

Affirmed and Opinion filed November 30, 2000.



In The

Fourteenth Court of Appeals

NO. 14-99-00123-CV

ANTHONY MADER, Appellant

V.

A.H. VELASQUEZ, W. WARD, P. JACK, A. HARRELL, Appellees

**On Appeal from the 149th District Court
Brazoria County, Texas
Trial Court Cause No. 6915*I99**

OPINION

This is an appeal from the trial court's order dismissing Anthony Mader's suit against the Texas Department of Criminal Justice-Institutional Division (TDCJ). Mader, a prison inmate, filed a *pro se* petition in district court alleging that the TDCJ warden and other employees unlawfully and unconstitutionally confiscated and retained his personal property, several commissary items, despite having found him "not guilty" of possessing contraband in a departmental hearing. The trial court dismissed Mader's claim as frivolous because he failed to file an affidavit disclosing previous filings, in accordance with section 14.004 of the Texas Civil Practice and Remedies Code. Alternatively, the court dismissed

Mader's case as frivolous or malicious, having no arguable basis in law or in fact, as provided in sections 13.001(a)(2) and 14.003(b)(2) of the Texas Civil Practice and Remedies Code. We affirm.

On appeal, Mader claims that the trial court erred in dismissing his petition against the TDCJ. Mader argues that he presented evidence that his personalty was confiscated and not returned by employees of the TDCJ, despite its finding that Mader was not guilty of possessing contraband.

Because we find that the trial court properly dismissed Mader's claim for failure to follow the affidavit requirements of section 14.004, we need not address whether Mader's petition presents an arguable basis in law.

Section 14.004 requires that inmates, who file an affidavit or unsworn declaration of inability to pay costs, file a separate affidavit or declaration identifying and describing previous *pro se* suits brought by the inmate, regardless of whether filed while an inmate. TEX. CIV. PRAC. & REM. CODE ANN. § 14.004(a)(1) (Vernon Supp. 2000). A trial court may assume that a suit is substantially similar to one previously filed by an inmate and is, therefore, frivolous where the inmate does not comply with the affidavit requirements of section 14.004. *See Bell v. Texas Dept. of Criminal Justice-Institutional Div.*, 962 S.W.2d 156, 158 (Tex.App.--Houston [14th Dist.] 1998, pet. denied). Upon finding a suit frivolous or malicious, section 14.003(a)(2) authorizes a judge to dismiss the case. TEX. CIV. PRAC. & REM. CODE ANN. § 14.003(a)(2) (Vernon Supp. 2000).

Although Mader did file an "affidavit relating to previous filings," we find it inadequate. Mader declared, in his affidavit, that he had "never filed any lawsuit or action of any kind in Brazoria County, Texas before this date." By limiting his declaration to suits filed in Brazoria County, the court had no means to determine whether Mader had previously filed similar suits in other Texas jurisdictions.

In requiring inmates to file an affidavit identifying "each" *pro se* suit previously filed, the "previous filings" rule does not state whether an inmate must disclose prior suits filed in any Texas county or merely from the county in which an inmate currently resides, as Mader has done in this case. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.004(a)(1) (Vernon Supp. 2000). In interpreting this statute, we must consider the purpose of its enactment, which is to preclude duplicative and repetitive inmate litigation in the state of Texas. *See Bell*, 962 S.W.2d at 158; TEX. GOV'T CODE ANN. § 312.005 (Vernon 1998) ("In

interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy.”). In light of the statute’s purpose, and because the “previous filings” rule does not limit the disclosure of prior *pro se* suits to those filed in a particular jurisdiction, we interpret section 14.004 as requiring disclosure of prior litigation filed within any Texas jurisdiction. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.004(a)(1). An interpretation that inmates must disclose prior *pro se* suits from only a particular jurisdiction would defeat the statute’s purpose in decreasing repetitive and duplicative suits in the State of Texas. *See Bell*, 962 S.W.2d at 158.

Accordingly, we hold that the trial court did not abuse its discretion in dismissing Mader’s suit as frivolous in that Mader filed an inadequate affidavit relating to previous filings, violating section 14.004, where he limited the affidavit to suits filed in Brazoria County. Moreover, because we find that the trial judge properly dismissed the action on the basis of Mader’s failure to follow the requirements of section 14.004, we need not address the alternative bases on which the trial judge may have dismissed this action: that Mader’s claim had no arguable basis in law or in fact.

The judgment of the trial court is affirmed.

PER CURIAM

Judgment rendered and Opinion filed November 30, 2000.

Panel consists of Justices Anderson, Fowler, and Edelman.

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