

Affirmed and Opinion filed November 15, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00868-CV

WARREN P. CANADY, Appellant

V.

**BACHMAN BRADLEY, E.W. BROCK, TROY WEDGEWORTH, C.T. SPIVEY,
CHRISTOPHER BROWN, WARREN HURD, ERIK BURSE, BRUCE THALER,
CAREY STAPLES, C.A. WILLIAMS, R. DURHAM, B. WEST, ENOS H. HARRIS,
AND THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE—INSTITUTIONAL
DIVISION, Appellees**

**On Appeal from the 278th District Court
Walker County, Texas
Trial Court Cause No. 20,451-C**

OPINION

Appellant Warren P. Canady appeals the trial court's dismissal of his lawsuit as frivolous. In three issues he contends the trial court (1) violated the Supremacy Clause of the United States Constitution in dismissing his lawsuit; (2) erred in dismissing the case as frivolous because Canady pleaded cognizable causes of action; and (3) abused its discretion in failing to rule on Canady's motion for summary judgment. We affirm.

Canady is an inmate in the Texas prison system. He sued the Texas Department of Criminal Justice—Institutional Division and many prison employees, claiming violations of the Texas Tort Claims Act and 42 U.S.C. § 1983. Specifically, Canady alleges that appellee Bradley Bachman altered his medical records, which thus disrupted Canady’s treatment for a knee injury and resulted in overly difficult job assignments. By motion of the appellees, Canady’s lawsuit was dismissed as frivolous.

In his first issue, Canady claims that dismissal of his lawsuit violates the Supremacy Clause of the United States Constitution. Specifically, he argues that his federal section 1983 claim should not be barred by his failure to comply with the procedural requirements for inmate litigation imposed by chapter 14 of the Texas Civil Practice and Remedies Code. States may apply their own neutral procedural rules to federal claims, unless those rules are preempted by federal law. *Howlett v. Rose*, 496 U.S. at 356, 372 (1990). The provisions of chapter 14 are neutral procedural requirements that enable "the trial court to discern whether the case is frivolous and the work of a nuisance litigator." *Thomas v. Wichita Gen. Hosp.*, 952 S.W.2d 936, 940 (Tex. App.—Fort Worth 1997, pet. denied). Arguments such as Canady’s have been addressed by at least two appellate courts in Texas, which held that the provisions of chapter 14 do not offend the Supremacy Clause. *Thomas v. Bush*, 23 S.W.3d 215, 218 (Tex. App.—Beaumont 2000, pet. denied); *Wichita Gen. Hosp.*, 952 S.W.2d at 940. We agree with these courts and thus overrule issue one.¹

In his second issue, Canady argues that dismissal of his lawsuit as frivolous was improper because he pleaded causes of action under the Texas Tort Claims Act and common law negligence. Whether Canady pleaded causes of action recognized by law is inapposite for purposes of this appeal. The appellees sought dismissal of the lawsuit for Canady’s failure to file suit within 31 days of receiving a written decision on his prison grievance; for

¹ In his first issue, Canady also complains about the trial court’s failure to make findings of fact and conclusions of law. A court need not make findings and conclusions when it dismisses a case without trial. *Eichelberger v. Balette*, 841 S.W.2d 508, 510 (Tex. App.—Houston [14th Dist.] 1992, writ denied).

omitting lawsuits on his declaration relating to previous filings; and for inadequately identifying the parties and operative facts of three prior suits.

An inmate's declaration relating to previous filings must identify each non-family code lawsuit 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)(2) (Vernon Supp. 2001). In two of his lawsuits, Canady lists the operative facts only as “sexual harassment” and “denial of access to courts.” Identifying the theories of law in a previous suit is not the same as stating operative facts. *See Thomas v. Knight*, 52 S.W.3d 292, 295 (Tex. App.—Corpus Christi 2001, pet. filed); *White v. State*, 37 S.W.3d 562, 564-65 (Tex. App.—Beaumont 2001, no pet.). Further, Canady did not include in his declaration several lawsuits that he filed in federal courts. As in this case, when an inmate does not comply with the requirements of section 14.004, the trial court is entitled to assume the suit is substantially similar to one previously filed by the inmate and, therefore, frivolous. *Bell v. Tex. Dep't. of Criminal Justice Inst. Div.*, 962 S.W.2d 156, 158 (Tex. App.—Houston [14th Dist.] 1998, pet. denied). Because Canady's declaration relating to previous filings is incomplete, the trial court did not err in dismissing the lawsuit as frivolous. Accordingly, we overrule issue two.

In his third issue, Canady complains about the trial court's failure to rule on his motion for summary judgment, which was heard in the same hearing as appellees' motion to dismiss. We review a trial court's dismissal of an inmate's claim under chapter 14 for abuse of discretion. *Samuels v. Strain*, 11 S.W.3d 404, 406 (Tex. App.—Houston [1st Dist.] 2000, no pet.). A court abuses its discretion if it acts without reference to guiding rules or principles. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex.1985).

Under chapter 14, a trial court has continuing authority to dismiss a claim. *McCollum v. Mt. Ararat Baptist Church*, 980 S.W.2d 535, 538 (Tex. App.—Houston [14th Dist.] 1998, no writ). Canady has cited no rule or law that requires a trial court to rule upon a motion for summary judgment instead of dismissing a lawsuit as frivolous. The trial court did not abuse its discretion in dismissing the suit instead of ruling on the motion for summary judgment. We overrule issue three.

Having overruled all three issues, we affirm the trial court’s dismissal order.

/s/ Charles W. Seymore
Justice

Judgment rendered and Opinion filed November 15, 2001.

Panel consists of Chief Justice Brister and Justices Fowler and Seymore.

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