

ARKANSAS SUPREME COURT

No. 07-398

Opinion Delivered September 13, 2007

RICKEY BROOKS
Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION, WARDEN GRANT
HARRIS, WARDEN MARSHALL REED,
WARDEN GAYLON LAY
Appellees

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE BRIEF [CIRCUIT
COURT OF LINCOLN COUNTY, LCV-
2006-85, HON. ROBERT HOLDEN
WYATT, JR., JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

Rickey Brooks, appellant herein, is an inmate in the custody of the Arkansas Department of Correction (ADC). He filed a pro se petition for declaratory judgment against the ADC director and others, seeking review by the Circuit Court of Lincoln County of certain administrative regulations. The petition was dismissed, and an appeal from the order has been lodged here. Appellant, who is proceeding pro se on appeal, now seeks an extension of thirty days' time to file the appellant's brief.

We need not consider the motion as it is apparent that appellant could not prevail in this appeal if it were permitted to go forward. Accordingly, we dismiss the appeal and hold the motion moot. This court has consistently held that an appeal from an order that denied a petition for postconviction relief, or other civil remedy, will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam);

Seaton v. State, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam).

Appellant complained in his petition for declaratory judgment that ADC was incorrectly applying the Administrative Regulations (AR) and Administrative Directives (AD), promulgated by ADC, regarding meritorious furloughs. He claimed that his Equal Protection rights under the Fourteenth Amendment to the United States Constitution were being violated as he had a protectable liberty interest at stake. Further, he stated in his amended petition that he had no means of judicial review of ADC's actions other than seeking a petition for declaratory judgment.

He sought a number of remedies in his petition and amended petition filed in the trial court. These remedies included conducting a hearing, issuing a temporary restraining order to prevent his being transferred, issuing a preliminary injunction, issuing a moratorium on ADC's ability to issue or deny furloughs "until the matter has been resolved," issuing an order "enumerating the rights" of appellant, and awarding compensatory damages. Further, appellant sought class-action status for his claims.

The State filed a motion to dismiss the petition pursuant to Ark. R. Civ. P. 12(b)(2) and (6). The trial court granted the State's motion, finding that appellant failed to state a claim upon which relief could be granted. Subsequently, appellant timely filed a pro se notice of appeal.

This court will not reverse a finding of fact unless clearly erroneous. *Sanford v. Sanford*, 355 Ark. 274, 137 S.W.3d 391 (2003). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left, on the entire record, with a definite and firm conviction that a mistake had been made. *Id.* A trial court's conclusion on a question of law, however, is given no deference on appeal. *Id.*

With regard to actions for declaratory judgment, in *Martin v. Equitable Life Assurance*

Society, 344 Ark. 177, 40 S.W.3d 733 (2001), we stated:

A declaratory judgment declares rights, status, and other legal relationships whether or not further relief is or could be claimed. The proceeding is intended to supplement rather than supercede ordinary causes of action. Declaratory-judgment procedure is not a proper means of trying a case. A declaratory-relief action is not a substitute for an ordinary cause of action. Rather it is dependent on and not available in the absence of a justiciable controversy.

344 Ark. at 181, 40 S.W.3d at 736 (internal citations omitted). Typically, declaratory relief will be utilized to determine the construction and validity of a “deed, will, written contract, or other writings” when the respective rights and status of parties are affected. Ark. Code Ann. § 16-111-104 (1987).

Here, appellant believed that he was entitled to meritorious furloughs. He argued that ADC’s enforcement of its own policies was incorrect, and he sought judicial review of ADC’s decisions. While appellant did include a request that the trial court issue an order “enumerating the rights” of appellant, the actual result appellant desired was to overturn the decisions made by ADC, to receive the furloughs to which he believed he was entitled, and to direct ADC to correct any retaliatory actions he believed were taken against him. The underpinnings of his petition were tantamount to an appeal. *McKinnon v. Norris*, 366 Ark. 404, ___ S.W.3d ___ (2006) (per curiam). Appellant admitted as much when he stated in his amended petition that he sought judicial review of ADC’s actions. That is not the proper function of a declaratory judgment.

Our declaratory judgment act “was not intended to allow *any* question to be presented by *any* person; the matters must first be justiciable.” *Andres v. First Ark. Development Finance Corp.*, 230 Ark. 594, 606, 324 S.W.2d 97, 104 (1959) (emphasis in original). The stated legislative purpose of a declaratory judgment is “to settle and to afford relief from uncertainty and insecurity with respect

to rights, status, and other legal relations.” Ark. Code Ann. § 16-111-102(b) (1987). Here, the legal rights as between appellant and ADC have already been established in that appellant is an inmate who is subject to the rules and regulations promulgated by ADC. *McKinnon, supra*.

In that regard, we have recognized that administrative agencies, due to their specialization, experience, and greater flexibility of procedure, are better equipped than courts to analyze legal issues dealing with their agencies. *First Nat'l Bank v. Arkansas State Bank Comm'r*, 301 Ark. 1, 781 S.W.2d 744 (1989). This accounts for the limited scope of review of administrative action and the reluctance of a court to substitute its judgment for that of the agency. *Id.* In particular, the administration of prisons has generally been held to be beyond the province of the courts. *McKinnon, supra*; *Stevens v. State*, 262 Ark. 216, 555 S.W.2d 229 (1977); *Walker v. Lockhart*, 713 F.2d 1378 (8th Cir.1983). Therefore, we have consistently declined to dictate the operation of the Arkansas Department of Correction. *Martin v. State*, 340 Ark. 719, 13 S.W.3d 576 (2000) (per curiam).

The trial court in the instant matter found that appellant failed to state a claim upon which relief could be granted. We cannot say that the trial court’s decision was clearly erroneous, and dismiss the appeal.

Appeal dismissed; motion moot.