

Question

Can a divorce case be dismissed in Texas if a party lies on their affidavit of inability to pay?

Answer (Texas)

Short response

Yes, a divorce case in Texas can be dismissed if a party is found to have lied on their affidavit of inability to pay, as Texas law expressly authorizes dismissal of any action—including divorce—on this basis. This authority is grounded in both statute and confirmed by Texas appellate case law.

Summary

Texas law provides that if a party files an affidavit of inability to pay (sometimes called an affidavit of indigence) under Rule 145 of the Texas Rules of Civil Procedure, and the court finds that the allegation of poverty is false, the court may dismiss the action. This rule applies broadly to all civil actions, including divorce cases, and is supported by both statutory authority and a consistent line of appellate decisions.

The statutory framework, specifically Texas Civil Practice and Remedies Code § 13.001, gives courts explicit power to dismiss cases where a party has made a false claim of indigence. Texas appellate courts have repeatedly upheld dismissals in such circumstances, making clear that the rule is not limited to any particular type of case. Thus, if a party in a Texas divorce proceeding is found to have lied on their affidavit of inability to pay, the court has clear authority to dismiss the case.

Background and Relevant Law

Legislative Framework

The primary legislative authority governing this issue is Texas Civil Practice and Remedies Code § 13.001. This statute provides that a court in which an affidavit of inability to pay under Rule 145 of the Texas Rules of Civil Procedure has been filed may dismiss the action if it finds that the allegation of poverty in the affidavit is false. The statute is not limited to any particular type of civil action and thus applies to divorce cases as well as other civil matters. The statute also allows for dismissal if the action is found to be frivolous or malicious, but the relevant ground here is the falsity of the affidavit.

Additionally, Texas Civil Practice and Remedies Code § 9.012 provides that if a pleading (which would include an affidavit of inability to pay) is signed in violation of the standards set out in § 9.011—such as being presented for an improper purpose or lacking evidentiary support—the court may impose sanctions. These sanctions can include striking pleadings, dismissing a party, or ordering payment of expenses. While § 9.012 is broader in scope, it reinforces the court's authority to dismiss actions where a party has abused the process by submitting false information.

Texas Civil Practice and Remedies Code § 10.001 further requires that all pleadings and motions, including affidavits, be signed with a certification that the factual contentions have evidentiary support and are not being presented for an improper purpose. Violation of this certification can also lead to sanctions, including dismissal, under Chapter 10.

Case Law

Texas appellate courts have consistently interpreted § 13.001 as authorizing dismissal of actions where a party has filed a false affidavit of inability to pay. In [Poff v. Guzman, 532 S.W.3d 867 \(Tex. App. 2017\)](#), the court recognized that the trial court had statutory authority to dismiss a case upon finding that an affidavit of indigence was fraudulent, citing § 13.001(a)(1). The court treated the dismissal as within the trial court's authority under this statute, even though the case did not specifically involve a divorce.

Similarly, in [Jackson v. North Forest Indep. Sch. Dist., No. 01-10-00010-CV \(Tex. App. Jan. 26, 2012\)](#), the court held that when an affidavit of indigence is filed under Rule 145, the trial court may dismiss the case if it finds the allegation of poverty to be false, again relying on § 13.001(a)(1). The court noted that this rule is generally applicable to all cases where such an affidavit is filed.

Earlier cases, such as [Brewer v. Collins, 857 S.W.2d 819 \(Tex. App. 1993\)](#), [Carson v. Gomez, 841 S.W.2d 491 \(Tex. App. 1992\)](#), [Timmons v. Luce, 840 S.W.2d 582 \(Tex. App. 1992\)](#), [Thompson v. Erickson, 814 S.W.2d 805 \(Tex. App. 1991\)](#), [Huntsberry v. Lynaugh, 807 S.W.2d 16 \(Tex. App. 1991\)](#), and [Kendrick v. Lynaugh, 804 S.W.2d 153 \(Tex. App. 1990\)](#), all confirm that a court may dismiss an action if it finds that the affidavit of inability to pay is false, and none of these decisions limit the rule to any particular type of civil case.

While some supplementary cases, such as [In re Interest of B.T.G., No. 05-16-00370-CV \(Tex. App. Aug. 8, 2017\)](#), discuss procedural consequences short of dismissal (such as granting a new trial), these do not contradict the clear statutory and precedential authority for dismissal where a false affidavit is found.

Analysis

The question is whether a Texas divorce case can be dismissed if a party lies on their affidavit of inability to pay. The answer is clearly yes, based on both statutory law and case law.

Statutory Authority

Texas Civil Practice and Remedies Code § 13.001 is the controlling statute. It provides that a court may dismiss an action if it finds that the allegation of poverty in an affidavit of inability to pay is false. The statute is not limited to any particular type of civil action, and there is no language excluding family law or divorce cases from its scope. The statute's reference to affidavits filed under Rule 145 of the Texas Rules of Civil Procedure further confirms its broad applicability, as Rule 145

governs affidavits of inability to pay in all civil cases, including family law matters.

Section 9.012 of the same code provides additional support, authorizing courts to impose sanctions—including dismissal—if a pleading is signed in violation of the standards set out in § 9.011. Submitting a false affidavit of inability to pay would violate these standards, as it would lack evidentiary support and be presented for an improper purpose. Section 10.001 reinforces this by requiring that all pleadings and motions be signed with a certification of their factual accuracy and proper purpose.

Judicial Interpretation

Texas appellate courts have repeatedly upheld the authority of trial courts to dismiss actions where a party has filed a false affidavit of inability to pay. In [Poff v. Guzman, 532 S.W.3d 867 \(Tex. App. 2017\)](#), the court specifically recognized the trial court's authority to dismiss a case on this basis, treating the dismissal as within the scope of § 13.001(a)(1). The court's reasoning was not limited to the facts of that case and applies generally to all civil actions.

Other appellate decisions, including [Jackson v. North Forest Indep. Sch. Dist., No. 01-10-00010-CV \(Tex. App. Jan. 26, 2012\)](#), [Brewer v. Collins, 857 S.W.2d 819 \(Tex. App. 1993\)](#), [Carson v. Gomez, 841 S.W.2d 491 \(Tex. App. 1992\)](#), [Timmons v. Luce, 840 S.W.2d 582 \(Tex. App. 1992\)](#), [Thompson v. Erickson, 814 S.W.2d 805 \(Tex. App. 1991\)](#), [Huntsberry v. Lynaugh, 807 S.W.2d 16 \(Tex. App. 1991\)](#), and [Kendrick v. Lynaugh, 804 S.W.2d 153 \(Tex. App. 1990\)](#), all confirm that a court may dismiss an action if it finds that the affidavit of inability to pay is false. None of these cases limit the rule to any particular type of case, and the language of the statute and the cases is broad enough to encompass divorce proceedings.

While [In re Interest of B.T.G., No. 05-16-00370-CV \(Tex. App. Aug. 8, 2017\)](#) involved a divorce case and did not result in dismissal, the procedural posture was different: the court granted a new trial after sustaining a challenge to the affidavit, and the party did not object further. This case does not undermine the general rule that dismissal is authorized where a false affidavit is found; rather, it illustrates that courts have discretion in fashioning remedies, and that procedural outcomes may vary depending on the circumstances and the parties' actions.

Application to Divorce Cases

There is no statutory or case law authority excluding divorce cases from the operation of § 13.001. The statute applies to any action in which an affidavit of inability to pay is filed under Rule 145, and divorce cases are civil actions governed by the Texas Rules of Civil Procedure. Therefore, if a party in a divorce case files an affidavit of inability to pay and the court finds that the affidavit is false, the court has clear authority to dismiss the case.

This conclusion is reinforced by the consistent line of appellate decisions applying § 13.001 to a wide range of civil cases. The courts have not drawn any distinction between types of cases, and the statutory language does not support any such distinction.

Sanctions and Discretion

While the statute authorizes dismissal, it does not require it. The use of the word "may" in § 13.001 indicates that dismissal is within the court's discretion. Courts may consider the circumstances of the case, the nature of the falsehood, and the interests of justice in deciding whether to dismiss the case or impose some lesser sanction. However, the authority to dismiss is clear.

Section 9.012 and Chapter 10 of the Civil Practice and Remedies Code provide additional bases for sanctions, including dismissal, where a party has filed a false affidavit. These provisions reinforce the court's authority and provide alternative grounds for dismissal or other sanctions.

Exceptions and Caveats

While the statutory and case law authority for dismissal is clear, there are some important caveats:

Discretionary Nature of Dismissal: The statute provides that the court "may" dismiss the action, not that it must. This means that dismissal is discretionary, and the court may choose to impose a lesser sanction or allow the case to proceed under certain circumstances.

Procedural Requirements: Before dismissing a case, the court must make a finding that the affidavit is false. This typically requires notice to the party and an opportunity to be heard. If the affidavit is not contested, or if the party can prove their inability to pay, dismissal may not be appropriate. See [Higgins v. Randall County Sheriff's Office, 257 S.W.3d 684 \(Tex. 2008\)](#) (noting that if no contest is filed, the affidavit's allegations are deemed true).

Alternative Remedies: In some cases, courts may fashion alternative remedies, such as granting a new trial or imposing monetary sanctions, rather than dismissing the case outright. See [In re Interest of B.T.G., No. 05-16-00370-CV \(Tex. App. Aug. 8, 2017\)](#).

Burden of Proof: The burden is on the party challenging the affidavit to show that it is false. If the party who filed the affidavit can provide sufficient evidence of their inability to pay, the court may not find the affidavit to be false, and dismissal would not be warranted.

Appeal and Review: Dismissals under § 13.001 are subject to appellate review for abuse of discretion. Courts of appeal will review whether the trial court had sufficient evidence to support its finding that the affidavit was false.

Conclusion

In summary, Texas law clearly authorizes the dismissal of a divorce case if a party is found to have lied on their affidavit of inability to pay. This authority is grounded in Texas Civil Practice and Remedies Code § 13.001 and is consistently upheld by Texas appellate courts. While dismissal is discretionary and subject to procedural safeguards, the statutory and case law framework leaves no doubt that courts have the power to dismiss divorce cases on this basis. Parties and counsel should be aware of the serious consequences of submitting false affidavits of inability to pay in Texas civil proceedings, including divorce.

Legal Authorities

[Denson v. T.D.C.J.-I.D. \(Tex. App. 1999\)](#)

Texas Court of Appeals

Extract

When a plaintiff files an affidavit of inability to pay, the trial court has broad discretion to dismiss the suit as frivolous or malicious. TEX. CIV. PRAC. & REM. CODE ANN. 14.003(a)(2), (b)(2) (Vernon Supp. 1998); Perales v. Kinney, 891 S.W.2d 731, 733 (Tex. App. - Houston [1st Dist.] 1994, no writ). We review the trial court's dismissal of an action as frivolous or malicious for an abuse of discretion. Carson v. Gomez, 841 S.W.2d 491, 494 (Tex. App. - Houston [1st Dist.] 1992, no writ).

Summary

The Texas court has broad discretion to dismiss a suit if an affidavit of inability to pay is filed and the suit is deemed frivolous or malicious. This implies that if a party lies on their affidavit, the court may consider the suit frivolous or malicious and thus has the discretion to dismiss it.

[In re Interest of B.T.G., No. 05-16-00370-CV \(Tex. App. Aug 08, 2017\)](#)

Texas Court of Appeals

Extract

Husband's seventh issue complains that the trial court allowed Wife to proceed without paying court fees after the court sustained the district clerk's challenge to Wife's affidavit of inability to pay. We overrule this issue because husband received a new trial on that basis but allowed the new trial to proceed without further objection and therefore waived any subsequent complaint in this regard.

Summary

The trial court allowed the Wife to proceed without paying court fees even after her affidavit of inability to pay was challenged and sustained. However, the Husband's complaint was overruled because he received a new trial on that basis and did not object further. This suggests that while a challenge to an affidavit of inability to pay can lead to procedural consequences, such as a new trial, it does not automatically result in the dismissal of the divorce case itself.

[Higgins v. Randall County Sheriff's Office, 257 S.W.3d 684 \(Tex. 2008\)](#)

Texas Supreme Court

Extract

Texas Rule of Appellate Procedure 20.1 governs the procedures to establish an appellant's indigence. The rule enumerates eleven items of financial information that the affidavit of indigence must contain, TEX.R.APP. P. 20.1(b), and also provides that if no contest to the affidavit is filed, 'no hearing will be conducted, the affidavit's allegations will be deemed true, and the party will be allowed to proceed without advance payment of costs,' TEX.R.APP. P. 20.1(f).

Summary

If an affidavit of indigence is not contested, its allegations are deemed true, and the party can proceed without paying costs. This suggests that if a party lies on their affidavit but no contest is filed, the affidavit's claims are accepted as true. However, if the affidavit is contested, the burden is on the applicant to prove indigence by a preponderance of the evidence. This implies that a divorce case could potentially be dismissed if a party lies on their affidavit and it is contested, but not if it is uncontested.

[Winn v. Federal Land Bank of Houston, 164 S.W.2d 864 \(Tex. App. 1942\)](#)

Texas Court of Appeals

Extract

It is evident, from the statement of the proof submitted by the attorney ad litem appointed to represent appellants, that he has not sustained the burden placed upon appellants under said Rule 355 (d) by competent proof of their inability to pay the costs of this appeal or any part thereof or to give security therefor. ... It necessarily follows that, since appellants did not meet the burden of proof imposed upon them by said Rule 355, Texas Rules of Civil Procedure, to sustain the allegations of said affidavit, this court is without jurisdiction to entertain this appeal. The appeal of the appellants, P. B. Winn, Jr., George Winn, and John Winn, must therefore be dismissed. It is so ordered. Dismissed.

Summary

If a party fails to meet the burden of proof for their affidavit of inability to pay costs, the court may dismiss the appeal due to lack of jurisdiction. This suggests that if a party lies on their affidavit and cannot prove their inability to pay, the case (or appeal) may be dismissed. The passage specifically addresses the dismissal of an appeal due to failure to prove the truth of an affidavit of inability to pay, which is relevant to the question of whether a divorce case could be dismissed under

similar circumstances.

[Carson v. Gomez, 841 S.W.2d 491 \(Tex. App. 1992\)](#)

Texas Court of Appeals

Extract

Appellant also urges that the trial judge abused his discretion by dismissing under section 13.001 of the Civil Practices and Remedies Code. That statute provides: (a) A court in which an affidavit of inability to pay under Rule 145, Texas Rules of Civil Procedure, has been filed may dismiss the action on a finding that: (1) the allegation of poverty in the affidavit is false; or (2) the action is frivolous or malicious.

Summary

Under section 13.001 of the Civil Practices and Remedies Code, a court may dismiss an action if it finds that the allegation of poverty in the affidavit is false. This directly addresses the question of whether a divorce case can be dismissed if a party lies on their affidavit of inability to pay.

[Brewer v. Collins, 857 S.W.2d 819 \(Tex. App. 1993\)](#)

Texas Court of Appeals

Extract

The trial court dismissed appellant's cause of action as frivolous under section 13.001 of the Texas Civil Practice and Remedies Code, which provides: (a) A court in which an affidavit of inability to pay under Rule 145, Texas Rules of Civil Procedure, has been filed may dismiss the action on a finding that: (1) the allegation of poverty in the affidavit is false; or (2) the action is frivolous or malicious.

Summary

Under section 13.001 of the Texas Civil Practice and Remedies Code, a court may dismiss an action if it finds that the allegation of poverty in an affidavit of inability to pay is false. This provision applies to any case where such an affidavit is filed, including potentially a divorce case.

[Huntsberry v. Lynaugh, 807 S.W.2d 16 \(Tex. App. 1991\)](#)

Texas Court of Appeals

Extract

Section 13.001 provides in relevant part that: (a) A court in which an affidavit of inability to pay under Rule 145, TEXAS RULES OF CIVIL PROCEDURE, has been filed may dismiss the action on a finding that: (1) the allegation of poverty in the affidavit is false; or (2) the action is frivolous or malicious.

Summary

The passage from the Texas Civil Practice and Remedies Code indicates that a court has the authority to dismiss an action if it finds that the affidavit of inability to pay contains false allegations of poverty. This provision is applicable to any case where such an affidavit is filed, including divorce cases. Therefore, if a party in a divorce case in Texas lies on their affidavit of inability to pay, the court may dismiss the case based on this finding.

[Aguilar v. Chastain, 923 S.W.2d 740 \(Tex. App. 1996\)](#)

Texas Court of Appeals

Extract

By filing a lawsuit in forma pauperis pursuant to Texas Rule of Civil Procedure 145, a litigant subjects his claim to dismissal by the trial court on a finding that the action is frivolous or malicious. TEX.CIV.PRAC. & REM.CODE ANN. § 13.001(a)(2) (Vernon Supp.1996). A trial court has broad discretion to determine whether an in forma pauperis suit should be dismissed.

Summary

When a lawsuit is filed in forma pauperis, it can be dismissed if found to be frivolous or malicious. The trial court has broad discretion in making this determination. While the passage does not specifically address lying on an affidavit of inability to pay, it implies that if such a lie renders the case frivolous or malicious, the case could be dismissed. The scope of this material is broad, applying to any in forma pauperis case in Texas, not just divorce cases.

[Kendrick v. Lynaugh, 804 S.W.2d 153 \(Tex. App. 1990\)](#)

Texas Court of Appeals

Extract

Moreover, appellant's case was dismissed pursuant to the court's inherent authority granted by the state legislature in TEX.R.CIV.PRAC. & REM.CODE ANN. § 13.001 (Vernon Supp.1991). That section states: (a) A court in which an affidavit of inability to pay under Rule 145, Texas Rules of Civil Procedure, has been filed may dismiss the action on a finding that: (1) The allegation of poverty in the affidavit is false; or (2) The action is frivolous or malicious.

Summary

The passage from the "Kendrick v. Lynaugh" case provides insight into the Texas Civil Practice and Remedies Code, Section 13.001, which allows a court to dismiss a case if it finds that the affidavit of inability to pay is false. This indicates that if a party in a divorce case in Texas lies on their affidavit of inability to pay, the court has the authority to dismiss the case based on this falsehood.

[Poff v. Guzman, 532 S.W.3d 867 \(Tex. App. 2017\)](#)

Texas Court of Appeals

Extract

Neither party, nor the trial court, has referred to any rule or statute that might authorize the trial court's dismissal of the Poffs' claim based upon a fraudulent affidavit of indigence. But, because the Poffs filed an affidavit of indigence under Rule 145 of the Texas Rules of Civil Procedure, the trial court had statutory authority to dismiss the action on a finding that 'the allegation of poverty in the affidavit is false.' Tex. Civ. Prac. & Rem. Code § 13.001(a)(1). Based on the trial court's ruling that the affidavit of indigence was 'inadequate' and 'fraudulent,' and that the Poffs were not 'qualified' to file the affidavit, we will treat the dismissal as within the trial court's authority under Section 13.001(a)(1).

Summary

Under Texas law, specifically Tex. Civ. Prac. & Rem. Code § 13.001(a)(1), a trial court has the authority to dismiss a case if it finds that an affidavit of indigence is fraudulent. This is applicable to any case where such an affidavit is filed, including divorce cases, as long as the affidavit is found to be false.

[Thompson v. Erickson, 814 S.W.2d 805 \(Tex. App. 1991\)](#)

Texas Court of Appeals

Extract

(a) A court in which an affidavit of inability to pay under Rule 145, Texas Rules of Civil Procedure, has been filed may dismiss the action on a finding that: (1) the allegation of poverty in the affidavit is false; or (2) the action is frivolous or malicious.

Summary

A court has the authority to dismiss an action if it finds that the allegation of poverty in an affidavit of inability to pay is false. This is directly relevant to the question of whether a divorce case can be dismissed on such grounds, as it provides a legal basis for dismissal in cases where false information is provided in the affidavit.

[Timmons v. Luce, 840 S.W.2d 582 \(Tex. App. 1992\)](#)

Texas Court of Appeals

Extract

A court in which an affidavit of inability to pay under Rule 145, Texas Rules of Civil Procedure, has been filed may dismiss the action on a finding that: (1) the allegation of poverty in the affidavit is false; or (2) the action is frivolous or malicious.

Summary

The passage from "Timmons v. Luce" provides a clear legal basis for dismissing a case if a party lies on their affidavit of inability to pay. According to TEX.CIV.PRAC. & REM.CODE ANN. § 13.001, a court may dismiss an action if it finds that the allegation of poverty in the affidavit is false. This statute is applicable to any case in Texas where such an affidavit is filed, including divorce cases.

[Jackson v. North Forest Indep. Sch. Dist., NO. 01-10-00010-CV \(Tex. App. Jan 26, 2012\)](#)

Texas Court of Appeals

Extract

*When an affidavit of indigence is filed pursuant to rule 145, a trial court may dismiss the case on a finding that the allegation of poverty in the affidavit is false. TEX. CIV. PRAC. & REM. CODE ANN. § 13.001(a)(1) (Vernon 2002); In re Kastner, No. 14-09-00653-CV, 2009 WL 3401867, at *1 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding [mand. denied]) (mem. op.) ("When the trial court has sustained a contest to an affidavit of indigence filed pursuant to Texas Rule of Civil Procedure 145, the court typically dismisses the case, finding the allegation of poverty is false and/or the case is frivolous.').*

Summary

Under Texas Rule of Civil Procedure 145, if a party files an affidavit of indigence and it is found to be false, the trial court has the authority to dismiss the case. This is supported by the Texas Civil Practice and Remedies Code § 13.001(a)(1), which allows for dismissal if the allegation of poverty is false. The scope of this rule is broad and applies to any case where an affidavit of indigence is filed, including divorce cases.

[Tex. Civ. Prac. and Rem. Code § 13.001 Tex. Civ. Prac. and Rem. Code § 13.001 Dismissal of Action](#)

Extract

A court in which an affidavit of inability to pay under Rule 145, Texas Rules of Civil Procedure, has been filed may dismiss the action on a finding that: the allegation of poverty in the affidavit is false; or the action is frivolous or malicious.

Summary

A court in Texas has the authority to dismiss an action if it finds that the allegation of poverty in an affidavit of inability to pay is false. This provision is applicable to any case where such an affidavit is filed, including divorce cases. Therefore, if a party lies on their affidavit of inability to pay in a divorce case, the court may dismiss the case.

[Tex. Civ. Prac. and Rem. Code § 10.001 Tex. Civ. Prac. and Rem. Code § 10.001 Signing of Pleadings and Motions](#)

Extract

The signing of a pleading or motion as required by the Texas Rules of Civil Procedure constitutes a certificate by the signatory that to the signatory's best knowledge, information, and belief, formed after reasonable inquiry: the pleading or motion is not being presented for any improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation; each claim, defense, or other legal contention in the pleading or motion is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; each allegation or other factual contention in the pleading or motion has evidentiary support or, for a specifically identified allegation or factual contention, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and each denial in the pleading or motion of a factual contention is warranted on the evidence or, for a specifically identified denial, is reasonably based on a lack of information or belief.

Summary

The signing of a pleading or motion in Texas is a certification by the signatory that the document is not being presented for any improper purpose and that all claims and factual contentions have evidentiary support. If a party lies on their affidavit of inability to pay, it could be considered an improper purpose or a lack of evidentiary support, which may lead to sanctions under Chapter 10 of the Texas Civil Practice and Remedies Code.

[Tex. Civ. Prac. and Rem. Code § 9.012 Tex. Civ. Prac. and Rem. Code § 9.012 Violation; Sanction](#)

Extract

If the court determines that a pleading has been signed in violation of any one of the standards prescribed by Section CIVIL PRACTICE AND REMEDIES CODE 9.011, the court shall, not earlier than 90 days after the date of the determination, at the trial or hearing or at a separate hearing following reasonable notice to the offending party, impose an appropriate sanction on the signatory, a represented party, or both. ... The sanction may include one or more of the following: the striking of a pleading or the offending portion thereof; the dismissal of a party; or an order to pay to a party who stands in opposition to the offending pleading the amount of the reasonable expenses incurred because of the filing of the pleading, including costs, reasonable attorney's fees, witness fees, fees of experts, and deposition expenses.

Summary

If a pleading, such as an affidavit of inability to pay, is found to be in violation of the standards set by Section 9.011, the court has the authority to impose sanctions. These sanctions can include the dismissal of a party, which could potentially lead to the dismissal of a divorce case if the affidavit is deemed fraudulent or misleading.

