

Affirmed and Opinion filed May 17, 2001.



In The

Fourteenth Court of Appeals

NO. 14-98-01265-CV

AARON WAYNE MCCLEARY, Appellant

V.

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE, A. VELASQUEZ, J. BARKSDALE,
and D. SHARP, Appellees**

**On Appeal from the 149th District Court
Brazoria County, Texas
Trial Court Cause No. 5681-I98**

OPINION

Appellant, Aaron Wayne McCleary, appeals the dismissal of his lawsuit, in which he sued the Texas Department of Criminal Justice (TDCJ) and three prison officials, in two points of error: (1) that the trial court erred in dismissing his lawsuit for failure to state a claim with an arguable basis in law or fact; and (2) that the trial court erred in dismissing his lawsuit for failure to comply with section 14.004 of the Civil Practice and Remedies Code. We affirm.

BACKGROUND

In September 1998, Appellant filed a lawsuit against the TDCJ and three prison officials for failure to provide a ladder or other safe means to access the top bunk in his prison cell. The petition alleged that Appellant fell when attempting to climb into his bunk and injured his back. He sought injunctive relief, compensatory damages for his pain and mental anguish, and punitive damages. At the same time he filed this original petition, Appellant also filed a Declaration of Inability to Pay Costs and a Declaration Relating to Previous Filings. Two days after Appellant filed this suit and declarations, the trial court dismissed it. The dismissal order states that the cause was malicious or frivolous because Appellant failed to (1) state a claim that has an arguable basis in law or fact as required by section 13.001(b)(2) and 14.003 of the Texas Civil Practice and Remedies Code and (2) follow the provisions of section 14.004 of the Texas Civil Practice and Remedies Code.

SECTION 14.004: DECLARATION RELATING TO PREVIOUS FILINGS

The dismissal of a lawsuit brought by an inmate who has filed an affidavit or declaration of inability to pay costs is reviewed under an abuse of discretion standard. *Jackson v. Texas Dep't of Criminal Justice*, 28 S.W.3d 811, 812-13 (Tex. App.—Corpus Christi 2000, pet. denied), *Barnum v. Munson*, 998 S.W.2d 284, 286 (Tex. App.—Dallas 1999, pet. denied); *McCollum v. Mt. Ararat Baptist Church, Inc.*, 980 S.W.2d 535, 536 (Tex. App.—Houston [14th Dist.] 1998, no pet.); *Hickson v. Moya*, 926 S.W.2d 397, 398 (Tex. App.—Waco 1996, no writ). To establish abuse of discretion, the complaining party must show that the trial court's action was arbitrary or unreasonable in light of all the circumstances in the case. *Smithson v. Cessna Aircraft Co.*, 665 S.W.2d 439, 443 (Tex. 1984). Stated differently, abuse of discretion is determined by examining whether the trial court acted without reference to any guiding rules and principles. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985); *McCollum*, 980 S.W.2d at 536-37.

An inmate who files a declaration of inability to pay costs must also file a second, separate declaration to set forth each non-family code lawsuit filed by the inmate. This

declaration must describe the previous lawsuits 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. TEX. CIV. PRAC. & REM. CODE ANN. § 14.004 (Vernon Supp. 2000). A purpose of section 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 previously filed a similar claim. *See id.*

Appellant claims that his declaration substantially complied with section 14.004 in describing two previous suits he had filed. First, he described one as a 42 U.S.C. § 1982 action filed in 1997 against Harris County, the Board of Pardons and Paroles, and Elizabeth Vail for denying him a suppression hearing and coercing him to waive his constitutional rights. The declaration states that Appellant filed this suit in the federal district court for the Southern District of Texas, but does not list the case name nor cause number. Appellant voluntarily dismissed this action. Second, Appellant listed in the declaration a lawsuit filed in 1989 or 1990 against attorney Aaron Ray in the Southern District of Texas. The declaration does not delineate the case name, cause number, operative facts, or result of the suit. Lastly, Appellant stated in the declaration that he had never filed a suit that had been dismissed as frivolous or malicious and that he did not have access to documents to more specifically describe the two previous lawsuits.

However, section 14.004 delineates the very specific information necessary for a declaration relating to previous filings. Without question, Appellant failed to provide the case names and cause numbers for his two suits. For one of the suits, he failed to provide the operative facts and the result. Given these deficiencies, we cannot say that the trial court abused its discretion in dismissing Appellant's petition for failure to comply with section

14.004. *See White v. State*, 37 S.W.3d 562, 564 (Tex. App.—Beaumont 2001, no pet.); *Clark v. J.W. Estelle Unit*, 23 S.W.3d 420, 422 (Tex. App.—Houston [1st Dist.] 2000, pet. denied). Accordingly, we overrule point of error two.

Given our disposition of his second point, we need not address Appellant’s first point of error, and we affirm the trial court’s dismissal of the case without prejudice.

/s/ Ross A. Sears
 Justice

Judgment rendered and Opinion filed May 17, 2001.

Panel consists of Justices Sears, Draughn, and Hutson-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.