



COURT OF APPEALS  
EIGHTH DISTRICT OF TEXAS  
EL PASO, TEXAS

MICHAEL HOSEA,	§	No. 08-21-00049-CV
	§	Appeal from the
	§	112th District Court
v.	§	
ROBERT ALAMANZA, LORIE DAVIS,	§	of Pecos County, Texas
BRYAN COLLIER, JOHN/JANE DOE,	§	
KAYLA GARZA, and DORA MEJIA,	§	(TC# P-12649-112-CV)
	§	
Appellees.	§	

**OPINION**

Appellant Michael Hosea, appearing pro se, appeals the dismissal of his lawsuit against Appellees Robert Alamanza, Lorie Davis, Bryan Collier, John/Jane Doe, Kayla Garza, and Dora Mejia under chapter 14 of the Texas Civil Practice and Remedies Code. We affirm in part and reverse in part.

**I. BACKGROUND**

**A. Factual Background**

Appellant is an inmate at the N5 Facility of the Texas Department of Criminal Justice in Fort Stockton, Texas. In July 2020, he filed suit against Appellees, all of whom are officials of the N5 Facility, alleging violations of his rights under the Eighth and Fourteenth Amendments to

the United States Constitution. Appellant also claims Appellees are denying him the ability to access the courts. He filed a supplemental petition in November 2020 that discarded all of his claims except his access-to-court claim. As explained below, legal principles governing our review require that we take as true the facts alleged in the Appellant's petition. *See Camacho v. Rosales*, 511 S.W.3d 82, 86 (Tex.App.--El Paso 2014, no pet.). The following facts are as stated in Appellant's original and supplemental petitions.

The N5 Facility consists of dormitory-style housing populated by approximately 500 to 600 prisoners. Appellant, who has several pending civil actions, claims the absence of electrical outlets in the housing area prevents him from using his typewriter to complete legal briefing. As a result, the law library or "dayroom" are the only places Appellant can perform legal work. The N5 Facility, however, limits the number of inmates in these rooms because of the COVID-19 pandemic. And the law library and dayroom are shut down if an inmate or staff member contracts COVID-19. These limitations have forced Appellant to do legal work in his bed. Appellant also states that the N5 Facility's law library officer does not have sufficient knowledge of legal rules, policies, or statutes to obtain the requested legal authorities that Appellant needs for his pending cases.

Appellant concludes that the N5 Facility's deficiencies "hindered [him] from litigating the civil actions under his name" and that "it is likely [he] will lose an action in light of an extended COVID-19 lock-downs." He also claims that he has had to seek an extension of time to file documents because of his inability to work at the N5 Facility. As a result, he requested an injunction requiring Appellees to transfer him to a facility with adequate legal resources.

## **B. Appellees' Motion to Dismiss**

Appellees filed a motion to dismiss Appellant's lawsuit under chapter 14 of the Texas Civil Practice and Remedies Code. In that motion, Appellees contend that Appellant's access-to-court claim is frivolous because it has no basis in law or fact. Specifically, Appellees claim that Appellant failed to plead that the alleged deficiencies of the N5 Facility caused an "actual injury" that hindered his efforts to pursue any of his legal claims.

Appellees also sought dismissal based on Appellant's failure to follow chapter 14's procedural rules. They assert that Appellant did not provide sufficient "operative facts" describing other actions he has brought as a pro se litigant as required by section 14.004. And they claim he failed to attach administrative grievances with his petition in violation of section 14.005 of chapter 14. Appellant, however, did file a declaration attaching the N5 Facility's denial of his access-to-court administrative grievance.

## **C. Trial Court's Order**

The trial court heard Appellees' motion to dismiss, and after arguments from both sides, the trial court stated it was denying the request for an injunction to be transferred to another unit. A week later, the trial court issued a written order dismissing the remainder of Appellant's claims with prejudice without stating a basis for its ruling.

Appellant complains on appeal that the trial court erred when it dismissed his claims under section 14.005 for failing to attach an affidavit showing he exhausted his administrative remedies. Also, while not delineated as a separate issue, Appellant argues throughout his brief that if the trial court properly dismissed his claim, it should have dismissed it without prejudice.

## II. STANDARD OF REVIEW

Chapter 14 governs litigation brought by an inmate who files an affidavit or unsworn declaration of inability to pay costs. TEX.CIV.PRAC. & REM.CODE ANN. § 14.002(a). Appellant’s lawsuit is subject to chapter 14 because he filed an affidavit of indigence. Section 14.003 of chapter 14 provides that a court may dismiss a claim if it is frivolous or malicious. *Id.* § 14.003(a)(2). In making that determination, the court may consider whether the claim has any arguable basis in law or fact. *Id.* § 14.003(b)(2). A claim has no basis in law or fact if it is premised on (1) wholly incredible or irrational factual allegations, or (2) an indisputably meritless legal theory. *Dehorny v. Talley*, 630 S.W.3d 297, 301-02 (Tex.App.--El Paso 2021, no pet.). We review a chapter 14 dismissal for abuse of discretion. *Camacho*, 511 S.W.3d at 85. Where, as here, the trial court dismisses a claim without specifying on which grounds its judgment rests, we may affirm under any applicable legal theory. *Id.* In making this assessment, we consider the inmate’s allegation as true and review his pro se pleadings “by standards less stringent than those applied to formal pleadings drafted by lawyers . . . .” *Dehorny*, 630 S.W.3d at 302.

## III. APPLICABLE LAW

In *Bounds v. Smith*, 430 U.S. 817, 828 (1977), the United States Supreme Court held that “the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.” Thirty years later, in *Lewis v. Casey*, 518 U.S. 343, 350-51 (1996), the Court clarified *Bounds* by finding that while it acknowledged the already well-established right of access to the courts, *Bounds* did not establish “an abstract, freestanding right to a law library or legal assistance.” Consequently, an inmate

cannot present a case “simply by establishing that his prison’s law library or legal assistance program is subpar in some theoretical sense.” *Id.* at 351.

An inadequate law library or legal assistance program can deprive an inmate of his right of access to the courts *if* it hinders efforts to pursue a legal claim in court. *Id.* This “actual injury” requirement derives from the standing doctrine, which prevents the courts from undertaking tasks assigned to the political branches. *Id.* at 349. As the *Lewis* court explained, it is the role of courts to provide relief to claimants “who have suffered, or will imminently suffer, actual harm . . . .” *Id.* It is the duty of the political branches of State and Federal governments to manage prisons so that inmates’ right to access the courts is not impeded. *Id.* Both the United States Supreme Court and the Texas Supreme Court define “actual injury” for standing purposes as “an invasion of a legally protected interest which is (a) concrete and particularized,” and “(b) actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Heckman v. Williamson County*, 369 S.W.3d 137, 154 (Tex. 2011), *quoting Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (internal quotation marks omitted).

## **IV. DISCUSSION**

### **A. Dismissal Under Chapter 14**

#### *1. Application of section 14.005 to this case*

Appellant claims on appeal that the trial court abused its discretion by dismissing his lawsuit under the exhaustion of remedies requirements from section 14.005 of chapter 14. But it is unlikely the trial court relied on section 14.005.

Trial courts must dismiss an inmate’s case under section 14.005 if they do not file an unsworn declaration with their petition showing they have exhausted all administrative remedies before filing in court. Appellant abandoned all of his claims except his access-to-court claim.

And he filed a declaration attaching the N5 Facility's written denial of his access-to-court grievance. As a result, while the trial court did not specify which section of chapter 14 it was relying on, it could not have dismissed Appellant's case under section 14.005.

2. *Application of section 14.003 to this case*

While section 14.005 is not applicable in this case, we affirm the trial court's dismissal if any legal theory supports it. *Camacho*, 511 S.W.3d at 85. Section 14.003 of chapter 14 requires inmates to plead sufficient facts to allow a court to determine whether their claim has a basis in law or fact. Appellant failed to meet this standard. Consequently, the trial court did not abuse its discretion by dismissing his access-to-court claim as frivolous.

To appropriately plead an access-to-court claim, an inmate must describe the alleged deficiencies of the prison. He must also allege how those deficiencies have interfered with his ability to litigate a claim. *Lewis*, 518 U.S. at 351. Failure to plead an "actual injury" of this type deprives an inmate of standing to sue in court. *Id.* at 348. Even liberally construing Appellant's pro se petition, and taking his allegations as true, as we must at this stage of the litigation, Appellant has not alleged that any of the N5 Facility's deficiencies have hindered his ability to access the court system. His claims that the N5 Facility's COVID-19 restrictions and inadequate law library are "hindering [him] from litigating" his civil actions and that "it is likely [he] will lose" an action are hypothetical at best. And standing alone, a request for an extension of time to file a pleading is not an injury. An "actual injury" requires a concrete, particularized, and imminent invasion of a legally protected interest. *Heckman*, 369 S.W.3d at 154. As pled, Appellant's injuries are hypothetical. Consequently, the trial court did not abuse its discretion by dismissing his lawsuit under chapter 14.

## **B. Dismissal with Prejudice**

Appellant argues throughout his brief that the trial court erred in dismissing his claim with prejudice. On that point, we agree.

A dismissal with prejudice is a ruling on the merits. *Hamilton v. Williams*, 298 S.W.3d 334, 340 (Tex.App.--Fort Worth 2009, pet. denied). And if a trial court's dismissal is based on the conclusion the inmate's claim has no arguable basis in law, then a dismissal with prejudice is appropriate. *Id.* But if the dismissal is based on a procedural defect, then the dismissal should be without prejudice. *Hickman v. Adams*, 35 S.W.3d 120, 124 (Tex.App.--Houston [14th Dist.] 2000, no pet.) ("We hold that a dismissal for failure to comply with the conditions in section 14.004 is not a dismissal on the merits, but rather an exercise of the trial court's discretion under chapter 14 of the Civil Practice and Remedies Code.").

The trial court did not specify on which basis it dismissed Appellant's lawsuit. But it could not have dismissed the case for lacking an arguable basis in law. Appellant's only remaining claim at the motion to dismiss hearing was his access-to-court claim, which the United States Supreme Court has recognized as a cause of action for more than forty-five years. *See Bounds*, 430 U.S. at 828. Appellant went awry by failing to plead facts demonstrating the N5 Facility's alleged deficiencies impeded his access to the courts. As a result, as pled, his claim lacked an arguable basis in fact and was appropriately dismissed. We have held, however, that when a court dismisses a plaintiff's case for failing to allege sufficient facts to demonstrate a cognizable claim, it should give him the opportunity to amend his pleadings. *De Los Santos v. Heldenfels Enterprises, Inc.*, 632 S.W.3d 584, 589 (Tex.App.--El Paso 2020, no pet.); *see also Hickman*, 35 S.W.3d at 125. If facts exist showing the N5 Facility's practices have harmed Appellant, he should not be forever foreclosed from asserting his claim. Consequently, while the trial court

appropriately dismissed the Appellant’s petition, the dismissal should be without prejudice. As a result, we affirm the trial court’s dismissal of the access-to-court claim but reform the dismissal to be without prejudice to refiling.

## V. CONCLUSION

We affirm the dismissal of the access-to-court claim but reform the dismissal to be without prejudice to refiling.

JEFF ALLEY, Justice

June 30, 2022

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