

Affirmed and Opinion filed May 18, 2000.



In The

Fourteenth Court of Appeals

NO. 14-97-01412-CV

ARTHUR JOHNSON, Appellant

V.

SHEARN SMITH AND P. K. REITER, Appellee

On Appeal from the 129th District Court
Harris County, Texas
Trial Court Cause No. 96-63235

OPINION

Appellant filed suit against appellees, Judges Shearn Smith and P.K. Reiter. The trial court granted summary judgment for appellees, and appellant brings this appeal on six points of error.¹ We affirm the trial court's judgment.

In his first point of error, appellant argues the trial court erred in not following the recusal procedures set out in Civil Procedure Rule 18a. Rule 18a requires, "notice that movant expects the motion

¹ Because appellant has not brought a point of error or issue arguing the granting of the summary judgment was improper, the summary judgment will be affirmed. *See Malooly Bros., Inc. v. Napier*, 461 S.W.2d 119, 121 (Tex. 1970).

to be presented to the judge three days after the filing of such motion unless otherwise ordered by the judge.” TEX. R. CIV. P. 18a(b). The procedural requirements of Rule 18a are mandatory, and a party who fails to comply with them waives the right to complain of a judge’s failure to recuse himself or herself. *See Wirtz v. Massachusetts Mut. Life Ins.*, 898 S.W.2d 414, 422-23 (Tex. App.—Amarillo 1995, no writ); *Vickery v. Texas Carpet Co., Inc.*, 792 S.W.2d 759, 763 (Tex. App.—Houston [14th Dist.] 1990, writ denied).

Appellant’s motion does not contain the expectation of presentment and it was not presented to the trial judge three days after filing of the motion. Because appellant did not comply with Civil Procedure Rule 18a, the trial judge was not required to refer the case for a recusal hearing. *See id.* Accordingly, we overrule appellant’s first point of error.

In his second and third points of error, appellant argues the trial judge failed to hold a hearing, pursuant to Civil Procedure Rule 165a.3, on his motion to reinstate. After the trial court granted summary judgment, appellant filed a document requesting the court to reinstate his case. Appellant correctly asserts a trial court must hold a hearing on a properly filed motion to reinstate. *See Thordson v. City of Houston*, 815 S.W.2d 550 (Tex. 1991) (per curiam). Rule 165a.3, however, refers only to cases dismissed for want of prosecution. *See* TEX. R. CIV. P. 165a.3. Thus, because appellant’s suit was not dismissed for want of prosecution, no reinstatement hearing was required. Accordingly, we overrule appellant’s second and third points of error.

In his fourth point of error, appellant argues the trial court erred by failing to file findings of fact and conclusions of law. Civil Procedure Rule 296 permits any party to request findings of fact and conclusions of law in any case tried *without* a jury. *See* TEX. R. CIV. P. 296. A trial judge is not required, however, to make findings of fact and conclusions of law in a summary judgment proceeding. *See State Farm Fire & Cas. Co. v. Reed*, 826 S.W.2d 659, 661 (Tex. App.—Houston [14th Dist.] 1992), *aff’d*, 873 S.W.2d 698 (Tex. 1993); *Kendrick v. Lynaugh*, 804 S.W.2d 152, 156 (Tex. App.—Houston [14th Dist.] 1990, no writ); *see also IKB Industries v. Pro-Line Corp.*, 938 S.W.2d 440, 443 (Tex. 1997). Because the trial judge was not required to make findings of fact and conclusions of law, he did not err. Accordingly, we overrule appellant’s fourth point of error.

In his fifth point of error, appellant argues the trial court erred by conducting a sanctions hearing after a notice of appeal was filed. Appellant timely filed a motion for new trial after summary judgment was granted. The sanctions hearing was held within thirty days of the signing of the original summary judgment order. “When a party files a motion for new trial within 30 days of a judgment, the trial court has plenary power for 75 days following the date the court signed the judgment to act on that motion.” *In re Dickason*, 987 S.W.2d 570, 571 (Tex. 1998, orig. proceeding). Additionally, a trial court may grant a Civil Procedure Rule 13 sanctions motion during its plenary jurisdiction. *See Scott & White Memorial Hosp. v. Schexnider*, 940 S.W.2d 594, 595-96 (Tex. 1996). Because the trial court had plenary power to hold the sanctions hearing, the court committed no error. Accordingly, we overrule appellant’s fifth point of error.

In his sixth point of error, appellant argues the trial court abused its discretion by vacating the first summary judgment order and entering another one a week later. A trial court has plenary power to grant a new trial or to vacate, modify, correct, or reform the judgment thirty days after it has been signed. *See TEX. R. CIV. P. 329b(d); In re Dickason*, 987 S.W.2d at 571. The trial court modified its judgment one week after entering the first summary judgment order. Because the trial court modified its judgment within its plenary power, we overrule appellant’s sixth point of error.

Having overruled all of appellant’s points of error, we affirm the trial court’s judgment.

/s/ Norman Lee
Justice

Judgment rendered and Opinion filed May 18, 2000.

Panel consists of Justices Cannon, Draughn, and Lee.*

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

* Senior Justices Bill Cannon, Joe L. Draughn and Norman Lee sitting by assignment.