

Affirmed and Opinion filed September 9, 1999.



In The
Fourteenth Court of Appeals

NO. 14-98-00932-CV

ESTEBAN AREVALO, JR. A/K/A STEVE RAMIREZ, Appellant

V.

RONALD J. HAUSER, M.D., Appellee

**On Appeal from the 164th District Court
Harris County, Texas
Trial Court Cause No. 97-36892**

MEMORANDUM OPINION¹

Esteban Arevalo, Jr. a/k/a Steve Ramirez (Appellant), a prison inmate, appeals from the trial court's order dismissing his suit against Ronald J. Hauser, M.D. (Appellee). Appellant brought this action, alleging that Appellee intentionally failed to diagnose that Appellant is suffering from Post-Traumatic Stress Disorder, purportedly caused by Appellant's military service during his tour of duty in the Republic of Vietnam. On Appellee's motion to dismiss, the trial court dismissed Appellant's suit because of his (1)

¹ See TEX. R. APP. P. 47.1.

failure to comply with section 14.004 of the Texas Civil Practice and Remedies Code; and (2) failure to comply with section 13.01 of article 4590i of the Texas Revised Civil Statutes. *See* TEX. PRAC. & REM. CODE ANN. § 14.004 (Vernon Supp. 1999); TEX. REV. CIV. STAT. ANN. art 4590i, § 13.01 (Vernon Pamph. 1999). Appellant assigns seven interrelated points of error, contending that the trial court abused its discretion in dismissing his suit. We affirm.

In his first three points of error, Appellant contends that the trial court abused its discretion and erred by dismissing his suit and not striking Appellee's original answer and entering a default judgment. The record shows that Appellant filed a "Motion to Strike [Appellee's] Answer and Request for Issuance of Judgment by Default." The record further shows that Appellant's suit was dismissed by the trial court before a ruling was made by the court on that motion. In order to preserve appellate review of a complaint concerning the trial court's ruling on a motion, the record must show that the complaint was made to the trial court by proper motion; that the trial court ruled on the motion or refused to rule on the motion; and that the complaining party objected to the refusal, if any. TEX. R. APP. P. 33.1(a). Here, the record shows that Appellant failed to obtain a ruling by the trial court on his motion, and the record also reveals that no objection was made by Appellant complaining about the trial court's refusal to rule on his motion. Consequently, trial court error, if any, has not been preserved for appellate review. *See Goodchild v. Bombardier-Rotax*, 979 S.W.2d 1, 6-7 (Tex.App.–Houston [14th Dist.] 1998, no pet.).

Moreover, even if we were to address Appellant's substantive complaint, based on Rule 12, we would overrule his first three points of error. Rule 12 provides that a party's pleadings can be struck if "no person who is authorized to prosecute or defend appears."

TEX. R. CIV. P. 12. This case does not present a Rule 12 situation. Apparently, the Attorney General initially filed a response for Appellee and then withdrew when Appellant filed his Rule 12 motion. Some time after that, Appellee hired counsel of his own to represent him. The record clearly shows that the answer, pleadings and other documents

on file were prepared by lawyers authorized to defend the suit. Points of error one through three are overruled.

Appellant's sixth point of error, in which he contends the trial court abused its discretion by not granting his motion to compel and not imposing sanctions against Appellee for abusing the discovery process, is also fatally flawed. As with his Motion to Strike, this motion was not ruled upon by the trial court before his suit was dismissed. Appellant is responsible for bringing his motions to the trial court's attention and obtaining rulings. *See* TEX. R. APP. P. 33.1(a). No objection appears in the record concerning the trial court's refusal to rule on the motion. Thus, Appellant failed to preserve his sixth point for appellate review. *See id.* Point of error six is overruled.

Because of the disposition we reach in his fifth point of error, *infra*, we need not address Appellant's fourth point of error concerning whether the trial court was in error for dismissing Appellant's suit for, as an alternative ground, failure to comply with section 13.01 of article 4590i of the Texas Revised Civil Statutes.² In his fifth point of error, Appellant contends that the trial court abused its discretion by dismissing his suit for failure to comply with section 14.004 of the Texas Civil Practice and Remedies Code.

We review a trial court's decision to dismiss an inmate's suit under section 14.004 for abuse of discretion. *Hickson v. Moya*, 926 S.W.2d 397, 398 (Tex.App.–Waco 1996, no pet.). Section 14.004 requires that an inmate file a separate affidavit or declaration identifying each prior suit brought by the inmate, specifying the operative facts, the case name, the cause number, the court in which it was brought, the names of the parties, and stating the result of the suit. TEX. CIV. PRAC. & REM. CODE ANN. § 14.004(a)(2) (Vernon

² Generally, regarding a health care liability claim, section 13.01 requires a claimant, not later than the 90th day after the date the claim is filed to (1) file a separate cost bond in the amount of \$5,000 for each health care provider named by the claimant in the action; (2) place cash in an escrow account in the amount of \$5,000 for each health care provider named in the action; or (3) file an expert report for each physician or health care provider with respect to whom a cost bond has not been filed. TEX. REV. CIV. STAT. ANN. art. 4590i, § 13.01(a) (Vernon Pamph. 1999).

Supp. 1999). This section also requires that the inmate file a certified copy of his trust-account statement from the Department. *Id.* In *Hickson*, the court held that the supplemental filing required by section 14.004 is designed to assist the court in making the determinations that the legislature has called upon it to make; thus, it is an essential part of the process by which courts review inmate litigation. *Id.* at 399. Because the court can dismiss when an inmate files a false affidavit or declaration, the same policy allows a court to dismiss a suit that is filed without the affidavit or declaration. *Id.*

The record in this case shows that Appellant failed to file an affidavit or declaration identifying any prior inmate litigation. Consequently, the trial court did not err in dismissing Appellant's suit. *See id.* Point of error five is overruled.

In his seventh point of error, Appellant contends that the trial court abused its discretion by denying his "Motion for Formal Bill of Exceptions." In this case, a bill of exceptions was not necessary to preserve any issue for appellate review. There was no trial; the trial court did not exclude any evidence or testimony from the record of this matter for which a bill of exceptions would be necessary to preserve appellate review of any such ruling. *See State of Texas v. Buckner Const. Co.*, 704 S.W.2d 837, 848 (Tex.App.–Houston [14th Dist.] 1985, writ ref'd n.r.e.); *Continental Trailways, Inc. v. McCandless*, 450 S.W.2d 707, 710 (Tex.Civ.App.–Austin 1969, no writ). Point of error seven is overruled.

The judgment is affirmed.

/s/ Wanda McKee Fowler
Justice

Judgment rendered and Opinion filed September 9, 1999.

Panel consists of Justices Yates, Fowler, and Frost.

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