

**Affirmed and Memorandum Opinion filed December 30, 2010.**



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

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**NO. 14-09-01030-CV**

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**KENNETH HILL, Appellant**

**V.**

**MICHAEL STEPHENS, CHARLES BRITT, DOMINGO CARILLO,  
and ABEL LEAL, Appellees**

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**On Appeal from the 412th District Court  
Brazoria County, Texas  
Trial Court Cause No. 48224**

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**MEMORANDUM OPINION**

Appellant Kenneth Hill appeals the dismissal of his suit under Chapter 14 of the Texas Civil Practice and Remedies Code. *See* Tex. Civ. Prac. & Rem. Code Ann. §§ 14.001-.014. In three issues, he asserts that the trial court misapplied the law in dismissing his suit and he is entitled to damages. We affirm.

Hill, an inmate confined at the Texas Department of Criminal Justice, filed suit *pro se* and *in forma pauperis*, under 42 U.S.C. § 1983, claiming that his right to be free of cruel and unusual punishment was violated because he was confined in administrative segregation, commonly referred to as solitary confinement, for a total of 22 days. He sought damages from seven correctional officers for their actions surrounding an alleged disciplinary rule violation that led to his solitary confinement.<sup>1</sup>

Hill asserts that appellee Michael Stephens charged him with violating prison rule 23, “creating a disturbance.” Hill was placed in pre-hearing detention for 10 days by appellee Charles Britt. Hill alleged that appellee Domingo Carillo had knowledge that he was illegally confined and authorized his continued confinement. On the tenth day of Hill’s pre-hearing detention, appellee Abel Leal conducted a disciplinary hearing. Hill was found guilty of the violation and assessed 13 days in administrative segregation and other disciplinary measures not at issue here. Hill asserts that after completion of the ordered solitary confinement, the disciplinary conviction was expunged from his record.<sup>2</sup>

The defendants filed a motion to dismiss Hill’s suit pursuant to Chapter 14 of the Texas Civil Practice and Remedies Code, contending that Hill had not asserted a section 1983 claim for alleged illegal confinement because he had no constitutional right not to be placed in solitary confinement. The trial court signed an interlocutory order dismissing the claims against Domingo Carrillo and Abel Leal on July 16, 2009. On November 16, 2009, the trial court signed a final judgment dismissing the entire case, and this appeal followed.

Chapter 14 of the Texas Civil Practice and Remedies Code governs inmate

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<sup>1</sup> Hill later non-suited defendants David Arce, Donna Horn and Linda Hone; consequently, they are not parties to this appeal.

<sup>2</sup> The record reflects that in response to Hill’s grievance, the disciplinary case was expunged due to “an incorrect code of offence.”

litigation. *See* Tex. Civ. Prac. & Rem. Code Ann. §§ 14.001-.014. We review a trial court's Chapter 14 dismissal of an inmate's claims under an abuse of discretion standard. *Retzlaff v. Tex. Dep't of Crim. Justice*, 94 S.W.3d 650, 654 (Tex. App.—Houston [14th Dist.] 2002, pet. denied). A trial court has broad discretion to dismiss an inmate's suit if it finds that the claim asserted is frivolous or malicious. *Martinez v. Thaler*, 931 S.W.2d 45, 46 (Tex. App.—Houston [14th Dist.] 1996, writ denied). A trial court abuses this broad discretion if it acts arbitrarily, capriciously, or without reference to any guiding rules or principles. *Id.*

The trial court did not hold an evidentiary hearing. Therefore, our review is confined to a determination of whether Hill's claims have an arguable basis in law. *Moreland v. Johnson*, 95 S.W.3d 392, 394 (Tex. App.—Houston [1st Dist.] 2002, no pet.). The issue of whether a claim has an arguable basis in law is a legal question that we review de novo. *Id.* A prisoner's claim is frivolous when it alleges the violation of a legal interest that does not exist. *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997).

On appeal, Hill asserts that he is entitled to recover damages as compensation for serving 13 days in solitary confinement.<sup>3</sup> He also asserts that in dismissing his suit, the trial court misapplied the United States Supreme Court's holdings in *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364 (1994) and *Edwards v. Balisok*, 520 U.S. 641, 117 S. Ct. 1584 (1997).

In *Heck*, the United States Supreme Court held that a prisoner's suit for monetary damages as a result of his confinement is not a cognizable section 1983 claim. 512 U.S. at 483, 114 S.Ct. at 2370. To recover damages for an allegedly unconstitutional imprisonment, a section 1983 plaintiff must prove that the conviction has been reversed,

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<sup>3</sup> Hill has variously referred to his time in solitary confinement as being for 13 days, 22 days or 23 days, depending on whether time spent in pre-hearing detention was included. The difference in the length of time is not material to the issues in this case.

expunged, declared invalid, or otherwise questioned by a federal court's issuance of a writ of habeas corpus. 512 U.S. at 486-87, 114 S.Ct. at 2372. In *Edwards v. Balisok*, the Court applied *Heck* and considered whether a prisoner's claim for damages for deprivation of good-time credits as a result of a disciplinary violation is cognizable under section 1983. 520 U.S. at 643, 117 S.Ct. at 1586. The Court concluded that the claim was not cognizable because the prisoner was impliedly attacking the validity of the punishment that had not been previously invalidated. 520 U.S. at 648, 117 S.Ct. at 1589. Hill argues that because his disciplinary violation was expunged, the trial court should have applied these authorities to permit his section 1983 claim to proceed.

Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C.A. § 1983. Thus, a cause of action under section 1983 involves two essential elements: (1) the conduct complained of was committed by a person acting under color of state law, and (2) the conduct deprived a person of rights, privileges, or immunities secured by the Constitution, or the laws, of the United States. *Gordon v. Scott*, 6 S.W.3d 365, 369 (Tex. App.—Beaumont 1999, pet. denied).

Hill has not alleged a violation of a federally protected right that would support a section 1983 claim. Hill's confinement in administrative segregation, without more, does not violate the constitution. *See Sandin v. Conner*, 515 U.S. 472, 475-76, 115 S.Ct. 2293, 2295 (1995); *see also Thomas v. Collins*, 960 S.W.2d 106, 112 (Tex. App.—Houston [1st Dist.] 1997, pet. denied) (holding that administrative segregation is not per se unconstitutional). "Discipline by prison officials falls within the expected perimeters of

the sentence imposed by a court of law.” *Sandlin*, 515 U.S. at 485, 115 S.Ct. at 2301. Administrative segregation is incident to the ordinary life of a prisoner, and absent extraordinary circumstances, it will not constitute a ground for a constitutional claim. *Martin v. Scott*, 156 F.3d 578, 580 (5th Cir. 1998) (affirming dismissal of section 1983 suit complaining of administrative segregation). We conclude that Hill has failed to allege a cognizable section 1983 claim.<sup>4</sup> *See Pichardo v. Kinker*, 73 F.3d 612, 613 (5th Cir.1996) (finding that inmate’s claim under section 1983 had no arguable basis in law because “administrative segregation, without more, simply does not constitute a deprivation of a constitutionally cognizable liberty interest”); *Franco v. State*, No. 03-09-00008-CV, 2009 WL 2195586 \*2 (Tex. App.—Austin Jul. 24, 2009, no pet.) (mem. op.) (same). Because Hill alleged no constitutional violation, the trial court did not abuse its discretion in dismissing Hill’s suit. *See Thomas v. Arthur*, 836 S.W.2d 822, 823 (Tex. App.—Tyler 1992, no writ) (holding that dismissal of an inmate’s section 1983 claim is proper where inmate failed to allege constitutional violation).

In addition to finding that Hill’s claims were frivolous, the trial court granted appellees’ motion to dismiss based on qualified immunity.<sup>5</sup> Hill has not challenged the finding of immunity. An appellant must attack all independent bases or grounds that

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<sup>4</sup> A section 1983 action may lie when the conditions of confinement are challenged. *See Preiser v. Rodriguez*, 411 U.S. 475, 498-99, 93 S.Ct. 1827, 1840-41 (1973). Hill had originally complained about the conditions of his confinement, specifically inadequate running water and the lack of hot water for showers for a period of six days. In response to appellees’ motion to dismiss, Hill filed a pleading in which he stated that he voluntarily dismissed “all allegations concerning the condition of confinement.” A challenge that the disciplinary procedures violated a prisoner’s constitutional rights may also be cognizable. *Wolff v. McDonnell*, 418 U.S. 539, 555, 94 S.Ct. 2963, 2974 (1974). Hill has not challenged the validity of the procedures involved in the disciplinary proceedings, and he specifically pleaded that he did not allege that he was denied due process. He complained only that he was found guilty of a disciplinary violation without sufficient evidence.

<sup>5</sup> The doctrine of qualified immunity shields a governmental official from liability for civil damages under section 1983, provided the official’s conduct does not violate clearly established constitutional rights of which a reasonable person would have been aware. *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738 (1982).

support the trial court's judgment. *See Britton v. Texas Dep't of Criminal Justice*, 95 S.W.3d 676, 681 (Tex. App.—Houston [1st Dist.] 2002, no pet.). If an independent ground fully supports the judgment, but the appellant assigns no error to that independent ground, we may affirm the judgment on that basis. *Id.*; *see also Cooper v. Texas Dep't of Criminal Justice*, No. 14-07-00741-CV, 2009 WL 1312944 \* 1 (Tex. App.—Houston [14th Dist.] May 12, 2009, no pet.) (mem. op.) (affirming dismissal when grounds on which suit was dismissed were not briefed). Therefore, the trial court's judgment may be affirmed on the unchallenged ground of official immunity. *See Leachman v. Dretke*, 261 S.W.3d 297, 315 (Tex. App.—Fort Worth 2008, no pet.) (affirming dismissal of section 1983 claims against public official based on qualified immunity when plaintiff failed to allege facts stating constitutional claims).

We overrule Hill's issues and affirm the trial court's judgment.

#### PER CURIAM

Panel consists of Chief Justice Hedges and Justices Yates and Anderson.