



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-15-00284-CV

ALLEN DWAYNE BATES, APPELLANT

V.

ELIZABETH ANN BROWN, ET AL., APPELLEES

On Appeal from the 47th District Court
Randall County, Texas
Trial Court No. 65,808-A, Honorable Dan L. Schaap, Presiding

March 15, 2016

MEMORANDUM OPINION

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

Appellant, Allen Dwayne Bates, an inmate proceeding *pro se*, brought suit against appellees, Elizabeth Brown, Blake Henschcliffe, and Jerry Jackson, claiming that each violated his constitutional rights in connection with his arrest for the offense of credit card abuse. Bates appeals the trial court's order dismissing his claims as frivolous under Texas Civil Practice & Remedies Code section 14.003. We will affirm the judgment of the trial court.

Factual and Procedural Background

Bates's handwritten original petition is difficult to read and comprehend. Bates relates that he was arrested in Potter County for illegal possession of a third person's credit card in Potter County by Henchcliffe and Jackson. However, Bates was never charged with a criminal offense in Potter County.¹ Subsequently, Bates was charged with the offense of credit card abuse in Randall County. On March 30, 2012, on the State's motion, the credit card abuse case was dismissed.

Bates filed suit on March 11, 2013, contending that appellees violated his constitutional rights for their respective parts in his arrest for credit card abuse. Brown was the affiant for the affidavit establishing probable cause upon which Bates's arrest warrant was issued, and Henchcliffe and Jackson were the officers that executed the arrest warrant. Bates seems to allege that all three appellees took their respective actions with knowledge that there was no probable cause to support Bates's arrest and, therefore, these actions violated Bates's constitutional rights. On May 12, 2014, the trial court dismissed Bates's claims, under the authority of Texas Civil Practice and Remedies Code section 14.003, because those claims "lack[] an arguable basis in law or in fact and has no realistic chance of ultimate success, particularly in light of the qualified immunity from civil liability enjoyed by police officers in such circumstances." See TEX. CIV. PRAC. & REM. CODE ANN. § 14.003 (West 2002). Bates filed the instant appeal from this dismissal order.

¹ Bates contends that he was not charged in Potter County because the arresting officers illegally searched him and, therefore, the evidence they obtained was inadmissible at trial. Review of the police report make it more likely that Bates was not charged by the Potter County District Attorney because the credit card was not actually used in Potter County but, rather, at a store located in Randall County. Regardless, the record does not reflect the reason why the Potter County District Attorney chose not to charge Bates.

Bates presents six issues by his appeal. By his first and fourth issues, Bates contends that Brown violated his Eighth Amendment rights and caused him to be falsely arrested and imprisoned by causing a warrant for Bates's arrest to be issued. By his second and third issues, Bates contends that Henschcliffe and Jackson violated his Fourth Amendment rights when they arrested him. By his fifth issue, Bates contends that Henschcliffe and Jackson falsely imprisoned him by taking him across county lines without first taking him before a Potter County magistrate. Finally, by his sixth issue, Bates contends that the trial court abused its discretion when it failed to enter findings of fact and conclusions of law after the same were properly requested by Bates. The State focuses the discussion by restating Bates's first five issues as asking whether the trial court abused its discretion by dismissing Bates's suit on the finding that his claims lacked an arguable basis in law and were, therefore, frivolous.

42 U.S.C. § 1983 Claims

Section 1983 provides a civil cause of action for violations of an individual's federal statutory or constitutional rights. 42 U.S.C. § 1983. For a person to assert a section 1983 claim, he must show that the conduct complained of was committed by a person acting under color of state law, and the conduct deprived the person of rights, privileges, or immunities secured by the Constitution or federal laws. *Leachman v. Dretke*, 261 S.W.3d 297, 305 (Tex. App.—Fort Worth 2008, no pet.) (op. on reh'g).

Inmate Litigation

Inmate litigation is governed by rules set forth in Chapter 14 of the Texas Civil Practice and Remedies Code. See TEX. CIV. PRAC. & REM. CODE ANN. §§ 14.001-.014

(West 2002 & Supp. 2015). The purpose of the requirements imposed by Chapter 14 is to aid the trial court in determining whether an inmate's claim is frivolous. See *Hamilton v. Pechacek*, 319 S.W.3d 801, 809 (Tex. App.—Fort Worth 2010, no pet.). A trial court has broad discretion to dismiss an inmate's suit as frivolous. *Nabelek v. Dist. Att'y of Harris Cty.*, 290 S.W.3d 222, 228 (Tex. App.—Houston [14th Dist.] 2005, pet. denied). In assessing whether a claim is frivolous, a court may consider whether the claim's realistic chance of ultimate success is slight, the claim has no arguable basis in law or fact, it is clear that the party cannot prove facts in support of the claim, or the claim is substantially similar to a previously filed claim because the claim arises from the same operative facts. TEX. CIV. PRAC. & REM. CODE ANN. § 14.003(b); *Garrett v. Williams*, 250 S.W.3d 154, 158 (Tex. App.—Fort Worth 2008, no pet.). The requirements of Chapter 14 do not conflict with the assertion of claims under section 1983. See *Comeaux v. TDCJ-ID*, No. 13-11-00446-CV, 2013 Tex. App. LEXIS 907, at *15-17 (Tex. App.—Corpus Christi Jan. 31, 2013, pet. denied) (mem. op.); *Vaughn v. Hicks*, No. 14-08-00726-CV, 2009 Tex. App. LEXIS 2710, at *2-3 (Tex. App.—Houston [14th Dist.] Apr. 16, 2009, pet. denied) (mem. op.) (per curiam).

Standard of Review

We review a trial court's Chapter 14 dismissal of an inmate's claim for abuse of discretion. *Hamilton*, 319 S.W.3d at 809; *Garrett*, 250 S.W.3d at 158. However, when, as in this case, an inmate's lawsuit is dismissed as frivolous for having no basis in law or fact but no evidentiary hearing is held, our review focuses on whether the inmate's lawsuit has an arguable basis in law. *Hamilton*, 319 S.W.3d at 809. While a Chapter 14 dismissal is reviewed under an abuse of discretion, the issue as to whether a claim has

an arguable basis in law is a legal question that we review de novo. *Id.* We will affirm the dismissal if it was proper under any legal theory. *Id.* A claim has no arguable basis in law if it is an “indisputably meritless legal theory.” *Scott v. Gallagher*, 209 S.W.3d 262, 266 (Tex. App.—Houston [1st Dist.] 2006, no pet.).

Analysis

Issues One through Five: 1983 Claims against Law Enforcement Officers

Each of Bates’s first five issues contends that law enforcement officers violated his rights while effectuating his arrest for credit card abuse in Randall County. That the appellees are members of law enforcement matters because, when law enforcement officers are sued under section 1983, the officers are entitled to claim qualified immunity. See *Saucier v. Katz*, 533 U.S. 194, 200, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001).

An officer that makes an affidavit to establish probable cause loses the shield of qualified immunity if the officer knows or has reason to know that he has materially misled a magistrate as to whether there is probable cause to make an arrest. *Golino v. City of New Haven*, 950 F.2d 864, 871 (2nd Cir. 1991), *cert. denied*, 505 U.S. 1221 (1992). A plaintiff asserting a section 1983 claim on the basis of an allegation that an officer submitted a false affidavit in support of a warrant must satisfy the two-part test of *Franks v. Delaware*, 438 U.S. 154, 155-56, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978). *Sherwood v. Mulvihill*, 113 F.3d 396, 399 (3rd Cir. 1997). Under this test, the plaintiff must make specific allegations accompanied by an offer of proof, “that the affiant knowingly and deliberately, or with a reckless disregard of the truth, made false

statements or material omissions in his application for a warrant, and that such statements or omissions were necessary to the finding of probable cause.” *Velardi v. Walsh*, 40 F.3d 569, 573 (2nd Cir. 1994). Unsupported conclusory allegations of falsehood or material omission is insufficient. *See id.*

In the instant case, Bates contends that Brown violated his rights by submitting an affidavit in support of the issuance of an arrest warrant when she knew or should have known that the assertions contained within the affidavit were the result of an illegal search and arrest. However, review of Bates’s petition reveals that he does not identify any specific falsehood or material omission in Brown’s affidavit. Bates’s entire argument relies on his assertion that the Potter County District Attorney did not charge him with an offense because he was illegally searched and arrested. However, he offered no proof to support this assertion. As such, we conclude that Bates’s claims against Brown have no arguable basis in law and the trial court did not err in dismissing those claims as frivolous.

An officer that executes an arrest warrant will not be immune if, on an objective basis, it is obvious that no reasonably competent officer would have concluded that a warrant should issue; but if officers of reasonable competence could disagree on the issue, immunity should be recognized. *Malley v. Briggs*, 475 U.S. 335, 341, 106 S. Ct. 1092, 89 L. Ed. 2d 271 (1986). When officers make an arrest subject to a warrant, even if probable cause is lacking, they are entitled to qualified immunity “unless the warrant application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable.” *Davis v. Parker*, No. 04-06-00316-CV, 2006 Tex. App. LEXIS

10189, at *8 (Tex. App.—San Antonio Nov. 29, 2006, pet. denied) (mem. op.) (citing *Malley*, 475 U.S. at 344-45).

In the present case, Bates's claims against Henschcliffe and Jackson arise solely from the officers' execution of the arrest warrant. As addressed above, Bates does not specify how Brown's affidavit in support of the arrest warrant was knowingly false and he wholly fails to identify how the arresting officers would be able to determine from the face of the warrant that it lacked probable cause to be issued. As such, we conclude that Henschcliffe and Jackson's arrest of Bates was entitled to qualified immunity.

Bates also contends that the officers' failure to take him before a Potter County magistrate before crossing county lines and taking him into Randall County constituted false imprisonment. However, the case cited by Bates, *King v. Roberts*, 84 S.W.2d 718, 720 (Tex. 1935), addresses the denial of an opportunity for an arrestee to make an appearance bond. Bates does not contend that he was denied bond. As such, we find this case to be inapposite.

Consequently, we conclude that Bates's claims against Henschcliffe and Jackson have no arguable basis in law and the trial court did not err in dismissing those claims as frivolous.

For the foregoing reasons, we overrule Bates's first five issues.

Issue Six: Trial Court's Failure to File Findings and Conclusions

By his sixth issue, Bates contends that the trial court abused its discretion when it failed to file findings of fact and conclusions of law, even though the same were

requested and notice of past due filing was made. Texas Rules of Appellate Procedure 296 and 297 do not apply when a court dismisses a case under Chapter 14 of the Texas Civil Practice and Remedies Code without holding a fact hearing. *Retzlaff v. Tex. Dep't of Criminal Justice*, 94 S.W.3d 650, 655 (Tex. App.—Houston [14th Dist.] 2002, pet. denied) (citing *Timmons v. Luce*, 840 S.W.2d 582, 586 (Tex. App.—Tyler 1992, no writ)). Since no fact hearing was held, our review is whether the suit lacks a basis in law and the trial court's failure to file findings and conclusions in such an instance must be harmless. *See id.* As such, we overrule Bates's sixth issue.

Conclusion

Having overruled each of Bates's issues, we affirm the judgment of the trial court.

Mackey K. Hancock
Justice