COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

CONNIE RAY PALMER, Appellant,	§	No. 08-20-00222-CV
	§	Appeal from the
v.	§	112th Judicial District Court
TEXAS DEPARTMENT OF CRIMINAL JUSTICE, Appellee.	§	of Pecos County, Texas
	§	(TC# P-12345-112-CV)

O P I N I O N

Appellant, Connie Palmer, appearing *pro se*, appeals the dismissal of his lawsuit against Appellee, Texas Department of Criminal Justice, pursuant to Chapter 14 of the Texas Civil Practice and Remedies Code. We reverse and remand.

BACKGROUND

Factual Background

Appellant is an inmate at the Wynn Unit of the Texas Department of Criminal Justice ("TDCJ") in Huntsville, Texas. The following facts are as Appellant alleged in his petition, which we must construe as true in considering this appeal. *Univ. of Tex. M.D. Anderson Cancer Ctr. v. McKenzie*, 578 S.W.3d 506, 512 (Tex. 2019). Before his incarceration, Appellant had three lower back surgeries. In 2009, Appellant was first examined by a physician during his TDCJ intake. The

following work restrictions were placed on Appellant's Health Summary for Classification: no lifting above twenty pounds, no bending at the waist, no repetitive squatting, and no climbing. Appellant was also actively treated in prison for chronic high blood pressure and back pain.

On August 8, 2011, Appellant saw an orthopedic specialist and was diagnosed with spinal stenosis with protruding bone to nerve. The specialist recommended surgery, and Appellant's work restrictions were updated to include limited standing. On September 21, 2011, Appellant was assigned to the James Lynaugh Unit of TDCJ in Fort Stockton, Texas. Upon his transfer, he was examined by a doctor at the Lynaugh Unit. The doctor concluded Appellant did not need surgery and treated his back pain with medication.

Appellant was at the Lynaugh Unit in April of 2018, when he was assigned to work in the kitchen. From April 19, 2018 through June 28, 2018, a period of over two months, Appellant was required to work his assignment on several occasions in violation of his on-file work restrictions. Appellant was required to lift trays and drink dispensers weighing more than twenty pounds, scrub trays, clean tables, and the serving line, which all included extended standing, repeated squatting and bending at the waist. The kitchen was also very hot on several occasions. Appellant informed several TDCJ employees of his work restrictions and told them he should not be doing the work assignments, and at one point even presented a printed copy of his work restrictions on file. He was ordered by TDCJ employees to do the work anyway and was told if he refused, a disciplinary case would be filed against him, which would result in loss of good time earned and transfer to higher-security housing. Appellant did the work as ordered.

Throughout this period, Appellant experienced "extreme" back pain, numbness down his leg and foot, difficulty standing, headaches, dizziness, shortness of breath, and chest pain. Appellant submitted several I-6 Forms requesting medical attention and saw several different

health service professionals at the Lynaugh Unit. His blood pressure tested high more than once, and he was prescribed medication for his back pain and high blood pressure. Appellant appealed to medical staff to recommend a change of his job assignment, but they refused. However, Appellant's work classifications were updated to include no temperature extremes on June 11, 2018 and a sedentary-work-only restriction on June 19, 2018.

Procedural Background

On May 18, 2018, Appellant submitted an informal complaint requesting re-evaluation of his job assignment. A TDCJ employee responded there was nothing in his file to prevent him from doing his job; the request was denied. On May 31, 2018, Appellant submitted a Step 1 Administrative Grievance alleging the aforementioned facts. On June 25, 2018, Appellant received the response to his Step 1 grievance, which acknowledged his medical restrictions and that his condition had worsened. On June 28, 2018, Appellant's work assignment was changed to medical squad. On July 6, 2018, Appellant submitted a Step 2 grievance because his concerns had not been fully addressed. He received the response to his grievance on August 16, 2018, which stated Appellant's job assignment had already been changed and if problems persisted, he should contact the classification department.

On September 13, 2018, Appellant executed a complaint for his injuries against Appellee under the Texas Tort Claims Act and Chapter 14 of the Texas Civil Practice and Remedies Code, alleging the aforementioned facts and seeking damages. Appellant attached the following to his complaint: an affidavit of previous filings, an affidavit of indigence with a declaration of inability to pay costs and his inmate trust account statement, an affidavit of exhaustion of administrative remedies with copies of his Step 1 and Step 2 grievances and decisions, copies of his work restrictions, clinic notes from various visits, and I-60s.

Appellee filed its original answer on January 31, 2019 and on April 25, 2019 filed a motion to dismiss Appellant's lawsuit as frivolous and for failure to comply with Chapter 14. On July 29, 2020, the trial court set a pretrial hearing for October 21, 2020. No hearing was held, however, because on October 2, 2020, the trial court dismissed all claims with prejudice. This appeal followed.

DISCUSSION

In two issues, Appellant argues the trial court erred in dismissing his lawsuit.[1]

Standard of Review

Chapter 14 of the Texas Civil Practices and Remedies Code allows an indigent inmate to file suit. TEX.CIV.PRAC.& REM.CODE ANN. § 14.002(a). A trial court can dismiss a Chapter 14 claim if a false affidavit of poverty is filed, if the claim is frivolous or malicious, or if any other false affidavit is filed which the plaintiff knows to be false. *Id*. at § 14.003(a). A trial court may consider the following factors in determining whether a claim is frivolous: "(1) the claim's realistic chance of ultimate success is slight; (2) the claim has no arguable basis in law or in fact; (3) it is clear that the party cannot prove facts in support of the claim; or (4) the claim is substantially similar to a previous claim filed by the inmate." *Id*. at § 14.003(b).

We normally review a Chapter 14 dismissal for abuse of discretion, but when a trial court dismisses a lawsuit as frivolous without a fact hearing, we are limited to reviewing whether the claim has an arguable basis in law. *Camacho v. Rosales*, 511 S.W.3d 82, 85-86 (Tex.App.—El Paso 2014, no pet.). When an inmate fails to exhaust his administrative remedies, the claim has no

[1] In Issue One, Appellant argues the trial court violated his rights with the "continue[d] application of Chapter 14" by dismissing his lawsuit after setting a hearing date. However, Appellant has failed to raise a valid issue here, because under Chapter 14, a trial court can dismiss a claim with or without conducting any hearings. TEX.CIV.PRAC.&REM.CODE ANN. § 14.003. We therefore overrule Issue One and proceed with our analysis of Issue Two.

arguable basis in law. *Retzlaff v. Tex. Dep't of Criminal Justice*, 94 S.W.3d 650, 653 (Tex.App.—Houston [14th Dist.] 2002, pet. denied); *Hamilton v. Williams*, 298 S.W.3d 334, 339-40 (Tex.App.—Fort Worth 2009, pet. denied). This is a legal question we review *de novo*. *Retzlaff*, 94 S.W.3d at 653.

Analysis

In the present case, the trial court's order does not specify the grounds for dismissal, stating only that all claims were dismissed with prejudice "as frivolous and for failure to comply with Chapter 14 of the Texas Civil Practice and Remedies Code." When a trial court order does not specify its grounds, we must affirm if any ground in the accompanying motion before the court is meritorious. *Garza v. Garcia*, 137 S.W.3d 36, 37 (Tex. 2004). In the present case, Appellee's motion to dismiss is the accompanying motion that was before the court. On appeal, Appellant argues the trial court erred in dismissing his case. Appellee argues Appellant's claims have no arguable basis in law because Appellant failed to overcome TDCJ's sovereign immunity, and because Appellant failed to exhaust his administrative remedies as required by Chapter 14. We use Appellee's arguments, as presented both on appeal and its motion to dismiss, to guide our analysis. We first address whether Appellant exhausted his administrative remedies.

Compliance with Chapter 14

Appellee contends Appellant failed to properly exhaust his administrative remedies and the trial court's judgment should therefore be affirmed.[2] We disagree.

[2] Appellee also claims Appellant filed a false affidavit of indigence, barring his suit. We agree that under Chapter 14, a trial court may dismiss a claim if the inmate files a false affidavit of indigence. TEX.CIV.PRAC.&REM.CODE ANN. § 14.003(a). We also agree that if an inmate has money in his trust fund account, he is not considered indigent. *Donaldson v. Tex. Dep't of Criminal Justice-Corr. Institutions Div.*, 355 S.W.3d 722, 725 (Tex.App.—Tyler 2011, pet. denied). Although Appellant's trust fund account had $35.89 at the time of his filing, it also had a $100 hold, resulting more accurately in a balance of negative $64.11. Thus, we find Appellant's affidavit of indigency was not false.

Chapter 14 requires an inmate to file proof of exhaustion of his administrative remedies for claims subject to Section 501.008 of the Texas Government Code. TEX.CIV.PRAC.&REM.CODE ANN. § 14.005(a). Under Section 501.008, an inmate may not file a claim in state court for relief sought against TDCJ that arises while the inmate is incarcerated, until he has received the highest-level written decision provided for in the grievance system, or until 180 days after filing a grievance if he has not received a decision. TEX.GOV'T CODE ANN. § 501.008. The grievance procedures are outlined in the Texas Department of Criminal Justice Offender Orientation Handbook, which provides that inmates must first attempt to resolve the issue informally, then submit a Step 1 Grievance Form within fifteen days of the occurrence of the issue. TEX. DEP'T OF CRIMINAL JUSTICE, OFFENDER ORIENTATION HANDBOOK 73-73 (Feb. 2017)(https://www.tdcj.texas.gov/documents/Offender_Orientation_Handbook_English.pdf). If an inmate is not satisfied with the response to his Step 1 grievance, he has fifteen days to submit a Step 2 grievance. *Id*. The written response to the Step 2 grievance is the highest-level written decision possible. *Id*.

The Supreme Court has held that "proper exhaustion [of administrative remedies] demands compliance with an agency's deadlines." *Woodford v. Ngo*, 548 U.S. 81, 90 (2006). Texas courts have applied this to the exhaustion of remedies requirements of Chapter 14 and Section 501.008, holding that inmates must comply with all deadlines in the grievance process and that courts may dismiss claims for failure to do so. *Leachman v. Dretke*, 261 S.W.3d 297, 310-11 (Tex.App.—Fort Worth 2008, no pet.); *In re Tex. Dep't of Criminal Justice*, No. 07-16-00108-CV, 2016 WL 4688910, at *2 (Tex.App.—Amarillo Aug. 3, 2016, no pet.)(mem. op.).

Appellee argues because Appellant filed his Step 1 grievance on May 31, 2018, all events in his claim that occurred prior to May 16, 2018 are unexhausted and barred for failure to meet the

fifteen-day Step 1 deadline. Case law on this is sparce. We know of only two cases where Texas courts affirmed dismissals of Chapter 14 suits due solely to the inmate's failure to file a Step 1 grievance within fifteen days of the injury or occurrence. *Leachman,* 261 S.W.3d at 310-11; *Washington v. Land,* No. 01-10-00572-CV, 2011 WL 4610764, at *2 (Tex.App.—Houston [1st Dist.] Oct. 6, 2011, pet. denied)(mem. op.).

There are, however, some key differences distinguishing those cases from the present case. First, the courts in *Leachman* and *Washington* reviewed dismissal of the suits for abuse of discretion, rather than *de novo*. *Leachman,* 261 S.W.3d at 303-04; *Washington*, 2011 WL 4610764, at *1. Second, in both cases, the claims arose from one discreet event. In *Leachman*, the inmate complained of the result of a disciplinary hearing that occurred on August 13 and he filed his Step 1 grievance on October 25. *Leachman*, 261 S.W.3d at 310. In *Washington*, the inmate complained of the seizure of his books on September 20, and he filed his Step 1 grievance on October 29. *Washington*, 2011 WL 4610764, at *1. In contrast, Appellant was injured over a period of time—from April 19, 2018 through June 28, 2018. Additionally, in *Leachman*, there was no dispute that the administrative remedies were not exhausted because the Step 1 grievance was returned to the inmate for being untimely filed, whereas in this case, decisions for both Appellant's Step 1 and Step 2 grievances were returned on the merits. *Leachman,* 261 S.W.3d at 310.

We are thus left with the question of how to apply the fifteen-day deadline to a case such as this—where an ongoing injury occurred over a period of time and the administrative decisions were rendered on the merits. We look to cases interpreting the purpose of Chapter 14 and Section 501.008 requirements to guide our analysis. The purpose of the requirements of Sections 14.005 and 501.008 is to ensure that an inmate has exhausted his administrative remedies before filing a lawsuit. *Brewer v. Simental*, 268 S.W.3d 763, 769 (Tex.App.—Waco 2008, no pet.). According to

the Supreme Court, the exhaustion of administrative remedies is required because it protects administrative agency authority by "giv[ing] an agency an opportunity to correct its own mistakes with respect to the programs it administers . . . and [discouraging] disregard of the agency's procedures[,]" which, in turn, promotes efficiency because "claims generally can be resolved much more quickly and economically" before an agency than in court. *Woodford*, 548 U.S. at 89. *See also Fernandez v. T.D.C.J.*, 341 S.W.3d 6, 12 (Tex.App.—Waco 2010, no pet.).

It is clear from the record that Appellant did fully exhaust his administrative remedies. He filed both his Step 1 and Step 2 grievances, alleging essentially the same facts as this complaint, and received written responses on the merits as to both. Appellant gave the agency the opportunity to address the issue, which it partially did by acknowledging his injury and work restrictions, updating his work restrictions, and changing his job assignment. Our sister court in Texarkana declined to affirm a dismissal based solely on an inmate's failure to meet the fifteen-day deadline because it was "clear the TDCJ officials reviewed the grievance and made a determination on the merits of the claim, not on a procedural shortfall." *Wolf v. Tex. Dep't of Criminal Justice, Institutional Div.*, 182 S.W.3d 449, 451 (Tex.App.—Texarkana 2006, pet. denied)(finding that appellant also did not file his complaint within 31 days of receiving his Step 2 response).

Indeed, it is clear that Appellant did not "disregard agency procedures," as evidenced by his numerous attempts to address the issue informally. *Woodford*, 548 U.S. at 89. The TDCJ Offender Orientation Handbook requires that inmates attempt to informally resolve their problem prior to filing a grievance, defining informal resolution as "any attempt to solve the issue at hand." TEX. DEP'T OF CRIMINAL JUSTICE, OFFENDER ORIENTATION HANDBOOK, *Id*. 73-74. Appellant made several such attempts. He spoke with several different TDCJ employees, explaining how his work restrictions prevented him from doing the assigned tasks. He requested and presented a

printed copy of his work restrictions when orally communicating them proved ineffective. He also appealed to medical staff, hoping they would recommend a change of his work assignment. When all these efforts failed, Appellant submitted a request for re-evaluation of his job assignment. When that was denied, he proceeded with his Step 1 grievance.

We do not believe Appellant should be penalized for attempting to resolve his issue informally, as required by administrative guidelines, especially when it is clear the administrative grievance process was fully exhausted. We find that Appellant did comply with Chapter 14 by exhausting his administrative remedies. Additionally, even if we found that Appellant's allegations prior to May 16, 2018 are barred, we could not affirm the trial court's order on that basis alone. The trial court's order dismissed the entire lawsuit, not just the pleadings occurring before May 16, 2018. Accordingly, Appellant would still be able to sue for the aggravation of his back injury occurring on and after May 16, 2018.

The aggravation rule is often utilized in the context of the Federal Employers' Liability Act, but applicable principles are relevant to the present case. For example, a railroad employee recovered for the aggravation of pulmonary disease, even though the initial cause of the disease was barred by the statute of limitations. *Kichline v. Consol. Rail Corp.*, 800 F.2d 356, 361 (3d Cir. 1986). A Texas court applied this rule, holding that a railroad employee would be able to recover for aggravation of time-barred hearing loss if he could show his employer's negligence caused additional injury within the statute of limitations. *Billman v. Missouri Pac. R. Co.*, 825 S.W.2d 525, 528 (Tex.App.—Fort Worth 1992, writ denied). We, also, have acknowledged the aggravation rule, holding it did not warrant recovery for a worker's back injury because the worker "did not plead that he suffered additional injury and that [his employer's] negligence caused the

additional injury." *BNSF Ry. Co. v. Acosta*, 449 S.W.3d 885, 894 (Tex.App.—El Paso 2014, no pet.).

In this case, Appellant is not attempting to recover for his initial back injury; he acknowledges it occurred prior to his incarceration. Rather, Appellant is pleading that Appellee's employees were repeatedly negligent by requiring him to work beyond his work restrictions, despite his protests, causing additional injury to his back and dangerously high blood pressure on numerous occasions. Appellant's work assignment was not changed until June 28, 2018, and he was required to work in the kitchen after May 16, 2018. Thus, even if we held that Appellant's pleadings prior to May 16, 2018 were not exhausted, he still has a cause of action regarding the events after May 16, 2018.

For these reasons, we cannot affirm the trial court's dismissal for failure to exhaust administrative remedies. We hold that Appellant's claims are not barred for failure to comply with Chapter 14.

Waiver of Sovereign Immunity

Appellee argues the trial court's dismissal should be affirmed because sovereign immunity has not been waived in this case. We disagree.

Sovereign immunity deprives a court of subject matter jurisdiction. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 (Tex. 2004). State governmental units have sovereign immunity unless the state consents to suit, which waives immunity. *Id.* A plaintiff must allege a valid waiver of immunity when suing a governmental unit. *Dallas Area Rapid Transit v. Whitley*, 104 S.W.3d 540, 542 (Tex. 2003). The Texas Tort Claims Act ("the Act"), under which Appellant brings his claim, waives sovereign immunity in limited circumstances. *Miranda*, 133 S.W.3d at 224. The Act provides that a governmental unit is liable for "personal injury and death so caused

by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant." TEX.CIV.PRAC.&REM.CODE ANN. § 101.021(2).

Appellant alleges his injuries were caused by Appellee's use of property, specifically, the Lynaugh Unit kitchen and its equipment. The question then becomes: what constitutes "use" of tangible personal or real property under the Act? The governmental unit itself, usually through an employee, must be the user to waive sovereign immunity. *San Antonio State Hosp. v. Cowan*, 128 S.W.3d 244, 245-46 (Tex. 2004)("section 101.021(2) waives immunity for a use of personal property only when the governmental unit is itself the user"); *Tex. Dep't of Criminal Justice v. Rangel*, 595 S.W.3d 198, 207 (Tex. 2020)(Under the Tort Claims Act's immunity waiver, a governmental unit can be liable for certain injuries proximately caused by the 'negligence or a wrongful act or omission of an officer or employee acting within the scope of his employment.'")(quoting *Univ. of Tex. M.D. Anderson Cancer Ctr. v. McKenzie*, 578 S.W.3d 506, 513 (Tex. 2019)); *see also DeWitt v. Harris Cnty.*, 904 S.W.2d 650, 653 (Tex. 1995).

"Use" for purposes of the Act is defined as "to put or bring into action or service; to employ for or apply to a given purpose." *Cowan*, 128 S.W.3d at 246 (citing *Beggs v. Tex. Dep't of Mental Health & Mental Retardation*, 496 S.W.2d 252, 254 (Tex.Civ.App.—San Antonio 1973, writ ref'd)). Although this definition is very broad, it is limited by precedent. For example, a patient committed suicide in a state hospital with his own walker and suspenders, which hospital employees allowed him to have. *Cowan*, 128 S.W.3d at 245. The Texas Supreme Court held that a governmental unit does not use property under the Act "merely by allowing someone else to use it and nothing more." *Id.* at 246. The Texas Supreme Court has also held that "negligent supervision, without more, does not constitute a 'use' of personal property[,]" under the Act. *Tex. A & M Univ. v. Bishop*, 156 S.W.3d 580, 583 (Tex. 2005).

Appellee contends the present case is like *Cowan*, since TDCJ employees did not physically use the property themselves, but merely allowed Appellant to use the kitchen and its equipment. We are unconvinced by this argument. Appellee's employees certainly did more than allow Appellant to use the property—they ordered him to.

It is true that Appellee did not physically handle the kitchen equipment to injure Appellant, but "use" under the Act encompasses more than direct personal handling by an employee. *See Tex. State Tech. Coll. v. Beavers*, 218 S.W.3d 258, 260 (Tex.App.—Texarkana 2007, no pet.); *see also Univ. of Tex. M.D. Anderson Cancer Ctr. v. Jones*, 485 S.W.3d 145 (Tex.App.—Houston [14th Dist.] 2016, pet. denied). For example, in *Texas State College v. Beavers*, a student was injured in an auto shop class. 218 S.W.3d at 260. The college provided the equipment, set it up, instructed the student as to its use, and the student was injured by using it as instructed. *Id*. The court held, "when a governmental unit . . . negligently equips the property, intentionally puts it into service for use by another with full knowledge of its intended use, [] instructs the manner of its use" and the person uses it as intended, sovereign immunity is waived under the Act. *Id*. at 267. Similarly, in *University of Texas M.D. Anderson Cancer Center v. Jones*, the court held when a participant in a study attempted suicide after the university prescribed a drug to her and directed her to take it, when they knew or should have known she had a history of depression, the university used tangible personal property under the Act. 485 S.W.3d at 150-51.

In the present case, like in *Beavers*, Appellee's employees provided the kitchen equipment to Appellant, told him what to do with it, and intentionally put it into service for his use. 218 S.W.3d at 260. Appellant was injured using the kitchen equipment as instructed. Like in *Jones*, Appellee knew or should have known of Appellant's work restrictions and directed him to use the property anyway, which resulted in Appellant's injury. 485 S.W.3d at 150-51. Appellee's use of

the property, however, was more direct than in the examples above—employees ordered Appellant to use the kitchen equipment, threatened punishment if he did not comply, and directly oversaw his use.

Subsection 1 of the Texas Tort Claims Act provides for a waiver of sovereign liability for personal injury or death resulting from an employee's negligent use of a motor-driven vehicle or equipment. TEX.CIV.PRAC.&REM.CODE ANN. § 101.021(1). When a word is used throughout a statute, courts construe it to have the same meaning throughout. *Town of Lakewood Vill. v. Bizios*, 493 S.W.3d 527, 532 (Tex. 2016). Thus, "use" in Subsections 1 and 2 of Section 101.021 has the same meaning. *See Cowan*, 128 S.W.3d at 246 ("there is no reason to construe 'use' differently in section [101.021(1) and] 101.021(2)"). In *County of Galveston v. Morgan*, a truck driver was moving a vehicle to complete a job. 882 S.W.2d 485, 490 (Tex.App.—Houston [14th Dist.] 1994, writ denied). County employees were watching and directing him where to move the truck. *Id*. They instructed him to move too close to a power line, and he was electrocuted. *Id*. The court found if the driver moved contrary to the direction of the employees, he could be fired, and even though he was the one physically driving the truck, the employees "'used or operated' the truck[] by exercising complete control over [its] 'use or operation.'" *Id*. Similarly, in *City of El Campo v. Rubio*, a police officer pulled a family over and arrested the father for driving with an expired license. 980 S.W.2d 943, 944 (Tex.App.—Corpus Christi 1998, pet. dism'd w.o.j.). Neither the mother nor the children were licensed to drive, so the officer instructed the mother on how to drive and told her to follow him back to the station. *Id*. Fearful of staying alone on a dark highway with her children, she did as instructed and was injured when another car struck her. *Id*. The court held the officer used or operated the vehicle because he exercised control over it by ordering the mother to drive, waiving immunity under the Act. *Id*. at 947.

This Court has cited to both *Morgan* and *Rubio*, concluding, "a government employee . . . is considered to have used or operated [a] vehicle if he exercises *direct* and *mandatory* control over the driver's actions." *El Paso Cmty. Coll. Dist. v. Duran*, 510 S.W.3d 539, 543 (Tex.App.—El Paso 2015, pet. denied); *see also City of El Paso v. Aguilar*, 610 S.W.3d 600, 605-06 (Tex.App.—El Paso 2020, no pet.)(city used or operated a float when they directed a third party to drive it forward, running over the plaintiff). We further clarified in *Duran* that the drivers in *Morgan* and *Rubio* "operated the vehicles at the behest of government employees in positions of formal authority because they had no choice in the matter. They felt compelled to obey the employees' orders for fear of losing something significant: in *Morgan*, loss of employment; in *Rubio*, loss of personal safety." *Duran*, 510 S.W.3d at 543.

In the present case, Appellant was ordered by governmental employees, who had authority over him, to use the kitchen equipment. Like the plaintiffs in *Morgan* and *Rubio*, Appellant feared losing something significant if he did not comply—his good time earned and lower-security housing. Thus, Appellee's employees exercised direct and mandatory control over the kitchen property, which constitutes "use" under the Act. We find Appellant alleged a valid waiver of sovereign immunity, and the lawsuit should not have been dismissed as frivolous on these grounds.[3]

[3] Appellee also argues Appellant does not have a constitutional cause of action under Chapter 42 because Section 1983 authorizes a cause of action against a "person," and a governmental unit is not a person under the Chapter. 42 U.S.C. § 1983; *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989). We agree. Appellant has only filed suit against TDCJ, and there can be no cause of action under Section 1983. However, Appellant does not appear to have brought any claims under Section 1983, as he specifically clarified in his reply to Appellee's original answer. We find Appellant has not stated any constitutional cause of action.

Because we have found Appellant fully exhausted his administrative remedies and alleged a valid waiver of sovereign immunity, the trial court erred in dismissing Appellant's claims. Issue Two is sustained.

CONCLUSION

For the foregoing reasons, we reverse the trial court's order dismissing Appellant's claims and remand to the trial court for further proceedings.

July 28, 2022

YVONNE T. RODRIGUEZ, Chief Justice

Before Rodriguez, C.J., Palafox, and Alley, JJ.