

**Affirmed as Modified and Opinion filed November 1, 2001.**



**In The**  
**Fourteenth Court of Appeals**

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**NO. 14-00-00628-CV**

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**TERRY PITTS, Appellant**

**V.**

**TEXAS DEPARTMENT OF PUBLIC SAFETY; TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE—INSTITUTIONAL DIVISION; WAYNE SCOTT,  
EXECUTIVE DIRECTOR; GARY JOHNSON, DIRECTOR; MICHAEL  
WILSON, WARDEN; MIKE COUNTZ, CHAIRMAN STATE CLASSIFICATION  
COMMITTEE; SHELLY ALBRIGHT, WYNNE UNIT CHIEF OF  
CLASSIFICATION; MR. LUGO, WYNNE UNIT CLASSIFICATION  
ASSISTANT; SERGEANT SIMENTAL, WYNNE UNIT COMPLIANCE  
SERGEANT; SAM YOUNG, WYNNE UNIT MEDICAL ADMINISTRATOR;  
AND MS. WINFREY, WYNNE UNIT LABORATORY TECHNICIAN, Appellees**

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**On Appeal from the 12th District Court  
Walker County, Texas  
Trial Court Cause No. 20,736**

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**OPINION**

Appellant, Terry Pitts, appeals the trial court's dismissal of his case as frivolous. In three points of error he contends the trial court erred (1) in applying chapter 14 of the Texas Civil Practice and Remedies Code, which pertains to inmate litigation; (2) in applying

section 14.004 of that chapter, which pertains to affidavits relating to previous filings; and (3) in dismissing Pitts's suit with prejudice and refusing to file findings of fact and conclusions of law. We affirm.

## **BACKGROUND**

Pitts is an inmate in the Texas prison system. He filed a lawsuit against the Texas Department of Public Safety, Texas Department of Criminal Justice–Institutional Division, and various prison employees, claiming negligence per se, slander, and libel. Pitts alleges that prison employees drew a sample of his blood, apparently under the mistaken belief that he was required to submit to DNA testing as a sex offender. Pitts, who is not incarcerated as a sex offender, protested in vain. He further alleges that a prison employee checked computer records and, in the presence of a roomful of prisoners, stated that the records showed Pitts was a convicted child sex-offender.

Pitts filed a grievance and was successful in compelling officials to destroy the sample and expunge the records. After the grievance procedure concluded, he filed suit in district court. The trial court found that Pitts failed to file a proper and complete declaration relating to previous filings and dismissed Pitt's claims with prejudice as frivolous under section 14.003(a)(2) and (b)(4) of the Texas Civil Practice and Remedies Code.

## **ISSUES ONE AND TWO**

In his first and second issues, Pitts contends the trial court erred in applying chapter 14 (specifically section 14.004) of the Texas Civil Practice and Remedies Code. The crux of his argument is that chapter 14 applies only to inmates who file an affidavit or declaration of inability to pay costs. TEX. CIV. PRAC. & REM. CODE ANN. § 14.002(a) (Vernon Supp. 2001). Pitts filed such a declaration, but argues the chapter should not be applied to him because the trial court ordered him to pay costs despite his declaration. We find this argument unpersuasive. There is no exemption in the plain language of section 14.002(a) for inmates who file an affidavit of inability to pay costs, but are ordered to pay such costs.

Further, the section under which the trial court may order an inmate to pay costs is also found in chapter 14. TEX. CIV. PRAC. & REM. CODE ANN. § 14.006. Pitts filed a declaration of inability to pay costs; therefore, chapter 14 is applicable. We overrule issues one and two.

### ISSUE THREE

In his third issue, Pitts contends the trial court abused its discretion in dismissing with prejudice his lawsuit for failure to file a proper and complete declaration relating to previous filings. The trial court stated in its dismissal order that Pitts failed to file a proper and complete declaration stating the operative facts, identifying each party, and stating the result of each prior suit.

An inmate who files a declaration of inability to pay costs must also file a second, separate declaration to describe each non-family-code lawsuit previously filed by the inmate. TEX. CIV. PRAC. & REM. CODE ANN. § 14.004. This declaration must include the following information for each lawsuit:

- (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.

*Id.* § 14.004(a)(2)(A)-(D). A purpose of section 14.004 is to curb constant, often duplicative, inmate litigation by requiring the inmate to notify the trial court about previous litigation and its outcome. *Bell v. Tex. Dep't of Criminal Justice—Inst. Div.*, 962 S.W.2d 156, 158 (Tex. App.—Houston [14th Dist.] 1998, pet. denied).

However, Pitts failed to identify all parties in two of his seven previous lawsuits. In one case against the Texas Department of Criminal Justice, Pitts listed the operative facts only as “official liability and negligence.” He contends this declaration is specific enough

for a trial court to determine whether his present claims are duplicative of previous lawsuits. We disagree. Identifying the theories of law in a previous suit is not the same as stating operative facts that would enable the trial court to distinguish the present action from the prior suit. *White v. State*, 37 S.W.3d 562, 564-65 (Tex. App.—Beaumont 2001, no pet.); see *Thomas v. Knight*, 52 S.W.3d 292, 295 (Tex. App.—Corpus Christi 2001, pet. filed) (type of relief sought in prior lawsuit does not qualify as operative facts). Nothing in Pitts’s declaration enabled the trial court to distinguish this lawsuit from the prior action against the Texas Department of Criminal Justice. As such, the trial court could conclude that the current suit is frivolous because it is substantially similar to a previously filed suit. *Clark v. J.W. Estelle Unit*, 23 S.W.3d 420, 421 (Tex. App.—Houston [1st Dist.] 2000, pet. denied). Given the deficiencies in Pitts’s declaration, we hold the trial court did not abuse its discretion in dismissing Pitts’s claims as frivolous.

Pitts further contends the trial court erred in refusing to file findings of fact and conclusions of law. Upon request, a trial court is required to file findings of fact and conclusions of law after a case is tried to the court without a jury. TEX. R. CIV. P. 296; *Eichelberger v. Balette*, 841 S.W.2d 508, 510 (Tex. App.—Houston [14th Dist.] 1992, writ denied). A court need not file findings and conclusions when it dismisses a case without a trial. See *Eichelberger*, 841 S.W.2d at 510. The court below, which dismissed Pitts’s suit without trial, did not err in refusing to file findings and conclusions.

Lastly, under his third point Pitts complains the trial court erroneously dismissed his claims with prejudice. “Dismissal with prejudice constitutes an adjudication on the merits and operates as if the case had been fully tried and decided.” *Hickman v. Adams*, 35 S.W.3d 120, 124 (Tex. App.—Houston [14th Dist.] 2000, no pet.). However, a dismissal for failure to comply with the conditions of section 14.004 is not a dismissal on the merits, but rather an exercise of discretion under chapter 14 of the civil practice and remedies code. *Id.*; accord *Thomas v. Knight*, 52 S.W.3d at 295. Accordingly, we sustain Pitts’s third point of error pertaining to the dismissal with prejudice.

In conclusion, we overrule Pitts's issues with the exception of the trial court's dismissal with prejudice. The trial court's dismissal order is affirmed as modified.

/s/ Charles Seymore  
Justice

Judgment rendered and Opinion filed November 1, 2001.

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

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