NO. 12-11-00209-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

KENNETH D. LACKEY, APPELLANT	***§***	***APPEAL FROM THE***
V.	***§***	***COUNTY COURT AT LAW***
D. GREEN, APPELLEE	***§***	***ANDERSON COUNTY, TEXAS***

MEMORANDUM OPINION

Kenneth D. Lackey appeals from the trial court's dismissal of his suit under Chapter Fourteen of the Texas Civil Practice and Remedies Code. In two issues, Lackey argues that the trial court erroneously dismissed his application for writ of certiorari. We affirm.

BACKGROUND

Lackey, an inmate, filed a lawsuit against D. Green in justice court. On January 27, 2011, the justice court dismissed Lackey's suit as frivolous due to Lackey's chance of ultimate success being slight and his inability to prove facts in support of his claim.

Thereafter, Lackey mailed an application for a writ of certiorari to the county court at law.[1] Lackey included an unsworn declaration of indigence with the application. However, the county clerk requested payment of the filing fee. Lackey responded that he had included an unsworn declaration of indigence. The clerk acknowledged that Lackey's "appealed case" had been filed, but instructed Lackey to set a hearing with the trial court on his request to proceed *in forma pauperis*. Lackey responded that he did not believe a hearing was necessary for him to proceed *in forma pauperis*, but that if a hearing was deemed necessary by the court, he would attend either by a bench warrant or telephone conference.

[1] *See* TEX. R. CIV. P. 575–591.

On June 7, 2011, the trial court reviewed Lackey's file. On June 8, 2011, the trial court dismissed Lackey's application for writ of certiorari because Lackey (1) failed to timely file an affidavit relating to previous filings and (2) failed to timely file his certificate of trust account statement. The trial court further noted that Lackey's requested relief could not be granted because more than ninety days had passed from the time the justice court signed its final judgment.[2] This appeal followed.

DISMISSAL OF SUIT

In his first issue, Lackey argues that the trial court erred and abused its discretion when it dismissed his application for writ of certiorari because Chapter 14 of the Texas Civil Practice and Remedies Code does not apply to an inmate's appeal to county court from a justice court's decision.

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); ***Birdo 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 accrues 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).

Chapter 14

Chapter Fourteen of the Texas Civil Practice and Remedies Code controls suits brought by an inmate when the inmate filed an affidavit or unsworn declaration of inability to pay costs.[3]

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[2] *See* TEX. R. CIV. P. 579.

[3] 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. CIV. PRAC. & REM. CODE ANN. § 14.002(a) (West Supp. 2012); ***Hickson***, 926 S.W.2d at 398. Chapter 14 applies "to a suit brought by an inmate in a district, county, justice of the peace, or small claims court in which an affidavit or unsworn declaration of inability to pay costs is filed by the inmate." ***Id***. During the time frame applicable to the case at hand, Chapter 14 did not apply to appeals filed with appellate courts. *See* ***Nabelek v. Garrett***, 94 S.W.3d 648, 649 (Tex. App.—Houston [14th Dist.] 2002, writ dism'd w.o.j.).[4]

The inmate must comply with the procedural requirements set forth in Chapter Fourteen. TEX. CIV. PRAC. & REM. CODE ANN. §§ 14.002(a), 14.004, 14.005 (West 2002 & Supp. 2012). Failure to fulfill those procedural requirements will result in the dismissal of an inmate's suit. *See* ***id***. § 14.003 (West 2002); ***Brewer v. Simental***, 268 S.W.3d 763, 767 (Tex. App.–Waco 2008, no pet.) (citing ***Bell v. Texas Dep't of Crim. Justice-Institutional Div.***, 962 S.W.2d 156, 158 (Tex. App.–Houston [14th Dist.] 1998, pet. denied)).

Statutory Construction

Statutory construction is a question of law and is reviewed de novo. ***Tex. Mun. Power Agency v. Pub. Util. Comm'n of Tex.***, 253 S.W.3d 184, 192 (Tex. 2007). In construing a statute, our primary objective is to determine and give effect to the legislature's intent in enacting it. ***McIntyre v. Ramirez***, 109 S.W.3d 741, 745 (Tex. 2003). In determining legislative intent, we examine the entire act, not just isolated portions of it. ***City of San Antonio v. City of Boerne***, 111 S.W.3d 22, 25 (Tex. 2003). We start with the plain and common meaning of the statute's words. ***McIntyre***, 109 S.W.3d at 745. Unless the statute is ambiguous, we determine the legislature's intent from the language of the statute itself. ***Cont'l Cas. Co. v. Downs***, 81 S.W.3d 803, 805 (Tex. 2002). "Ordinarily, the truest manifestation of what legislators intended is what lawmakers enacted, the literal text they voted on." ***Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson***, 209 S.W.3d 644, 651 (Tex. 2006). We must presume that every word of the statute has been used for a purpose and that every word excluded from the statute has been excluded for a purpose. ***Laidlaw Waste Sys., Inc. v. City of Wilmer***, 904 S.W.2d 656, 659 (Tex. 1995). We should not insert words into the statute except to give effect to clear legislative intent. ***Id***.

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[4] The legislature amended Chapter 14 in 2011. Thus, beginning January 1, 2012, Chapter 14 will apply to any "action" brought in an appellate court. *See* TEX. CIV. PRAC. & REM. CODE ANN. 14.002(a).

Application

Lackey does not argue that he complied with Chapter 14. Instead, he argues that he was not required to comply because he filed an appeal with the county court. Our sister courts have examined whether Chapter 14's requirements apply to appeals to an appellate court and decided the issue in Lackey's favor. *See, e.g.*, ***Nabelek***, 94 S.W.3d at 649. However, Lackey has not cited to, nor are we aware of, a previous decision deciding whether Chapter 14's requirements apply to an appeal to the county court from a decision by a justice court.

The plain language of the statute states that it applies to "suits" filed in county court where an inmate filed an affidavit or unsworn declaration of inability to pay costs. "Suit" is defined as "[a]ny proceeding by a party or parties against another in a court of law." *See* BLACK'S LAW DICTIONARY 1475 (8th ed. 2004); *see also* ***CHEK Investments, L.L.C. v. L.R.***, 260 S.W.3d 704, 706 (Tex. App.–Dallas 2008, no pet.) (defining "suit" as "any proceeding in a court of justice by which an individual pursues that remedy . . . which the law affords him").

We recognize that certiorari involves an error-correcting role of a superior court.[5] However, the application for writ of certiorari is ultimately determined by a trial de novo in the county court at law. *See* TEX. R. CIV. P. 591. The county court neither affirms nor reverses the judgment of the justice court, but instead, conducts a trial de novo with judgment rendered as in any proceeding initially begun in county court. *See* ***id***. As a result, Lackey's application for writ of certiorari was a "suit brought by an inmate in a . . . county . . . court in which an affidavit or unsworn declaration of inability to pay costs is filed by the inmate." TEX. CIV. PRAC. & REM. CODE ANN. § 14.002(a). Therefore, under the circumstances of this case, we agree with the trial court that Lackey was required to comply with Chapter 14.

Based on our review of the record, Lackey failed to file the documents necessary to satisfy the mandate of Section 14.004(a). We stress that the burden to provide the necessary documents rests on the pro se litigant. *See, e.g.*, ***Clark v. J.W. Estelle Unit***, 23 S.W.3d 420, 422 (Tex. App.–Houston [1st Dist.] 2000, pet. denied) (refusing to hold that trial court must sift

[5] Certiorari is a writ issued by a superior court to an inferior court of record, requiring the latter to send to the former some proceedings therein pending, or the records or proceedings in some cause already terminated, in cases where the procedure is not according to the course of the common law. ***Ramsey v. Morris***, 578 S.W.2d 809, 811 (Tex. Civ. App.–Houston [1st Dist.] 1979). It is the office of a common law writ of certiorari to correct errors of law apparent on admitted or established facts. ***Id.***

through numerous documents to find information required by Section 14.004). Therefore, because Lackey did not comply with the mandatory requirements of Section 14.004(a), the trial court could have properly assumed that he had previously filed substantially similar "suits" and that his application for writ of certiorari was, therefore, frivolous. *See* ***Hall v. Treon***, 39 S.W.3d 722, 724 (Tex. App.–Beaumont 2001, no pet.). Lackey's first issue is overruled.[6]

DISPOSITION

Having overruled Lackey's first issue, we ***affirm*** the trial court's judgment.

BRIAN HOYLE
Justice

Opinion delivered August 8, 2012.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(PUBLISH)

[6] Having overruled Lackey's first issue, we need not address Lackey's second issue, in which he challenges the county court at law's ruling that its authority to grant relief had ended according to Texas Rule of Civil Procedure 579. *See* TEX. R. APP. P. 47.1.

COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

AUGUST 8, 2012

NO. 12-11-00209-CV

KENNETH D. LACKEY,
Appellant
V.
D. GREEN,
Appellee

Appeal from the County Court at Law
of Anderson County, Texas. (Tr.Ct.No. 11668)

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.

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