

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned on Briefs April 1, 2003

**ROBERT W. SMITH v.  
TENNESSEE DEPARTMENT OF CORRECTION**

**Appeal from the Chancery Court for Davidson County  
No. 01-1991-II Carol McCoy, Chancellor**

---

**No. M2002-00812-COA-R3-CV - Filed May 20, 2003**

---

Plaintiff, an inmate with the Department of Corrections, appeals the action of the trial court in dismissing his complaint pursuant to Tennessee Code Annotated section 41-21-812. We affirm the judgment.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed**

WILLIAM B. CAIN, J., delivered the opinion of the court, in which BEN H. CANTRELL, P.J., M.S., and PATRICIA J. COTTRELL, J., joined.

Robert W. Smith, Tiptonville, Tennessee, Pro Se.

Paul G. Summers, Attorney General & Reporter and Nichon Shannon, Assistant Attorney General, for the appellee, Tennessee Department of Corrections.

**MEMORANDUM OPINION<sup>1</sup>**

Plaintiff on June 22, 2001 filed in the Chancery Court of Davidson County, Tennessee a Petition for a Writ of Certiorari challenging the action of the Department of Corrections wherein the disciplinary committee had found him guilty of assault on staff and sentenced him to twenty days punitive segregation together with six months loss of package restriction and a five dollar fine.

---

<sup>1</sup>Court of Appeals Rule 10(b):

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case.

Defendant Department of Corrections filed a T.R.C.P. Rule 12.06 Motion to Dismiss for Failure to State a Claim.

The trial court, however, *sua sponte* dismissed the petition in an order dated August 28, 2001, providing:

In his inmate affidavit, Petitioner lists several other state and federal cases he has initiated, including a federal case that was dismissed as frivolous by the court. A review of court records reveals that Petitioner has two active cases in this Court, and that a petition for writ of certiorari in another chancery court case no. 00-1398-III, was dismissed on November 9, 2000 with costs assessed against Petitioner. As of this date, these costs are still due and owing.

Tennessee law provides that “a clerk of a court may not accept for filing another claim by the same inmate until such prior fees, taxes, costs and other expenses are paid in full.” T.C.A. § 41-21-812. The exception to this prohibition applies in cases where an inmate seeks injunctive relief to prevent irreparable injury or serious physical harm. T.C.A. § 41-21-812(b). There is no such claim in the present action.

Accordingly, this action is dismissed. Costs are assessed against Petitioner.

Petitioner filed a Motion to Reconsider the August 28, 2001 order which motion provided, in part:

This court issued an order, dismissing your petitioner’s petition, due to his owing fees in another chancery court in case # 00-1398-III. In that case, your petitioner also submitted proper affidavits, requesting that he be allowed to proceed in forma pauper, in that he was without proper funds to pay the costs. After dismissal in case # 00-1398-III, your petitioner submitted Motions to Set Aside Judgment and to this date no actions have been taken thereon.

In dismissing this case pursuant to T.C.A. 41-21-812, Tennessee law provides that “a clerk of a court may not accept for filing another claim by the same inmate until such prior fees, taxes, costs and other expenses are paid in full. With all due respect, the reasoning for this court’s dismissal pursuant to T.C.A. 41-21-812 is misplaced. This case was accepted and filed on June 22, 2001. It is believed that T.C.A. 41-21-812 applies to inmates who a court has determined to have proper funds to proceed and pay costs.

The trial court overruled this motion by order of October 22, 2001 providing, in part:

T.C.A. § 41-21-812 states that “a clerk of a court may not accept for filing another claim by the same inmate until such prior fees, taxes, costs and other expenses are paid in full.” Petitioner has costs due an[d] owing in a prior case no. 00-1398-III, which was dismissed on November 9, 2000. Petitioner argues that since

the clerk inadvertently accepted the present case for filing, it cannot now be dismissed. He cites no authority for this proposition.

The Court finds Petitioner's argument unpersuasive and, accordingly, his motion is denied.

Petitioner moved again to reconsider the dismissal of his case and by order entered March 1, 2002 the trial court reaffirmed its action holding:

Finally, Petitioner requests that the Court set aside its order of dismissal in this case. Petitioner appears to argue that T.C.A. § 41-21-804 takes precedence over T.C.A. § 41-21-812, and that he was entitled to a hearing to determine whether his allegations of poverty were true, and whether the claims he made in his petition were false, frivolous, or malicious. Petitioner's analysis is flawed. As stated above, T.C.A. § 41-21-812 provides that an inmate is precluded from filing a new claim if unpaid court costs are due and owing on a previous case. The present case was dismissed pursuant to T.C.A. § 41-21-812, not T.C.A. § 41-21-804. Accordingly, Petitioner's motion to set aside the dismissal is denied.

For the reasons stated above, Petitioner's motions for an injunction, to enforce an order, and to set aside judgment are hereby denied. Cost are taxed to Petitioner.

Petitioner timely appealed.

The inmate affidavit of indigency filed with the Petition for Certiorari discloses:

1. Petitioner previously filed suit in the Circuit Court for Lake County, Tennessee, case no. 95-7350 alleging racial discrimination and violation of equal protection rights asserted to exist under the Fifth and Eighth Amendments of the United States Constitution. This complaint was dismissed.

2. Petitioner previously filed suit in the United States District Court for the Eastern District of Tennessee, case no. 98-00154 charging retaliation for the exercise of protected right to free speech and to petition the government for redress of grievances allegedly under the First Amendment to the Constitution of the United States. This action was dismissed as frivolous.

3. Petitioner previously filed suit in the Circuit Court of Hickman County, Tennessee, in case no. 9814160-II charging that the defendants had wrongfully issued disciplinary reports, slandered petitioner's name and retaliated against him, allegedly in violation of First, Fifth, Eight and Fourteenth Amendments to the United States Constitution. The case was dismissed for failure to prosecute.

4. Petitioner filed a Petition for Writ of Certiorari in the Circuit Court of Davidson County in case no. 00-1398-III wherein he asserts that he was "found guilty of disciplinary

infractions in violation of departmental guidelines, in that your petitioner had right to call witnesses and present favorable evidence in his behalf, according to policy no. 502.01 and rights afforded under the Fourteenth Amendment to the U.S. Constitution.”

5. Petitioner previously filed suit in the United States District Court for the Eastern District of Arkansas in case no. 3:01CV00136JTR seeking a writ of habeas corpus claiming that he was denied a timely revocation hearing. The outcome of the case is not shown by the affidavit.

It is his failure to pay costs assessed against him in Davidson County Chancery case no. 00-1398-III, as such costs were taxed in the order of dismissal of that case on November 9, 2000, that forms the basis for the trial court order of dismissal in this case.

Tennessee Code Annotated section 41-21-812 provides:

(a) Except as provided by subsection (b), on notice of assessment of any fees, taxes, costs and expenses under this part, a clerk of a court may not accept for filing another claim by the same inmate until such prior fees, taxes, costs and other expenses are paid in full.

(b) A court may allow an inmate who has not paid any costs or expenses assessed against the inmate to file a claim for injunctive relief seeking to enjoin an act or failure to act that creates a substantial threat of irreparable injury or serious physical harm to the inmate.

The trial court properly dismissed the case. *Davis v. Holland*, 31 S.W.3d 574 (Tenn. Ct. App. 2000).

The action of the trial court is affirmed and costs are assessed against Appellant.

---

WILLIAM B. CAIN, JUDGE