COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00161-CV

STEPHEN STEPHON WILLIAMS — APPELLANT

V.

JUANITA PAVLICK, BARRY MACHA, STARLA JONES, MARK BARBER, AND DORSEY TRAPP — APPELLEES

FROM THE 30TH DISTRICT COURT OF WICHITA COUNTY
TRIAL COURT NO. 183,668-A

MEMORANDUM OPINION[1]

On November 25, 2015, Appellant Stephen Stephon Williams, a pro se inmate, filed his "Ex-Parte Petition For A Writ Of Error Quo-Warranto," alleging that the trial judge (Juanita Pavlick), district attorney (Barry Macha), prosecutors (Appellees Starla Jones and Mark Barber), and district clerk (Dorsey Trapp) had

[1]*See* Tex. R. App. P. 47.4.

not taken their oaths of office, which he claimed rendered his felony convictions void.[2] Jones and Barber each filed a plea to the jurisdiction and a motion to dismiss the case as frivolous.[3] The other parties were never served—Trapp's death was noted on his return of citation, while Macha's return stated that he did

[2]A jury convicted Williams of two counts of aggravated robbery and assessed his punishment at sixty-five years' confinement and a $10,000 fine for each count, and the trial court sentenced him accordingly. *Williams v. State*, No. 02-03-00148-CR, 2004 WL 2320370, at *1 (Tex. App.—Fort Worth Oct. 14, 2004, pet. ref'd) (mem. op., not designated for publication), *cert. denied*, 546 U.S. 1018 (2005). After we affirmed his conviction, *id.*, the court of criminal appeals refused his petition for discretionary review and then denied his state habeas corpus application, and a federal district court subsequently denied his federal habeas corpus petition. *Williams v. Thaler*, No. 7:07-CV-077-O, 2010 WL 3359453, at *1, *3–7 (N.D. Tex. Aug. 24, 2010). In 2014, we denied Williams's petition for writ of mandamus in which he also argued that the trial court's judgments of conviction were void. *See In re Williams*, No. 02-14-00181-CV, 2014 WL 2809054, at *1 (Tex. App.—Fort Worth June 19, 2014, orig. proceeding [mand. denied]) (mem. op.).

[3]Jones and Barber pointed out to the trial court that Williams lacked standing to file a quo warranto proceeding, asserted that the case should be dismissed for lack of jurisdiction, and reminded the trial court that it could dismiss a claim filed by an inmate confined in a correctional institution if it found that the claim was frivolous or malicious and could order him to pay court costs and fees under civil practice and remedies code section 14.006. *See* Tex. Civ. Prac. & Rem. Code Ann. §§ 14.003(a)(2), .006 (West 2002). They also raised prosecutorial immunity as a defense to Williams's claim.

Williams filed a "Motion for Bench Warrant to Attend a Hearing by Submission or Video Conference," seeking to give testimony, but the trial court did not rule on the motion. He also filed a motion for no-answer default judgment against Barber before Barber filed his plea to the jurisdiction and motion to dismiss and filed objections to both pleas to the jurisdiction.

not work in the district attorney's office, and Pavlick's reflected, "Returned – no longer at address – unknown location."[4]

In its letter ruling on April 29, 2016, the trial court asked the assistant district attorney who represented Jones and Barber to prepare the order. The order, which was filed on May 4, 2016, granted the pleas to the jurisdiction and motions to dismiss, dismissed Williams's claims with prejudice, dismissed Williams's lawsuit as having no arguable basis in law or in fact, and ordered Williams to pay all costs of court under civil practice and remedies code sections 14.006 and 14.007(a)(2).[5] On May 5, 2016, Williams filed a motion for no-answer default judgment as to Pavlick, Trapp, and Macha.[6]

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[4]Williams subsequently sought substituted service through the Texas Secretary of State, and he filed those returns on March 19, 2016; however, he did not refer the trial court to any statutorily-authorized basis for such service, nor does he explain any such basis to this court in his brief on appeal. *Cf. Ulusal v. Lentz Eng'g, L.C.*, 491 S.W.3d 910, 914 (Tex. App.—Houston 2016, no pet.) (stating that a plaintiff must show strict compliance with the statute that authorizes substituted service).

[5]Section 14.007 provides for additional expenses to be assessed against an inmate if the court finds that the inmate has previously filed an action to which chapter 14 applies and that a final order has been issued that affirms that the action was dismissed as frivolous or malicious under sections 13.001 or 14.003 or otherwise. *See* Tex. Civ. Prac. & Rem. Code Ann. § 14.007 (West Supp. 2016). However, in their pleadings, Jones and Barber asked only for assessment of fees and costs under section 14.006, and the record before us does not reflect that Williams had previously filed an action to which chapter 14 applied and to which a final order had been issued that affirmed that his action had been dismissed as frivolous or malicious.

[6]Williams dated his motion as "executed" on April 28, 2016, but he dated his cover letter to the clerk, requesting that the clerk file his motion for no-answer default judgment, April 29, 2016. He filed both items on May 5, 2016.

We note ab initio that, as correctly pointed out by Jones and Barber to the trial court, a challenge to a public official's right to hold office may be brought by quo warranto, but only by the State, acting through its attorney general or applicable county or district attorney. *See* Tex. Civ. Prac. & Rem. Code Ann. §§ 66.001–.002 (West 2008); *Orix Capital Mkts., LLC v. Am. Realty Tr., Inc.*, 356 S.W.3d 748, 754 (Tex. App.—Dallas 2011, pet. denied) ("[T]he plain and unambiguous language of the quo warranto statute confers standing to lodge such a challenge on the State, not a private litigant such as Orix."); *see also In re Lyon*, No. 06-12-00110-CV, 2013 WL 1143724, at *1 (Tex. App.—Texarkana Mar. 20, 2013, pet. ref'd) (mem. op.) (stating that only the attorney general or county or district attorney may bring an action in the nature of quo warranto), *cert*. *dism'd*, 134 S. Ct. 519 (2013). Therefore, because Williams lacked standing to bring a quo warranto proceeding, the trial court did not abuse its discretion by granting Jones's and Barber's pleas to the jurisdiction.[7] Based on Williams's lack

[7]In the six issues raised in this appeal, Williams argues that the trial court abused its discretion by denying him an appearance at the hearing before dismissing his suit as frivolous; by failing to rule on all of his motions, including his motions for no-answer default judgment against Pavlick, Macha, Trapp, and Barber and his motion for a bench warrant so that he could present evidence; by allowing the assistant district attorney to prepare the order that dismissed all of the parties, not just Jones and Barber; by not docketing the hearing with the county clerk; and by not allowing him to present his "requests for admission opportunity in the hearing." In an unnumbered issue, Williams also complains that the trial court "NEVER showed if there where [sic] a hearing on record to show cause on payment for those court transcripts," that Jones and Barber never showed cause for payment of attorney's fees "if any," and that the reason he is forced to pay all costs is "to discourage, demoralize, and destroy any confidence in filing any other civil action against" Jones and Barber because he is indigent.

of standing, the trial court also did not abuse its discretion by finding his entire action frivolous under civil practice and remedies code section 14.003[8] and dismissing it or by assessing court costs under section 14.006.[9]

The record does not reflect that the trial court held any hearings. To the extent that our holding and conclusion do not otherwise expressly address or moot Williams's issues, we note that an inmate does not have an absolute right to appear in person in every court proceeding, *In re Z.L.T.*, 124 S.W.3d 163, 165 (Tex. 2003), and as the trial court had a legal basis to make its decision rather than solely an evidentiary ground, there was no harm in failing to rule on or to grant Williams's motion for a bench warrant. *See Presiado v. Sheffield*, 230 S.W.3d 272, 274 (Tex. App.—Beaumont 2007, no pet.) ("When the trial court does not hold a hearing on the motion to dismiss [under civil practice and remedies code chapter 14], the issue before a reviewing court is whether the trial court properly determined the lawsuit had no arguable basis in law.").

Additionally, because Barber filed his plea to the jurisdiction and motion to dismiss before the trial court could render a no-answer default judgment against him, granting a no-answer default judgment against him would not have been appropriate. *See Armstrong v. Benavides*, 180 S.W.3d 359, 362 (Tex. App.—Dallas 2005, no pet.) ("The standards governing no-answer and post-answer default judgments differ greatly."). Nor would it have been appropriate to grant a default judgment against the other defendants without proper service and after a final judgment had already been entered to dismiss the entire suit as frivolous.

[8]Under civil practice and remedies code section 14.003(a)(2), a court may dismiss a claim, either before or after service of process, if it finds that the claim is frivolous or malicious after considering, among other factors, whether it has no arguable basis in law. *See* Tex. Civ. Prac. & Rem. Code Ann. § 14.003.

[9]Under section 14.006, a court may order an inmate who has filed a claim to pay court fees, court costs, and other costs. *See* Tex. Civ. Prac. & Rem. Code Ann. § 14.006(a); *see also Obadele v. Johnson*, 60 S.W.3d 345, 351 (Tex. App.—Houston [14th Dist.] 2001, no pet.) (overruling pro se inmate's claim that court costs were improperly assessed against him under section 14.006 based on his in forma pauperis status). Although Williams had a zero balance in his inmate trust account at the time that he filed his original petition, he also stated in his indigence declaration that he received approximately $10 per month as gifts from relatives and friends, had no debts, and had no monthly expenses. *See Barker v. Hutt*, No. 11-10-00190-CV, 2012 WL 2862267, at *2 (Tex. App.—

However, as noted above, because Jones and Barber neither pleaded nor showed evidence to support the assessment of costs under section 14.007, and because the record does not otherwise reflect that such an assessment was appropriate, we modify the judgment to delete the reference to section 14.007(a)(2) and to reflect only the assessment of court costs under section 14.006. We affirm the trial court's judgment as modified.

/s/ Bonnie Sudderth
BONNIE SUDDERTH
JUSTICE

PANEL: GARDNER, WALKER, and SUDDERTH, JJ.

DELIVERED: September 15, 2016

Eastland July 12, 2012, no pet.) (mem. op.) (stating that even though an inmate-appellant files an affidavit of indigence, the trial court has discretion to assess costs and fees against him under section 14.006 and that an inmate who has funds in his trust account is not indigent).