

Affirm and Opinion Filed July 16, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-19-00366-CV

**CARLOS A.L. VAUGHN AND TAMBRE' SHIA JACKSON, Appellants
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 160th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-18-02427**

MEMORANDUM OPINION

Before Justices Schenck, Molberg, and Nowell
Opinion by Justice Molberg

Appearing pro se, Carlos A.L. Vaughn and Tambre' Shia Jackson appeal the trial court's dismissal, pursuant to Chapter 14 of the Texas Civil Practice and Remedies Code—relating to indigent inmate litigation—of their suit challenging the constitutionality under the United States and Texas Constitutions of sections 19.03(a)(3) and 1.04 of the Texas Penal Code and article 54.03 of the Texas Code of Criminal Procedure.¹ *See* TEX. CIV. PRAC. & REM. CODE § 14.003; TEX. PENAL

¹ Appellants' petition stated, "This action arises under Article III [of the] United States Constitution, 28 U.S.C.A. §§ 1331, 1391, and 42 U.S.C.A. § 1983."

CODE §§ 19.03(a)(3),² 1.04³; TEX. CODE CRIM. PROC. art. 54.03.⁴ On appeal, appellants make several arguments, which we consolidate into three issues: the trial court abused its discretion by “dismissing [their] claims as frivolous under § 14.003 of the Texas Civil Practice and Remedies Code”; chapter 14 is unconstitutional and is pre-empted by federal law; and the trial court’s judgment was not final.

We affirm the trial court’s order of dismissal.

BACKGROUND

Appellants are indigent inmates within the Texas Department of Criminal Justice Correctional Institutions Division. On February 22, 2018, they filed suit against the State of Texas challenging the constitutionality of the aforementioned statutes. Neither appellant filed, among other things, an affidavit in compliance with section 14.004 of the Texas Civil Practice and Remedies Code. TEX. CIV. PRAC. & REM. CODE § 14.004. Without conducting a hearing, the trial court sua sponte dismissed appellants’ lawsuit without prejudice pursuant to section 14.003 of the civil practice and remedies code. TEX. CIV. PRAC. & REM. CODE § 14.003. In its order of dismissal, the trial court found, among other things, that appellants “failed

² Section 19.03(a) of the Texas Penal Code describes offenses which—together with the offense of murder as defined under section 19.02(b)(1)—constitute capital murder, including “murder for remuneration or the promise of remuneration.” TEX. PENAL CODE §§ 19.02(b), 19.03(a)(3).

³ Section 1.04(a) of the Texas Penal Code provides the circumstance under which the State of Texas has territorial jurisdiction over an offense. TEX. PENAL CODE § 1.04.

⁴ Article 54.03 of the Texas Code of Criminal Procedure suspended, as of January 1, 1966, the “Constitutional Rule requiring bills to be read on three several days.” TEX. CODE CRIM. PROC. art. 54.03.

to file a separate affidavit or declaration identifying suits previously brought by him [sic] as required by CPRC § 14.004(a)”; appellants “failed to file a certified copy of his [sic] trust account statement as required by CPRC § 14.004(c); because appellants did not comply with the mandatory requirements of § 14.004(a), the court “presume[d] they previously filed substantially similar suits and that this suit is, therefore, frivolous”; and because appellants’ “realistic chance of ultimate success is slight[,] this suit is frivolous.”

STANDARD OF REVIEW

We review a trial court’s dismissal of an inmate’s suit for an abuse of discretion. *Amir-Sharif v. Mason*, 243 S.W.3d 854, 856 (Tex. App.—Dallas 2008, no pet.). While we construe a pro se appellant’s brief liberally, pro se litigants are held to the same standards as licensed attorneys and they must comply with applicable laws and rules of procedure. *Gilbert v. Tex. Dep’t of Crim. Justice—Inst. Div.*, No. 09-16-00298-CV, 2017 WL 3975687, at *2 (Tex. App.—Beaumont Aug. 31, 2017, no pet.) (mem. op.).

CHAPTER 14 REQUIREMENTS

Chapter 14 of the civil practice and remedies code governs litigation by indigent inmates. TEX. CIV. PRAC. & REM. CODE § 14.002(a). An inmate subject to chapter 14 must comply with certain procedural requirements, including filing an affidavit or unsworn declaration describing all prior pro se lawsuits filed by the inmate and filing a certified inmate trust account statement. *Id.* §§ 14.004(a), (c). If

a prison inmate filing suit in Texas state court does not fulfill chapter 14’s procedural requirements, the trial court must dismiss the lawsuit. *Amir-Sharif*, 243 S.W.3d at 856–57; *see also Burlison v. Tex. Dep’t of Crim. Justice*, No. 01-17-00565-CV, 2018 WL 5289140, at *2 (Tex. Crim.—Houston [1st Dist.] Oct. 25, 2018, no pet.) (mem. op.); *Gowan v. Tex. Dept. of Crim. Justice*, 99 S.W.3d 319, 322 (Tex. App.—Texarkana 2003, no pet.) (“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.”).

ANALYSIS

Appellants argue chapter 14 is unconstitutional because it violates the supremacy clause of the U.S. Constitution; they were not required to file an affidavit under section 14.004 of the civil practice and remedies code because their lawsuit alleged a violation of federal law and chapter 14’s requirements are pre-empted by federal law; the trial court erred by dismissing their lawsuit without holding a hearing; and the trial court’s judgment was not final.

Chapter 14 Does Not Violate The Supremacy Clause and Federal Law Does Not Pre-Empt Chapter 14

Under the Supremacy Clause, a state law is without effect if it conflicts with federal law. U.S. CONST. VI, cl. 2. However, states may apply neutral procedural rules to federal claims to discourage the filing of frivolous lawsuits, unless those rules are pre-empted by federal law. *Thomas v. Bush*, 23 S.W.3d 215, 217–18 (Tex. App.—Beaumont 2000, pet. denied). Section 14.004 of the civil practice and

remedies code is one such neutral procedural rule, designed to prevent frivolous litigation. *Id.* “The Civil Practice and Remedies Code’s neutral procedural requirements on *pro se* indigent inmates filing civil claims in state court ‘enable[s] the trial court to discern whether the case is frivolous and the work of a nuisance litigator.’” *Id.* at 218 (quoting *Thomas v. Wichita Gen. Hosp.*, 952 S.W.2d 936, 940 (Tex. App.—Fort Worth 1997, no pet.)).

Claims under 42 U.S.C. section 1983 are subject to federal provisions, including “a ‘three strikes’ provision barring suits filed by inmates who have brought previous frivolous suits.” *Bush*, 23 S.W.3d at 218 (quoting 28 U.S.C.A. § 1915(g)). Because federal law “imposes substantially similar requirements on inmates litigating *in forma pauperis*,” we conclude section 14.004 of the civil practice and remedies code does not violate the Supremacy Clause of the U.S. Constitution. *Id.*; *see also Hollis v. Acclaim Physician Group, Inc.*, No. 02-19-00062-CV, 2019 WL 3334617, at *5 (Tex. App.—Fort Worth July 25, 2019, no pet.) (mem. op.) (“Because the requirements of chapter 14 do not conflict with section 1983, such arguments raised by *pro se* inmates have failed.”); *Comeaux v. TDCJ-ID*, No. 13-11-00446-CV, 2013 WL 398937, at *5 (Tex. App.—Corpus Christi Jan. 31, 2013, pet. denied) (mem. op.) (finding “the requirements of chapter 14 do not conflict with section 1983” and concluding “the trial court did not err when it dismissed [appellant’s] federal claims . . . under chapter 14”). For the same reason, we reject appellants’ argument chapter 14 is pre-empted by federal law. *See Hollis v. MHMR*

of *Tarrant County*, 2019 WL 4124383, at *4 (Tex. App.—Fort Worth Aug. 29, 2019, no pet.) (mem. op.) (with respect to chapter 14 of civil practice and remedies code, because “federal courts are also empowered to impose restrictions on vexatious litigants . . . there was therefore no reason to suppose a conflict between federal and state law that might give rise to preemption”). We resolve these issues against appellants.

Chapter 14 Is Not Unconstitutional As Applied In This Case

Appellants complain the trial court “presume[d] that Plaintiff[s] has [sic] previously filed substantially similar suits,” “does not point to the actual frivolousness of appellants[’] claims,” and dismissed their claims without holding a hearing.

The trial court, however, is not required to conduct a hearing under chapter 14.

In determining whether [to dismiss a suit under section 14.003], the court *may* hold a hearing. The hearing may be held before or after service of process, and it may be held on motion of the court, a party, or the clerk of the court.

TEX. CIV. PRAC. & REM. CODE § 14.003(c) (emphasis added). The plain language of section 14.003 indicates the trial court’s decision to hold a hearing on a chapter 14 motion to dismiss is discretionary. *Perry v. Smyth*, No. 13-19-00301-CV, 2020 WL 2776527, at *3 (Tex. App.—Corpus Christi May 28, 2020, no pet.) (mem. op.) (“A trial court has the discretion under Chapter 14 to dismiss an inmate’s claim, and the inmate has no right to a hearing on a motion to dismiss.”).

Moreover, the trial court was entitled to presume appellants' lawsuit was frivolous. Appellants do not contest they did not file an affidavit in compliance with section 14.004. Because appellants are inmates and they failed to comply with the requirements of section 14.004, "the trial court [was] entitled to presume that the suit is substantially similar to one previously filed by the inmate, and therefore, frivolous." *Bell v. Tex. Dep't of Crim. Justice-Inst. Div.*, 962 S.W.2d 156, 158 (Tex. App.—Houston [14th Dist. 1998, pet. denied.).

We conclude the trial court did not abuse its discretion by dismissing appellants' lawsuit as frivolous pursuant to sections 14.003 and 14.004 of the civil practice and remedies code. We resolve this issue against appellants.

The Trial Court's Order of Dismissal Was Final

Appellants erroneously argue the trial court's judgment was not final because the order of dismissal "only dismissed plaintiff Vaughn" and not Jackson. The caption on the trial court's order reads, "Carlos A.L. Vaughn, et. al. v. State." While the trial court's order variously refers to "Plaintiff" and "Plaintiffs" in its findings, it is apparent from the context and language of the order that the references to "Plaintiff" are typographical errors. These typographical errors do not affect the meaning of the order, which explicitly dismissed "this suit" and "this case" without prejudice. We therefore interpret all of the trial court's findings to reference both appellants. *See In re D.M.*, No. 04-14-00059-CV, 2014 WL 2917458, at *4 (Tex.

App.—San Antonio June 25, 2014, no pet.) (mem. op.). We resolve this issue against appellants.

Having resolved these issues against appellants, we need not address appellants' other arguments or the other grounds for the trial court's dismissal of appellants' lawsuit. TEX. R. APP. P. 41. We affirm the trial court's order of dismissal.

/Ken Molberg//

KEN MOLBERG
JUSTICE

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TEX. R. APP. P. 47



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

CARLOS A.L. VAUGHN AND
TAMBRE' SHIA JACKSON,
Appellants

No. 05-19-00366-CV V.

THE STATE OF TEXAS, Appellee

On Appeal from the 160th Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-18-02427.
Opinion delivered by Justice
Molberg. Justices Schenck and
Nowell participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 16th day of July, 2020.