Affirmed and Opinion filed April 19, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-98-01420-CV

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HENRY LEWIS, Appellant

V.

LANCE SHARPE, ET AL., Appellee

On Appeal from the 12th District Court
Walker County, Texas
Trial Court Cause No. 20,188

O P I N I O N

Appellant, an inmate in the Texas Department Criminal Justice–Institutional Division (TDCJ), acting *pro se* and proceeding *in forma pauperis*, appeals the dismissal of his 42 U.S.C. § 1983 lawsuit against several prison officials and guards to have disciplinary proceedings overturned and good-time credits restored. In three points of error, appellant contends the trial court erred in dismissing his case as frivolous because: (1) *res judicata* barred the dismissal; (2) appellant's cause was not frivolous; and (3) the trial court heard evidence in violation of Federal Rules of Civil Procedure. We affirm.

FACTS

Appellant and other inmates were working in the prison textile mill. Appellant and other inmates claimed that on December 15, 1997, the water wasn't working in the mill. As a result, appellant and other inmates were forced to work in an unsanitary, unsafe, and unhealthy environment. They refused to work and the prison officials filed disciplinary proceedings for inciting a riot. Appellant contended that his constitutional rights were violated by making him work under such conditions. Therefore, appellant asserts he was justified in taking a stand against working in the mill, and the ensuing disciplinary action and removal of about five years of good-time credits was unwarranted.

Appellant filed suit under 42 U.S.C. § 1983 alleging violation of his constitutional rights, and seeking money damages, declaratory judgments, mandamus and injunctive relief. Specifically, appellant sought: (1) mandamus ordering the appellees to restore his good-time credits and "expunge" the disciplinary offenses; (2) declaratory judgment declaring that appellees violated 42 U.S.C. § 1983-1985, the United States Constitution and State law by disciplining him; (3) injunctive relief against appellees; and (4) money damages. The trial court held a preliminary hearing on July 6, 1998, to determine whether some of the named officials needed to be served with citation in appellant's suit. The trial court entered an order requiring the clerk to issue citation on eleven of the named defendants in appellant's original petition. On October 30, 1998, the trial court heard appellees' motion to dismiss pursuant to section 14.003, Texas Civil Practice and Remedies Code. After hearing argument by appellant and the attorney for the appellees, the trial court dismissed appellant's claims with prejudice as frivolous.

Standard of Review

The dismissal of a cause of action under chapter fourteen is reviewed under an abuse of discretion standard. *See Hickson v. Moya*, 926 S.W.2d 397 (Tex. App.—Waco 1996, no pet.). To establish an abuse of discretion, the complaining party must show the trial court's

action was arbitrary or unreasonable in light of all of the circumstances in the case. *See Smithson v. Cessna Aircraft Co.*, 665 S.W.2d 439, 443 (Tex. 1984). Stated differently, abuse of discretion is determined by examining whether the court acted without reference to any guiding principles. *See Hickson*, 926 S.W.2d at 398.

RES JUDICATA

In point one, appellant asserts that trial court's order of July 6, 1998, authorizing service of citation on eleven named defendants was "res judicata" as to any future motions to dismiss his claims. An evidentiary hearing was held on July 6, 1998, and no reporter's record was made of the proceedings. The order plainly states: "It is hereby ordered that the Plaintiff *may pursue his claims* against the following named defendants . . . ."

In *Bonniwell v. Beech Aircraft Corp.*, 663 S.W.2d 816, 818 (Tex. 1984), the supreme court considered the doctrines of *res judicata* and collateral estoppel. *Res judicata*, a matter judicially determined, bars the retrial of claims pertaining to the same cause of action which has been *finally* adjudicated. *Id.* Collateral estoppel or issue preclusion is more narrow, precluding only the relitigation of identical issues of fact that have been actually litigated. *Id.* To invoke either doctrine, the prior judgment must involve, the same issues, subject matter, and parties or those in privity. *Id. See also Coalition of Cities for Affordable Utility Rates v. Public Utility Com'n of Texas*, 798 S.W.2d 560, 562(Tex. 1990). In this case, the order was interlocutory, and not final, and cannot be *res judicata* of any further action by the court on appellant's claim. We overrule appellant's point of error one.

DISMISSAL OF ALL CLAIMS AS FRIVOLOUS

In point two, appellant asserts his claims were not frivolous. The order dismissing appellant's claim did not state the grounds upon which it was granted. Therefore, if any of the grounds are meritorious, we will affirm the judgment of the trial court. TEX. R. APP. P. 47.1; s*ee Carr v. Brasher*, 776 S.W.2d 567, 569 (Tex. 1989); *Trigo v. Munoz*, 993 S.W.2d 419, 421 (Tex. App.—Corpus Christi 1999, pet. denied). *See also Walker v. Gonzales County*

Sheriff's Dept., 35 S.W.3d 157, 161 (Tex. App.—Corpus Christi 2000, no pet.h.).

Section 14.003 of the Texas Civil Practice and Remedies Code provides that a trial court may dismiss a claim if the court finds that it is frivolous or malicious. *See* TEX. CIV. PRAC. & REM. CODE ANN.§ 14.003(a)(2) (Vernon 1986 & Supp. 2000). In determining whether a suit is frivolous or malicious, the court may consider, among other things, whether the claim is substantially similar to a previous claim filed by the inmate because the claim arises from the same operative facts. *See id*. at §14.003(b)(4). To allow the trial court to determine whether a claim arises from the same operative facts as a previous claim, the legislature enacted Section 14.004 of the Texas Civil Practice and Remedies Code. Section 14.004 requires an inmate who files an affidavit or unsworn declaration of inability to pay costs to file a separate affidavit or declaration setting out the following information:

> (1) identifying each suit, other than a suit 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 suit was brought; and
>
> (2) describing each suit 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 suit was brought;
>
> (C) identifying each party named in the suit; and
>
> (D) stating the result of the suit, including whether the suit was dismissed as frivolous or malicious under Section 13.001 or Section 14.003 or otherwise.

TEX. CIV. PRAC. & REM. CODE ANN. § 14.004(a) (Vernon 1986 & Supp. 2000).

The purpose of sections 14.003 and 14.004 is to curb constant, often duplicative, inmate litigation, by requiring the inmate to notify the trial court of previous litigation and the outcome. *See Bell v. Texas Dep't. of Criminal Justice-Institutional Div.*, 962 S.W.2d 156, 158 (Tex. App.—Houston [14th Dist.] 1998, pet. denied). If provided with the information required by section 14.004, the trial court can determine, based on the previous filings,

whether the suit was frivolous because the inmate already filed a similar claim. *See id.*

In this case, the trial court dismissed appellants suit and found that his affidavit of previous filings was insufficient to meet the requirements of section 14.004. In that affidavit, appellant listed eight other suits, three of which had been dismissed. Although he stated the type of relief sought, he failed to state any operative facts for which that relief was sought, as required by section 14.004(2)(A). Because appellant did not list the facts of his previous suits, the trial court was entitled to assume the suit was substantially similar to one previously filed by appellant and, therefore, did not abuse its discretion by dismissing it as frivolous. *See Hickman v. Adams*, 35 S.W.3d 120, 143 (Tex. App.—Houston [14th Dist.] 2000, no pet. h.); *Samuels v. Strain*, 11 S.W.3d 404, 406-07 (Tex. App.—Houston [1st Dist.] 2000, no pet.); *Bell*, 962 S.W.2d at 158; *Hickson*, 926 S.W.2d at 398. We find the trial court did not abuse its discretion in dismissing appellant's suit on these grounds.

Appellees also argued that Lewis could not maintain his section 1983 claim without a showing that his punishment has been invalidated and relied on *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994), and *Edwards v. Balisok*, 520 U.S. 641, 117 S.Ct. 1584, 137 L.Ed.2d 906 (1997), to support their position.

In *Heck*, the Supreme Court held that the ancient principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments applies to section 1983 damage actions that necessarily require the plaintiff to prove the unlawfulness of his conviction or confinement. 512 U.S. at 485-87, 114 S.Ct. at 2372. The Court held that, to recover damages for an allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a section 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by an authorized state tribunal, or called into question by a federal court's issuance of a writ of habeas corpus. *Id*. The court stated that a section 1983 claim that has not been so invalidated is not cognizable. *Id.* Thus, when a state

prisoner seeks damages in a section 1983 suit, the court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence. *Id*. If it would, the plaintiff's suit must be dismissed unless he can demonstrate that the conviction or sentence has already been invalidated. *Id*.

In *Edwards*, the Court specifically addressed this issue of whether a claim for damages brought by a state prisoner challenging the validity of the procedures used to deprive him of good time credits is cognizable under section 1983. 520 U.S. at___, 117 S.Ct. at 1586. In that case an inmate at the Washington State Penitentiary in Walla Walla was charged with, and found guilty of, four prison infractions. *Id*. He was sentenced to ten days in isolation, twenty days in segregation, and deprived of thirty days good-time credit. *Id*.

The inmate filed suit under section 1983, seeking monetary damages, alleging that the procedures used in his disciplinary proceeding violated his due process rights under the Fourteenth Amendment. *Id*. Specifically, the inmate claimed that the hearing officer had concealed exculpatory witness statements and refused to ask specific questions of requested witnesses, which denied him the right to present evidence in his defense. 117 S.Ct. at 1587.

The Court noted that the inmate was complaining about procedural defects in the disciplinary process. *Id*. at 1588. Those defects, if established, would result in reinstatement of his good-time credits. *See id*. In addition, the Supreme Court found that the defects complained of by the inmate would, if established, imply the invalidity his punishment, including the deprivation of his good-time credits. *Id*. at 1588. Based on a prior opinion, *Heck*, the Court concluded that the inmate's claim for relief under section 1983 was not cognizable because he had to allege that his punishment had been invalidated. He did not do this, and therefore, his claim was not cognizable. *See id*. at 1589. In this case, appellant's complaints, like those of the inmate in *Edwards*, are about the procedural defects in his disciplinary hearing. Appellant's allegations are essentially that he was denied due process because of a limitations upon his right to present evidence in his own defense, refusal of the prison officials to furnish him with a video-tape of some unknown activities in the textile mill, refusal of the

officials to allow appellant to examine the charging officer, and failure of appellees to call the safety officer to assess the safety of the mill. Appellant claimed that all of the appellees conspired to punish appellant because of his racial heritage and prisoner status.

The complaints, if established, would necessarily imply that the punishment appellant received was invalid. *See id.* at 1588. Thus, to maintain this section 1983 action, appellant had to allege that his punishment has been invalidated. *See Heck*, 512 U.S. at 485-87, 114 S.Ct. at 2372. Appellant did not do this. A review of his pleadings shows that his case was validated and the punishment imposed. Thus, the allegations in appellant's suit are of the type that the Supreme Court has rejected in the context of a section 1983 action. *See Edwards*, 117 S.Ct. at 1589; *Heck*, 114 S.Ct. at 2372.

We hold the trial court correctly granted dismissal in favor of appellees, thereby dismissing appellant's section 1983 action. *See also Spellmon v. Collins* 970 S.W.2d 578,582-583 (Tex. App.—Houston [14th Dist]) 1998, no pet.). This error cannot be remedied, and we hold that the trial court properly dismissed appellant's claims "with prejudice." *See Hickman ,* 35 S.W.3d at 143.

VIOLATION OF FEDERAL RULES OF PROCEDURE

In point three, appellant contends the trial court erred by violating rule 12(b)(6) of the Federal Rules of Civil Procedure concerning failure of a pleading to state a claim. Although Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for a motion to dismiss for failure to state a claim upon which relief can be granted, the Texas Rules of Civil Procedure do not contain any analogous provision. *Fort Bend County v. Wilson*, 825 S.W.2d 251, 253 (Tex. App.—Houston [14th Dist.] 1992, no writ). Appellant did not present this novel defense to the trial court by a "timely request, objection, or motion that stated the grounds for the ruling . . ." and obtain a ruling on it. TEX. R. APP. P. 33.1(a); *San Jacinto River Authority v. Duke*, 783 S.W.2d 209, (Tex. 1990). Appellant has waived this complaint on appeal. We overrule appellant's point of error three.

We affirm the judgment of the trial court.

/s/ Joe L. Draughn
Justice

Judgment rendered and Opinion filed April 19, 2001.

Panel consists of Justices Sears, Draughn, and Hutston-Dunn.*

Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Ross A. Sears, Joe L. Draughn, and D. Camille Hutson-Dunn sitting by assignment.