

Reversed and Remanded and Opinion filed November 30, 2000.



In The

Fourteenth Court of Appeals

NO. 14-99-00426-CV

**WILLIAM STEED KELLEY, JEROME A. MARKS, THOMAS E. MORBACH, AND
JOSEPH A. RICHARD, Appellants**

V.

WAYNE SCOTT, ET AL., Appellees

**On Appeal from the 278th District Court
Walker County, Texas
Trial Court Cause No. 98-137**

OPINION

William Steed Kelley, Jerome A. Marks, Thomas E. Morbach, and Joseph A. Richard, appellants, appeal from an order dismissing their *pro se, in forma pauperis* suit. Finding the trial court erred in dismissing appellants' suit, we reverse and remand.

Appellants are inmates in the Texas Department of Criminal Justice--Institutional Division ("TDCJ-ID"). Appellants filed suit against appellees alleging violations of 42 U.S.C. § 1983 and their constitutional rights. Their claims were based on the application and enforcement of TDCJ-ID's reformed administration segregation plan.

The trial court, having considered the pleadings of the plaintiffs and the testimony at the hearing, entered the following order:

It is hereby ORDERED that his case is STAYED for a period of ninety (90) days to allow Plaintiffs to bring their claims regarding the constitutionality of TDCJ's current administrative segregation plan to the attention of the *Ruiz* court, either through intervention in the class action or through the class representative and attorney. In order to proceed with this suit, Plaintiff's [sic] must obtain a ruling or other order from the *Ruiz* court refusing jurisdiction over their claims . . . Should the *Ruiz* court decline to hear the issues raised by the Plaintiffs, then this Court will consider whether to exercise jurisdiction over the matter. Failure to comply with this Order may result in dismissal of the case.

This order was signed on September 14, 1998. On December 16, 1998, the trial court entered an order dismissing appellants' suit. In that order, the trial court specifically stated that it was dismissing appellants' suit because matters raised in the suit have been "preempted by *Ruiz*," and appellants made no attempt to intervene in the *Ruiz* suit as ordered. Appellants then perfected this appeal.

On appeal, appellants raise numerous points of error contesting the trial court's decision to dismiss their appeal. In one of the arguments under their first point of error, appellants claim the trial court erred in dismissing their appeal because they did not comply with its order to attempt to intervene in the *Ruiz* suit. We agree with appellants' contention.

Ruiz v. Estelle, was a class action initiated by Texas prisoners to challenge the conditions of their confinement at the Texas Department of Corrections, now known as the Texas Department of Criminal Justice--Institutional Division. 503 F. Supp. 1265 (S.D. Tex. 1980), *aff'd in part and rev'd in part*, 679 F.2d 115 (5th Cir. 1982), *amended in part and vacated in part*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042, 103 S.Ct. 1438, 75 L.Ed.2d 795 (1983). The litigation resulted in a comprehensive adjudication of the constitutional rights of the prisoners. *See id.*

While the Fifth Circuit once required that all cases filed in the United States District Courts of Texas complaining of prison conditions be transferred to the *Ruiz* court, *see Johnson v. McKaskle*, 727 F.2d 447, 501-02 (5th Cir. 1984), that court later issued an administrative order ending this policy. *See Savidge v. Fincannon*, 784 F.2d 186, 186-87 (5th Cir. 1986). Thus, the Fifth Circuit no longer requires that all inmate complaints about the conditions in the Texas Department of Criminal Justice--

Institutional Division be transferred to the *Ruiz* court. Accordingly, we hold that state courts cannot avoid exercising their jurisdiction over inmate complaints by ordering the inmates to intervene in the *Ruiz* suit. *See Moore v. Molinari*, 724 S.W.2d 860, 862 (Tex. App.–Tyler 1986, no writ).

We reverse the trial court's order and remand the cause to the trial court with orders to reinstate appellants' suit.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed November 30, 2000.

Panel consists of Justices Yates, Wittig, and Frost.

Publish — TEX. R. APP. P. 47.3(b).