the claim was filed”).

Discussion

McBride pleaded facts alleging several causes of action, arising out of separate grievances. However, he attached grievance forms and responses related only to his complaint that the prison withheld religious materials shipped from Iran. None of the other grievance forms or responses were attached to his petition, even though McBride referenced them in his affidavit alleging that he complied with the administrative grievance process, and identified them by their separate grievance numbers. Since he failed to include the step one and step two

grievance forms and responses for those claims, McBride failed to demonstrate that he complied with the administrative grievance process. It was therefore proper for the trial court to dismiss all of his claims except for the claim that the prison wrongfully withheld religious materials shipped from Iran on the ground that McBride failed to exhaust his administrative remedies.

With regard to the remaining complaint, McBride failed to attach a statement reflecting the activity in his inmate trust account during the six months preceding the date on which the claim was filed. To be clear, McBride attached a statement, but it did not cover the correct time period. Specifically, the statement showed that it was prepared on November 29, 2011. McBride's suit was filed on December 2, 2011. Yet, the inmate trust account shows the balances from May 10, 2011, through October 10, 2011. The statement does not reflect the balance of the account on November 10, 2011, which is the month immediately preceding the filing of the lawsuit. McBride's balance on October 10, 2011, was \$176.61. The statement reflects that \$583.70 was deposited during the six month period reflected on the sheet. But when the statement was prepared, just days before filing his lawsuit, McBride had only \$0.14 in his account. McBride filed suit in December, but the most recent month reflected on the statement was October. Since the statement should have shown the balance on November 10, 2011, but failed to account for the balance on that date, McBride has not complied with the Section 14.006(f). *See, e.g., Thompson*, 99 S.W.3d at 330; *Geiger*, 2007 WL 4328438, at *1.

Accordingly, and for the reasons set out above, we hold that the trial court acted within its discretion when it dismissed his lawsuit for failure to comply with Chapter Fourteen.

McBride's third issue is overruled.

COSTS

In his fourth issue, McBride argues that the "District Clerk's taxation of costs against [him] were in excess of that allowed by law." In a related fifth issue, he contends that it was error to tax the preparation of the clerk's record for his appeal against him.

First, the language of the trial court's collection order tracked the payment schedule as required by Chapter Fourteen. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.006. Next, with regard to the fees themselves, the Office of Court Administration has compiled an itemized list of all filing fees that may be charged to litigants by the district clerk for 2010, the year in which

McBride filed suit.³ That list contains a description of all fees, the amounts to be charged, and the statutory source law authorizing each fee. McBride cites only some of the sections authorizing the collection of fees by the district clerk in lodging his fee complaint. *See* TEX. GOV'T CODE ANN. § 51.317 (West Supp. 2012) (filing fees and record management fee), 51.601 (West Supp. 2012) (court reporter fee). However, McBride ignored other fees that the district clerk could collect in connection with the filing of a civil suit such as his. *See, e.g., id.* §§ 22.2131 (West Supp. 2012) (appellate judicial system fee), 51.305 (West Supp. 2012) (district court records archive fee), 51.708 (court records preservation fee) (West Supp. 2012); TEX. LOC. GOV'T CODE ANN. 133.151 (West 2008) (consolidated state fee), 133.154 (West 2008) (judicial support fee), 291.008 (West 2005) (courthouse security fee), 323.023 (West 2005) (law library fee).

McBride also complains of a sheriff's jury fee assessed against him in the amount of \$22.00. The Texas Constitution establishes the commissioners' court as the governing body of the county. TEX. CONST. art. V, § 18. Thus, the commissioners' court of a county can set a reasonable fee for services provided by sheriffs. *See* TEX. LOC. GOV'T CODE ANN. § 118.131(a) (West 2008); *see also Harris Cnty. v. Proler*, 29 S.W.3d 646, 648 (Tex. App.—Houston [14th Dist.] 2000, no pet.). The commissioners' court must provide written notice of the amounts of the fees to the Texas Comptroller of Public Accounts. *See id.* § 118.131(f). The comptroller's office is then required to compile a list of fees charged by Texas sheriffs in discharging their duties as set by the commissioners' court of the relevant county. *See id.* For the Anderson County Sheriff's Office in 2010, the applicable \$22.00 fee is a "Sheriff's Jury Fee."⁴ McBride failed to show that the district clerk and sheriff's office's fees were not authorized by state law.

Finally, McBride contends that there was no authority to assess the cost of preparing the clerk's record for appeal against him. First, it appears that McBride is complaining about the itemized description of the amount for clerk's fees in the clerk's bill of costs. However, the clerk is required to provide a certified bill of costs, "including the cost of preparing the clerk's record." TEX. R. APP. P. 34.5(a)(11). The trial court, in its dismissal order, never ordered that costs of

³ *See* <http://www.courts.state.tx.us/oca/pdf/DistrictClerkCivilFilingFees2010.pdf>.

⁴ *See* <https://ourcpa.cpa.state.tx.us/sacf/feesSearch.jsp>.

preparing the clerk's record be taxed against McBride. Without an order to pay that cost, McBride has not shown how he has been harmed.

McBride's fourth and fifth issues are overruled.

DISPOSITION

Having overruled all of McBride's issues, we *affirm* the judgment of the trial court.

JAMES T. WORTHEN
Chief Justice

Opinion delivered November 30, 2012.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(PUBLISH)



**COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT**

NOVEMBER 30, 2012

NO. 12-11-00117-CV

KIRK WAYNE MCBRIDE, SR.,

Appellant

V.

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE—CORRECTIONAL
INSTITUTIONS DIVISION, R. PRICE, J. SMITH, D. WARD
E. BROWN, C. KISER, A. SHABBAZZ, AND V. BRAXTON,**

Appellees

Appeal from the 369th Judicial District Court
Of Anderson County, Texas. (Tr.Ct.No. 369-10-4369)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

James T. Worthen, Chief Justice.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.