Affirmed and Memorandum Opinion filed December 20, 2016.

In The

Fourteenth Court of Appeals

NO. 14-15-00437-CV

RICHARD A. DUNSMORE, Appellant

V.

(MADELINE) ORTIZ & M.R. GUNN, Appellees

On Appeal from the 412th District Court
Brazoria County, Texas
Trial Court Cause No. 76312-I

M E M O R A N D U M O P I N I O N

Richard A. Dunsmore, an inmate incarcerated in the Texas Department of Criminal Justice (TDCJ), challenges the trial court's dismissal of his claim for injunctive relief against appellees Madeline Ortiz and M.R. Gunn (collectively, appellees), both employees of the TDCJ. Specifically, Dunsmore sought (1) removal of certain pre-parole conditions—required attendance in TDCJ substance abuse programs—that he urged were effectively delaying his parole date

and (2) an order requiring appellees to immediately enroll him in a certain class or permitting him to take that class after he was placed on parole. We affirm.

Background

Dunsmore filed his petition for injunctive relieve against appellees in March 2014. In it, he asserted that the TDCJ wrongly required him to participate in various pre-parole programs. Dunsmore sought an order enjoining appellees from requiring him to participate in these programs or an order requiring appellees to enroll him in these programs as soon as possible. Dunsmore based his entitlement to relief on the interference of these ITP requirements on his "liberty interest" in being paroled.

In response, appellees moved to dismiss Dunsmore's request for relief under Chapter 14 of the Texas Civil Practice & Remedies Code, asserting that his claims were frivolous. Among other reasons, appellees explained that Dunsmore had no liberty interest in being placed on parole. Thus, according to appellees, Dunsmore had not articulated a legitimate basis for injunctive relief.

Dunsmore replied and filed numerous other motions concerning the appointment of counsel to represent him. After a hearing on May 6, 2015, the trial court signed an order dismissing Dunsmore's case as frivolous. This appeal timely followed.

Analysis

On appeal, as best we can discern from his briefing,[1] Dunsmore complains that (1) he was denied access to TDCJ programs based on his disability, in violation of the Americans with Disabilities Act (ADA), and (2) he was improperly

[1] Dunsmore has not identified in his briefing the trial court rulings from which he appeals. Instead, he requests that we remand to the trial court for a "do over."

denied the appointment of "IOLTA funded" trial counsel. We address Dunsmore's complaint regarding the alleged ADA violation first.

Due Process Violation

In his petition, Dunsmore sought injunctive relief based on asserted violations of his due process rights; he did not complain in his petition that the TDCJ's failure to enroll him in various pre-parole programs violated the Americans with Disabilities Act. Thus, the argument he makes on appeal does not comport with that made in the trial court. To preserve error for appeal, a party's argument on appeal must correspond with his argument in the trial court. *See, e.g.*, *Isaacs v. Bishop*, 249 S.W.3d 100, 113 n.13 (Tex. App.—Texarkana 2008, pet. denied); *Wohlfahrt v. Holloway*, 172 S.W.3d 630, 639–40 (Tex. App.—Houston [14th Dist.] 2005, pet. denied). Dunsmore's appellate complaint does not correspond with his arguments in the trial court; thus he has not preserved this issue for our review.

Further, to the extent that Dunsmore raises a due process complaint regarding pre-parole conditions, Dunsmore has no due process right to parole. Dunsmore has not asserted that he has completed his sentence and is not being released; instead, he asserts that his eligibility for parole has been delayed. But the United States Supreme Court has recognized that there is no constitutional right to be released on parole before the expiration of a valid sentence. *See Board of Pardons v. Allen*, 482 U.S. 369, 378 n.10 (1987) (explaining that "statutes or regulations that provide that a parole board 'may' release an inmate on parole do not give rise to a protected liberty interest"); *Greenholtz v. Inmates of the Neb. Penal & Correctional Complex*, 442 U.S. 1, 11 (1979) (holding that a statute which "provides no more than a mere hope that the benefit will be obtained . . . is not protected by due process"); *see also Johnson v. Rodriguez*, 110 F.3d 299,l 308 (5th

Cir. 1997) (explaining that Texas inmates "have no protected liberty interest in parole). Because Dunsmore has not established a due process violation, his first issue lacks merit.

For the foregoing reasons, Dunsmore's first issue is overruled.

No Right to Counsel

Dumsmore additionally asserts that the trial court erred by refusing to appoint counsel in this case. Dunsmore raised this issue in the trial court via several motions to appoint counsel.

A district judge has the discretion to appoint counsel for an indigent party in a civil case. *See* Tex. Gov't Code § 24.016. But the Texas Supreme Court has never recognized a right to counsel in civil cases. *See Travelers Indem. Co. of Conn. v. Mayfield*, 923 S.W.2d 590, 594 (Tex. 1996); *see also Harris v. Civil Serv. Comm'n for Mun. Employees of the City of Houston*, 803 S.W.2d 729, 731 (Tex. App.—Houston [14th Dist.] 1990, no pet.) ("Neither the Texas nor United States Constitution guarantees a right to counsel in a civil suit"). The *Mayfield* court noted, however, that "in some exceptional cases, the public and private interests at stake are such that the administration of justice may best be served by appointing a lawyer to represent an indigent civil litigant." 923 S.W.2d at 594.

Subsequently, the court provided further guidance about what circumstances are, in fact, *not* exceptional. *Gibson v. Tolbert*, 102 S.W.3d 710, 713 (Tex. 2003) (stating that "'exceptional' is by definition rare and unusual—something not easily identified by a general rule" that "it is easier to determine what is no exceptional"). In fact, the *Tolbert* court noted that inmate suits against prison personnel "are common." *Id.* Dunsmore has not identified any "rare or unusual" circumstances in this case that would warrant the appointment of counsel. And as we have

explained above, Dunsmore has no due process right to parole,[2] and his request for relief based on this asserted liberty interest lacks merit.

Dunsmore has provided no argument supporting a determination that the private or public interests at stake in his case are such that the administration of justice would best be served by the appointment of counsel to represent him. We therefore overrule Dunsmore's second issue.

Conclusion

We have overruled Dunsmore's appellate complaints. Accordingly, we affirm the trial court's judgment.

/s/ Sharon McCally
Justice

Panel consists of Justices Jamison, McCally, and Wise.

[2] Dunsmore cited *Pruitt v. Mote*, a federal case, in his motion to appoint counsel. *See* 503 F.3d 647 (7th Cir. 2007). But the *Pruitt* court explained that, even if a trial court errs in failing to appoint counsel to an inmate, the inmate must show that he was prejudiced by this error—i.e., the inmate must show that there is a "reasonable likelihood" that the presence of counsel would have made a difference in the outcome of his litigation. *Id.* at 659. As noted above, Dunsmore has failed to assert a due process violation that would support his entitlement to the relief he sought in the trial court. Thus, even under the standard set forth in his own cited authority, he cannot show prejudice sufficient to warrant reversal for the appointment of counsel.