



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

MICHAEL HOSEA TDCJ # 00711435,	§	No. 08-21-00204-CV
Appellant,	§	Appeal from the
v.	§	112th District Court
EDUARDO DOMINGUEZ, JR.,	§	of Pecos County, Texas
JAMADRE ENGE, AND	§	(TC# P-12744-112-CV)
ERIKA L. WILLIAMS,	§	
Appellees.	§	

OPINION

Appellant, Michael Hosea, appearing pro se, appeals the dismissal of his suit against Appellees, Eduardo Dominguez, Jr., Jamadre Enge, and Erika A. Williams, under Chapter 14 of the Texas Civil Practice and Remedies Code. We affirm.

I. BACKGROUND

A. Factual Background

Appellant is an inmate at the N5 Facility of the Texas Department of Criminal Justice in Fort Stockton, Texas. He sued Appellees, all officials at the Fort Stockton facility, for conversion, violation of the Texas Theft Liability Act, and violation of his constitutional right to due process of law. Appellant sued Appellees in their individual capacities seeking damages in the sum of \$100,000.00. Appellant alleges the following facts in his amended petition, and we must take these

facts as true in this appeal of Appellees' motion to dismiss. *See Camacho v. Rosales*, 511 S.W.3d 82, 86 (Tex. App.—El Paso 2014, no pet.).

On September 24, 2020, at approximately 11:15 p.m., Appellee Dominguez, a supervisor at the N5 Facility, entered Appellant's housing area for the purpose of conducting a security check and to see whether the prisoners' property was properly stored. Dominguez noticed a large bag of law books and paperwork under Appellant's bunk. Appellant explained he was awaiting approval for subsequent storage and the bag contained paperwork for pending civil actions. Dominguez took the bag from under the bunk without asking for Appellant's ID card.

At breakfast the following morning, Appellant saw Appellee Williams and explained to her what had transpired. Williams said she would e-mail the law library officer to confirm the allegations about the subsequent storage container.

Appellant was never called to be present during the search of the legal documents. More than 48 hours after the incident, Appellant was called to Dominguez's office and was told he would be receiving a disciplinary report for possession of contraband. No confiscation papers were issued, and Appellant was not allowed to review what was missing in the presence of Dominguez and Williams. Appellees refused to return the property on Appellant's demand.

Appellant filed two grievances, one challenging the unlawful seizure of his legal property, while the legal property was in the possession of Dominguez and Williams and the other complaining of retaliation and arguing that his rights of due process and access to courts had been violated. On October 12, Appellee Enge, facility grievance decisionmaker, held no procedural or due process issues were noted.

A disciplinary hearing was timely conducted. Appellant was found guilty and was assessed loss of 20 recreation days. The regional office, however, ultimately overturned the disciplinary case.

The paperwork removed from under Appellant's bunk included two law books and copies of five habeas petitions Appellant used for research and writing, purchased for him by his family or friends; paperwork from seven grievance proceedings; and various other paperwork relating to pending cases. Items missing when the property was returned to him included grievances relating to a pending action along with his copies of the pleadings in the same action.

B. Appellees' Motion to Dismiss

Appellees moved to dismiss all Appellant's claims pursuant to Chapter 14 of the Texas Civil Practice and Remedies Code. Appellees urged Appellant's suit should be dismissed for failure to comply with the procedural requirements of Chapter 14 because he did not state the operative facts in his declaration listing the previous lawsuits he has filed, and he did not provide a certified copy of his inmate trust fund account statement.

Appellees also argued Appellant's claims should be dismissed as frivolous with no basis in law pursuant to Chapter 14 because he did not overcome Defendants' sovereign immunity and because he failed to state valid claims, both because he did not demonstrate that he exhausted his administrative remedies and on the merits of the claims.

C. The Trial Court's Order

The trial court sent a notice of hearing stating that the motion to dismiss would be heard by submission. Eight days after the date noticed for submission, the trial court issued its order dismissing the case. The order did not state the basis for its decision, other than stating that

Appellant's claims were dismissed with prejudice for failure to comply with Chapter 14 of the Texas Civil Practice and Remedies Code.

Appellant argues the trial court abused its discretion because it failed to hold an in-person hearing on his motion to dismiss. He also argues the trial court erred because it dismissed his claims with prejudice.

II. STANDARD OF REVIEW

Chapter 14 of the Civil Practice and Remedies Code dictates procedures governing lawsuits filed by inmates claiming an inability to pay costs. *Camacho*, 511 S.W.3d at 85. We typically review dismissal of inmate litigation under Chapter 14 for an abuse of discretion. *Id.* However, we review a determination that a case was dismissed because it had no arguable basis in law, under section 14.003(b)(2) of that same chapter, using a de novo standard. *Id.* at 86.

When a trial court's dismissal does not specify the grounds for its determination, we may affirm under any applicable legal theory. *Id.* at 85. In reviewing the pleadings, we take the inmate's allegations as true and, when the inmate is pro se, we review them using standards less stringent than those applied to pleadings drafted by lawyers. *Id.* at 86.

A court may dismiss an inmate's claim under Chapter 14 if it determines the claim is frivolous or malicious. TEX. CIV. PRAC. & REM. CODE ANN. § 14.003(a)(2). One basis for a determination of frivolity is whether the claim has any arguable basis in law or in fact. *Id.* § 14.003(b)(2). If no fact hearing is held, we are limited to reviewing whether the claim had an arguable basis in law. *Camacho*, 511 S.W.3d at 86. "A claim has no arguable basis in law only if it is based on (1) wholly incredible or irrational factual allegations; or (2) an indisputably meritless legal theory." *Id.*

A dismissal with prejudice, which is a ruling on the merits of a case, is appropriate if the trial court has determined an inmate’s claim has no arguable basis in law. *Hosea v. Alamanza*, No. 08-21-00049-CV, 2022 WL 2378003, at *3 (Tex. App.—El Paso June 30, 2022, no pet.) (citing *Hamilton v. Williams*, 298 S.W.3d 334, 340 (Tex. App.—Fort Worth 2009, pet. denied)).

A trial court’s decision whether to hold a hearing on a Chapter 14 motion to dismiss is reviewed for abuse of discretion. *Williams v. Brown*, 33 S.W.3d 410, 411 (Tex. App.—Houston [1st Dist.] 2000, no pet.).

III. DISCUSSION

A. Failure to Hold a Hearing on the Chapter 14 Motion to Dismiss

Appellant asserts his constitutional right to procedural due process includes a right to be heard in an oral hearing. The trial court did not conduct an oral or evidentiary hearing; instead, it heard Appellees’ motion to dismiss by submission.

An inmate does not have an absolute right to appear personally in court in a civil case. *In re Z.L.T.*, 124 S.W.3d 163, 166 (Tex. 2003). A party’s due process right to be present at a civil trial is not absolute. *In re T.B.*, 594 S.W.3d 773, 777 (Tex. App.—Waco 2019, no pet.). Moreover, a court acting on a motion to dismiss under Chapter 14 is not required to hold a hearing. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.003(c) (“In determining whether [to dismiss], the court *may* hold a hearing” [Emphasis added]). This Court previously noted a trial court can dismiss a claim under Chapter 14 with or without conducting a hearing. *See Palmer v. Tex. Dep’t Crim. Just.*, No. 08-20-00222-CV, 2022 WL 2981166, at *2 (Tex. App.—El Paso July 28, 2022, no pet.); *see also Hamilton v. Pechacek*, 319 S.W.3d 801, 808 (Tex. App.—Fort Worth 2010, no pet.).

Therefore, we conclude the trial court did not abuse its discretion in considering the motion to dismiss on submission.

B. Sovereign Immunity

Appellant brought claims for conversion and theft under the Texas Theft Liability Act, all against Appellees in their individual capacities. Appellees argue the trial court properly dismissed Appellant's claims because sovereign immunity would, in all likelihood, bar them. *See Lopez v. Serna*, 414 S.W.3d 890, 895 (Tex. App.—San Antonio 2013, no pet.); TEX. CIV. PRAC. & REM. CODE ANN. § 14.003(b)(1).

A government employee may be sued in his individual capacity because government employees are individually liable for their own torts. *Demar v. Garcia*, No. 13-19-00182-CV, 2020 WL 3396602, at *2 (Tex. App.—Corpus Christi-Edinburg June 18, 2020, no pet.) (mem. op.) (citing *Franka v. Velasquez*, 332 S.W.3d 367, 383 (Tex. 2011)). However, the Texas Tort Claims Act (TTCA) has an election of remedies provision, which provides:

If a suit is filed against an employee of a governmental unit based on conduct within the general scope of that employee's employment and if it could have been brought under this chapter against the governmental unit, the suit is considered to be against the employee in the employee's official capacity only.

TEX. CIV. PRAC. & REM. CODE ANN. § 101.106(f). A government employee "is entitled to a dismissal when the plaintiff's suit (1) is based on conduct within the scope of the defendant's employment with a governmental unit and (2) could have been brought against the governmental unit under the TTCA." *Demar*, 2020 WL 3396602, at *2 (citing *Franka*, 332 S.W.3d at 369).

A government employee acts within the scope of his employment for purposes of the TTCA when he performs duties lawfully assigned to him by a competent authority. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 101.001(5). Appellant alleges Appellees confiscated his property while conducting a security check. Appellant has not alleged any independent course of conduct not intended to serve any purpose of the prison. *See Alexander v. Walker*, 435 S.W.3d 789, 792

(Tex. 2014). Accordingly, we conclude Appellant's suit is based on conduct that is within the scope of Appellees' employment.

Because Appellant's conversion and theft claims are for actions taken by Appellees in the scope of their employment, they could have been brought under the TTCA. *See Demar*, 2020 WL 3396602, at *2. Thus, the election of remedies provision applies, and Appellant's claims against Appellees are in their official, not individual, capacities. *Id.* Sovereign immunity, however, bars intentional tort suits against state employees while acting in their official capacities. *Lopez*, 414 S.W.3d at 895. Therefore, Appellant's conversion and theft claims lack an arguable basis in law and the trial court did not err in dismissing those claims with prejudice.

C. Failure to State a Due Process Claim

In his amended petition, Appellant alleged his due process rights were violated because the disciplinary infraction written against him was held invalid. Appellees urge the trial court properly dismissed Appellant's due process claim with prejudice because he failed to allege sufficient facts to state a claim.¹ There is no due process violation when a wrongly accused inmate is given an adequate state procedural remedy to challenge the accusations. *Grant v. Thomas*, No. 94-50491, 1994 WL 558835, at *1 (5th Cir. Sept. 23, 1994) (citing *Collins v. King*, 743 F.2d 248, 253-54 (5th Cir. 1984)). Here, Appellant challenged the allegations against him through the grievance process and the disciplinary decision was overturned on his appeal. The fact that a disciplinary action was overturned, does not, by itself, indicate a denial of due process. *Hollins v. Holman*, No. 6:17CV356, 2018 WL 286263 (E.D. Tex. Jan. 4, 2018). Therefore, the trial court did not err in dismissing these claims with prejudice.

¹ On appeal, Appellant also alleges his due process rights were violated because he was not afforded a hearing on Appellees' motion to dismiss, however, we have previously held above this issue is without merit.

IV. CONCLUSION

The trial court did not abuse its discretion in dismissing Appellant's case without a hearing because there was no right to a hearing in this instance.

The trial court did not err in dismissing Appellant's claims for conversion and theft because these claims are barred by sovereign immunity. The trial court did not err in dismissing Appellant's claim for violating his due process rights regarding his disciplinary action because he had an adequate procedural remedy. These claims had no arguable basis in the law, thus dismissal with prejudice was appropriate.

For these reasons, we affirm the trial court's dismissal with prejudice.²

SANDEE B. MARION, Chief Justice (Ret.)

December 6, 2022

Before Rodriguez, C.J., Alley, J., and Marion, C.J. (Ret.)
Marion, C.J. (Ret.) (Sitting by Assignment)

² Because we affirm the trial court's decision on these grounds, we do not address whether Appellant complied with other requirements of Chapter 14.