**Affirmed and Opinion filed November 30, 2000.**

**In The**

# Fourteenth Court of Appeals

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**NO. 14-99-00696-CV**

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**W. L. PITTMAN A/K/A KAAZIM ABUL 'UMAR, Appellant**

**V.**

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE–INSTITUTIONAL DIVISION, ET AL., Appellees**

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**On Appeal from the 12th District Court**
**Walker County, Texas**
**Trial Court Cause No. 20,404**

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## O P I N I O N

Appellant, W. L. Pittman, appeals from an order dismissing his *pro se*, *in forma pauperis* suit under Chapter 14 of the Texas Civil Practice and Remedies Code. Finding no abuse of discretion by the trial court, we affirm.

Appellant is an inmate at the Michael Unit of the Texas Department of Criminal Justice–Institutional Division ("TDCJ–ID"). Appellant filed a lawsuit against TDCJ–ID. First, appellant alleged TDCJ–ID violated a previous compromise and settlement agreement by placing appellant in a unit where defendants from his previous suit were working. Second, appellant alleged negligence, gross negligence, and violations

of the Texas Tort Claims Act. With respect to this second claim, appellant alleged he was injured when TDCJ–ID lifted appellant's medical restriction without first having him examined by a doctor. According to appellant, he was on medical restriction for severe back problems and because of those problems, was entitled to reside in a cell on the ground floor. Appellant stated that after the medical restriction was lifted, he was forced to move to a new cell, which was not on the ground floor, and while he was moving his belongings up the three flights of stairs to his new cell, he slipped on the wet stairs. Appellant alleged that as a result of the lifting of the medical restriction and the fall, he severely injured his back.

Because appellant was proceeding *pro se* and *in forma pauperis*, the trial court ordered an evidentiary hearing to determine whether there was an arguable basis in fact or in law for any of appellant's claims. Following that hearing, the trial court dismissed appellant's lawsuit because (1) the complaint is frivolous in that it has no realistic chance of success; (2) appellant cannot prove facts in support of his claims; and (3) appellant failed to "file a proper and complete Affidavit Relating to Previous Filings," in violation of section 14.004 of the Texas Civil Practice and Remedies Code. This appeal followed.

As an inmate, appellant's suit is governed by Chapter 14 of the Texas Civil Practice and Remedies Code. *See* Act of June 8, 1995, 74th Leg., ch. 378, § 2, 1995 Tex. Gen. Laws 2921-27; *see also Thompson v. Henderson*, 927 S.W.2d 323, 324 (Tex. App.—Houston [1st Dist.] 1996, no writ) (noting that, effective June 8, 1995, the dismissal of inmate lawsuits is governed by sections 14.001–.014 of the Texas Civil Practice and Remedies Code). Under this chapter, a trial court has "broad discretion" to dismiss an inmate's suit if it finds that the claim is frivolous or malicious. *See Martinez v. Thaler*, 931 S.W.2d 45, 46 (Tex. App.—Houston [14th Dist.] 1996, writ denied); *see also Lentworth v. Trahan*, 981 S.W.2d 720, 722 (Tex. App.—Houston [1st Dist.] 1998, no pet.) (citing TEX. CIV. PRAC. & REM. CODE § 14.003(a)(2)). Therefore, a trial court's dismissal of an action as frivolous or malicious is subject to review under an abuse of discretion standard. *See Martinez*, 931 S.W.2d at 46. In that regard, a trial court abuses its discretion if it acts arbitrarily, capriciously, and without reference to any guiding rules or principles. *See id.*

In a single point of error, appellant contends the trial court erred in dismissing his suit because the appellees never filed a motion to dismiss and he was never given notice of any motion to dismiss. In other

words, appellant argues the trial court cannot dismiss his suit unless a motion to dismiss has been filed and served on appellant. We disagree.

A trial court may dismiss a claim, either before or after service or process, if the court finds the suit is frivolous or malicious. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.003(a)(2) (Vernon Supp. 2000). In determining whether the suit is frivolous or malicious, the trial court *may* hold a hearing. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.003(c) (Vernon Supp. 2000) (emphasis added). The clear language of section 14.003 establishes that the trial court is authorized to dismiss an inmate's claim before service and without a hearing. *See id*. If the trial court can dismiss the inmate's suit before service of process and without a hearing, it is obvious that the dismissal may be done *sua sponte*, i.e., on the court's own motion without a formal motion to dismiss from the defendant. *See Hicks v. Brysch*, 989 F. Supp. 797, 815 (W.D. Tex. 1997) (holding that trial court may *sua sponte* dismiss *in forma pauperis* filed under 28 U.S.C., § 1915). Dismissals are often made *sua sponte* before the issuance of process to spare prospective defendants the inconvenience and expense of answering such complaints. *See Kendrick v. Lynaugh*, 804 S.W.2d 153, 155 (Tex. App.—Houston [14th Dist.] 1990, no writ).

Moreover, we find appellant cannot have been harmed by any failure on the part of the appellees to file a formal motion to dismiss stating the grounds upon which dismissal was proper. In the order setting the evidentiary hearing, which appellant admits he received, the trial court informed the parties that at the hearing the court may consider whether: (1) the allegation of poverty in the affidavit is false; (2) the claim or claims are frivolous or malicious; (3) plaintiff knowingly filed a false affidavit; (4) defendants are subject to suit or liability, in view of any assertion of official immunity; (5) counsel should be appointed; (6) to order sanctions or costs; or (7) plaintiff has previously filed an *in forma pauperis* action in any state court that was dismissed as frivolous or malicious. Thus, appellant was clearly on notice of the issues to be considered at the hearing. Accordingly, appellant's contention that he was somehow deprived of notice because the Attorney General's office did not file a formal motion to dismiss is without merit.

Accordingly we overrule appellant's sole point of error and affirm the trial court's judgment.

PER CURIAM

Judgment rendered and Opinion filed November 30, 2000.

Panel consists of Justices Yates, Wittig, and Frost.

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