

COURT OF APPEALS OF TEXAS, TENTH DISTRICT AT WACO

2008 Chevrolet Corvette, VIN#1G1YY36W585105455 v. The State of Texas

No. 10-14-00137-CV (Tex. App.—Waco Nov. 19, 2015) · No. No. 10-14-00137-CV · Decided November 19, 2015

SUMMARY

The Tenth Court of Appeals denied the appellant's motion to waive or set aside appellate filing fees, explaining that indigent appellants may proceed without advance payment but remain liable for costs if unsuccessful. The court ordered an inmate appellant to file documents required by Chapter 14 of the Texas Civil Practice and Remedies Code within 14 days and warned that failure to comply would result in dismissal and a finding that the appeal was frivolous.

CASE DETAILS

COURT	Court of Appeals of Texas, Tenth District at Waco
WRITING FOR THE COURT	Chief Justice Gray; Justice Davis; Justice Scoggins
JURISDICTION	Texas
DECIDED	November 19, 2015
DOCKET	No. 10-14-00137-CV
DISPOSITION	other
PROCEDURAL POSTURE	The court considered the appellant's affidavit of indigence and motion to set aside required appellate filing fees in a civil appeal.
PRECEDENTIAL VALUE	published
PARTIES	2008 Chevrolet Corvette, VIN#1G1YY36W585105455 v. The State of Texas

TOPICS

[appellate procedure](#) [costs](#) [civil procedure](#)

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the court could waive or set aside appellate filing fees for an indigent appellant.
2. Whether an indigent inmate pursuing a civil appeal must comply with the filing requirements of Chapter 14 of the Texas Civil Practice and Remedies Code.
3. Whether the appellant should be ordered to file the required Chapter 14 documents and warned that failure to do so could result in dismissal.

HOLDINGS

1. The court cannot set aside or waive payment of filing fees, although an indigent appellant may proceed without advancing the costs.
2. The requirements of Chapter 14 of the Texas Civil Practice and Remedies Code apply when an indigent inmate files a civil appeal.

KEY QUOTATIONS

“The ability to proceed without the advance payment of cost does not, however, mean that the costs are not owed by an unsuccessful appellant.” (Page 1)

“Failure to timely file these additional documents will result in the dismissal of this appeal without further notice and a finding that the appeal is frivolous.” (Page 2)

FACTUAL BACKGROUND

The appellant was an indigent inmate pursuing a civil appeal. The appellant filed an affidavit of indigence and sought to have the required filing fees set aside. The record before the appellate court also lacked the affidavit or declaration concerning previous filings and the certified inmate-account statement required by Chapter 14.

PROCEDURAL HISTORY

The appellant filed an affidavit of indigence and a motion to set aside required filing fees on October 26, 2015. The Court of Appeals denied the motion, explained that indigent appellants may proceed without advance payment but remain liable for costs if unsuccessful, and ordered the inmate-appellant to file documents required by Chapter 14 within 14 days.

DISPOSITION

other

CASES CITED

- In re McGowan, No. 10-10-00208-CV, 2010 Tex. App. LEXIS 5046 (Tex. App.—Waco June 30, 2010, orig. proceeding) (mem. op.)
- Anderson v. Tex. Dep't of Crim. Justice, 2015 Tex. App. LEXIS 2674 (Tex. App.—Waco Mar. 19, 2015, no pet.)

OPINION

PER CURIAM.

IN THE TENTH COURT OF APPEALS No. 10-14-00137-CV 2008 CHEVROLET CORVETTE, VIN#1G1YY36W585105455, Appellant v. THE STATE OF TEXAS, Appellee From the 66th District Court Hill County, Texas Trial Court No. 51,223 ORDER Appellant's affidavit of indigence was filed on October 26, 2015.

On the same date, appellant also submitted a motion to set aside the required filing fees for this appeal. The Court cannot set aside or waive the payment of filing fees. An appellant who is indigent is allowed to proceed without the advance payment of cost. See TEX. R. APP. P. 20.1.

The ability to proceed without the advance payment of cost does not, however, mean that the costs are not owed by an unsuccessful appellant. See *In re McGowan*, No. 10-10-00208-CV, 2010 Tex. App. LEXIS 5046 (Tex. App.—Waco June 30, 2010, orig. proceeding) (mem. op.).

Accordingly, appellant's "Motion to Set Aside Required Filing Fees" filed on October 26, 2015, is denied. Further, the requirements of Chapter 14 of the Texas Civil Practice and Remedies Code apply when indigent inmates file a civil appeal. See TEX. CIV. PRAC. & REM. CODE ANN. § 14.002 (West 2002); *Anderson v. Tex. Dep't of Crim. Justice*, ___ S.W.3d ___, 2015 Tex. App.

LEXIS 2674 (Tex. App.—Waco Mar. 19, 2015, no pet.). Chapter 14 requires appellant, as an inmate, to file an affidavit or declaration "relating to previous filings" in which appellant must detail all previous civil actions filed pro se, other than a suit under the Family Code. TEX. CIV. PRAC. & REM. CODE ANN. § 14.004(a) (West 2002); *Anderson v. Tex. Dep't of Crim.*

Justice, 2015 Tex. App. LEXIS 2674 at *5. In addition, appellant is required to file a certified copy of appellant's "inmate trust account statement"¹ that "reflect[s] the balance of the account at the time the claim is filed and activity in the account during the six months preceding the date on which the claim is filed." TEX. CIV. PRAC. & REM. CODE ANN. §§ 14.004(c); 14.006(f) (West 2002); *Anderson*, 1 Courts and parties have frequently referred to inmate accounts as inmate "trust" accounts.

The term "trust" has been removed from this statutory reference. Act of 1989, 71st Leg., ch. 212, § 2.01, eff. Sept. 1, 1989, amended by Act of 1999, 76th Leg., ch. 62, § 8.10, 19.02(8), eff. Sept. 1, 1999 (current version at TEX. GOV'T CODE ANN. § 501.014 (West 2012)). They are simply inmate accounts. While there may be a custodial relationship between the Department and the inmate as to the money in the account, an issue not decided by us today, there is certainly no trustee/beneficiary relationship wherein the Department is burdened with all the duties of a trustee with regard to the inmate's money.

2008 Chevrolet Corvette v. State Page 2 Accordingly, appellant is ordered to file the above-listed documents required by Chapter 14 within 14 days from the date of this order. Failure to timely file

these additional documents will result in the dismissal of this appeal without further notice and a finding that the appeal is frivolous. Anderson, 2015 Tex. App.

LEXIS 2674 at *5. PER CURIAM Before Chief Justice Gray, Justice Davis, and Justice Scoggins Motion denied; documents ordered filed Order issued and filed November 19, 2015 2008 Chevrolet Corvette v. State Page 3

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