

NO. 12-18-00288-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

**RAY HILL,
APPELLANT**

§ **APPEAL FROM THE 369TH**

V.

**LORIE DAVIS, DIRECTOR, B.
BARNETT, WARDEN MEADOR,
CAPTAIN BRISTO, A/K/A GARNER
NEE, CAPTAIN HOLIMAN, SGT.
GALLOP, CO. K. HOLDEN, SUB
COUNSEL PENA, GRIEVANCE
SUPER PRICE, IN THEIR
INDIVIDUAL AND/OR OFFICIAL
CAPACITIES,
APPELLEES**

§ **JUDICIAL DISTRICT COURT**

§ **ANDERSON COUNTY, TEXAS**

**MEMORANDUM OPINION
PER CURIAM**

Appellant, an inmate acting pro se, appeals from an order dismissing his lawsuit against Appellees as frivolous under Chapter 14 of the Texas Civil Practice and Remedies Code. Because Appellant has not complied, after notice, with the requirements of Chapter 14, we dismiss the appeal.

“A party who is not excused by statute or these rules from paying costs must pay--at the time an item is presented for filing--whatever fees are required by statute or Supreme Court order.” TEX. R. APP. P. 5. If unable to pay the requisite filing fee, an inmate must file a statement of inability to pay costs, and a separate affidavit or declaration of previous filings that details all previous pro se actions and contains a certified copy of the inmate’s trust account statement. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 14.002(a), 14.004 (West 2017). An inmate must be afforded an opportunity to cure a Chapter 14 filing defect before dismissal of the appeal. **Brown**

v. Jones, 494 S.W.3d 727, 728 (Tex. 2016); *Ex parte N.C.*, 486 S.W.3d 560 (Tex. 2016); *McLean v. Livingston*, 486 S.W.3d 561, 564 (Tex. 2016).

On October 23, 2018, the Clerk of this Court notified Appellant that the filing fee in this appeal is due.¹ Appellant was informed that failure to remit the filing fee on or before November 2, would result in the Court's taking appropriate action, including dismissal of the case without further notice. *See* TEX. R. APP. P. 42.3(c). The date for remitting the filing fee has passed, and Appellant has not paid the filing fee.

On November 15, the Clerk of this Court notified Appellant that the filing fee is past due. The notice stated that if Appellant is indigent, in lieu of the filing fee, a statement of inability to afford payment of court costs, along with an affidavit of previous filings and a current, certified copy of his inmate trust account, is due. Appellant was informed that failure to remit the filing fee or a statement of inability to afford payment of court costs, a statement of previous filings, and a current, certified copy of his inmate trust account before November 26 would result in the appeal being referred to the Court for dismissal without further notice. *See id.* On November 30, Appellant filed a response that requested to be treated less stringently than attorneys and contained exhibits, including documents filed with the trial court that describe previous filings. He did not file a declaration of inability to pay costs, a separate affidavit or declaration relating to previous filings, or a current, certified copy of his inmate trust account statement.

Because, after notice and an opportunity to cure, Appellant has not complied with Chapter 14, the appeal is *dismissed*. *See* TEX. R. APP. P. 42.3(c); *see also Ex parte Alvarado*, No. 13-16-00514-CV, 2016 WL 6520179, at *1 (Tex. App.—Corpus Christi Nov. 3, 2016, no pet.) (mem. op.).

Opinion delivered December 12, 2018.

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

(PUBLISH)

¹ According to the case information sheet from the Anderson County Clerk, Appellant was not declared indigent in the trial court. *See* TEX. R. APP. P. 20.1(b)(1) (indigency status in trial court carries forward on appeal).



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

DECEMBER 12, 2018

NO. 12-18-00288-CV

RAY HILL,

Appellant

V.

**LORIE DAVIS, DIRECTOR, B. BARNETT, WARDEN MEADOR, CAPTAIN BRISTO,
A/K/A GARNER NEE, CAPTAIN HOLIMAN, SGT. GALLOP, CO. K. HOLDEN, SUB
COUNSEL PENA, GRIEVANCE SUPER PRICE, IN THEIR INDIVIDUAL AND/OR
OFFICIAL CAPACITIES,**

Appellees

Appeal from the 369th District Court
of Anderson County, Texas (Tr.Ct.No. DCCV18-506-369)

THIS CAUSE came to be heard on the appellate record; and the same being considered, it is the opinion of this Court that this appeal should be dismissed.

It is therefore ORDERED, ADJUDGED and DECREED by this Court that this appeal be, and the same is, hereby **dismissed**; and that this decision be certified to the court below for observance.

By *per curiam* opinion.

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