



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

No. 07-17-00081-CV

STEVEN BOYD, APPELLANT

V.

**ROBERT LOVE, HONORABLE DAN L. SCHAAP,
AND LAMETRA MOORE-BOYD, APPELLEES**

On Appeal from the 47th District Court
Randall County, Texas
Trial Court No. 71,518-A; Honorable Kelly G. Moore, Presiding

October 11, 2017

MEMORANDUM OPINION

Before CAMPBELL, PIRTLE and PARKER, JJ.

Appellant, Steven Boyd, an inmate proceeding *pro se* and *in forma pauperis*, appeals from the trial court's *Amended Order of Dismissal* in his suit against Appellees, Robert Love, Randall County Assistant District Attorney, Honorable Dan L. Schaap, presiding judge of the 47th District Court of Randall County,¹ and Lametra Moore-Boyd,

¹ Judge Schaap recused himself and Judge Moore is sitting by assignment.

Boyd's common law spouse. Judge Schaap and Love were sued in their individual capacities. By two issues, Boyd contends dismissal of his claims without an evidentiary hearing violated his due process rights because he was denied access to courts (issue two) and a free reporter's record (issue one).² We affirm.

BACKGROUND

At the trial court level in this proceeding, Boyd filed a pleading, entitled "Due Course of Law Complaint," alleging a conspiracy by Judge Schaap and Love in obtaining consent from Moore-Boyd for a warrantless search of the residence he shared with her. Evidence obtained in that search was used in the prosecution of a robbery charge that resulted in Boyd's conviction. In that criminal proceeding, Boyd and the State entered into a plea bargain agreement whereby he pleaded guilty to the robbery charge and waived his right of appeal in exchange for a recommended sentence of thirty years confinement and the dismissal of another pending charge. By this suit, Boyd is complaining about and appears to be attempting to re-litigate that robbery conviction, which has long since been fully litigated.³

² It is unclear whether Appellant is complaining about not receiving a free reporter's record of his earlier criminal conviction (*see infra* n.3) or the proceeding the subject of this appeal. Because the filing of a collateral lawsuit is not the appropriate way to obtain a record for purposes of a post-conviction habeas corpus proceeding, we will address his complaints as pertaining to this proceeding.

³ This court dismissed his appeal from the robbery conviction based on the *Trial Court's Certification of Defendant's Right of Appeal* after he pleaded guilty and voluntarily, knowingly, and intelligently waived his right to appeal. *See Boyd v. State*, No. 07-14-00245-CR, 2014 Tex. App. LEXIS 8445 (Tex. App.—Amarillo Aug. 1, 2014, no pet.) (mem. op., not designated for publication); *Boyd v. State*, No. 07-14-00245-CR, 2014 Tex. App. LEXIS 9377 (Tex. App.—Amarillo Aug. 22, 2014) (op. on reh'g) (mem. op., not designated for publication). Mandate issued in that appeal on November 11, 2014. This court subsequently denied Boyd's attempt to challenge his robbery conviction via a writ of mandamus. *In re Boyd*, No. 07-15-00209-CV, 2015 Tex. App. LEXIS 7156 (Tex. App.—Amarillo July 10, 2015, orig. proceeding).

By the underlying complaint filed in this case, Boyd asserted he did not receive a fair trial and that Judge Schaap abused his discretion by denying him a favorable ruling on his motion to suppress. Boyd also alleged various *Brady*⁴ violations and complained that he had suffered “irreparable mental anguish” by “‘nonfeasance’ in reprisal of complainant’s exercise of constitutional rights.” Finally, he requested a declaration that his constitutional rights were violated, a permanent injunction, an admission of a *Brady* violation, and a free clerk’s record and reporter’s record to “fight his case.”

Boyd’s complaint was accompanied by a motion to recuse Judge Schaap. Pursuant to Rule 18a(f)(1)(A) of the Texas Rules of Civil Procedure, Judge Schaap voluntarily recused himself and the matter was referred to Judge Kelly C. Moore, the regional presiding judge.

Without an evidentiary hearing on Boyd’s complaint, Judge Moore entered an *Amended Order of Dismissal* with the following findings:

1. [Boyd] is an inmate in the Texas Department of Criminal Justice;
2. [Boyd] filed an Application to Proceed *In Forma Pauperis*;
3. The claim’s realistic chance of success is slight, the claim has no arguable basis in law, and it is clear that [Boyd] cannot prove facts in support of the claim; and
4. The claim is frivolous as described in Section 14.003, Civil Practice and Remedies Code.

APPLICABLE LAW—CHAPTER 14

Chapter 14 of the Texas Civil Practice and Remedies Code was enacted by the Texas Legislature to control the flood of frivolous lawsuits being filed in Texas by prison

⁴ *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

inmates. See TEX. CIV. PRAC. & REM. CODE ANN. §§ 14.001 - 14.014 (West 2017). This chapter sets forth the procedural requirements an inmate must satisfy as a prerequisite to filing suit as a pauper. *Id.* at § 14.002(a). Additionally, other provisions of chapter 14 provide that a trial court may dismiss a suit if it finds the claims asserted therein are frivolous or malicious, even if the complaining inmate has satisfied the necessary filing requirements. *Id.* at § 14.003(a)(2). In that regard, a claim is frivolous or malicious if it has no basis in law or fact or if its realistic chance of ultimate success is slight. *Id.* at § 14.003(b)(1)-(2).

In determining whether a claim is frivolous or malicious, the trial court may consider whether:

- (1) the claim's realistic chance of ultimate success is slight;
- (2) the claim has no arguable basis in law or in fact;
- (3) it is clear that the party cannot prove facts in support of the claim; or
- (4) the claim is substantially similar to a previous claim filed by the inmate because the claim arises from the same operative facts.

Id. at § 14.003(b). Furthermore, chapter 14 provides that, in determining whether to dismiss a claim pursuant to that chapter, a court may conduct a hearing. *Id.* at § 14.003(c). When, however, a claim is dismissed without conducting an evidentiary hearing, the dismissal can be affirmed only if the basis of the dismissal was the lack of an arguable basis in law. *Hamilton v. Williams*, 298 S.W.3d 334, 339 (Tex. App.—Fort Worth 2009, pet. denied); *Sawyer v. Texas Dept. of Criminal Justice*, 983 S.W.2d 310, 311 (Tex. App.—Houston [1st Dist.] 1998, pet. denied). A claim has no basis in law if it is based on an indisputably meritless legal theory. *Leachman v. Dretke*, 261 S.W.3d 297, 304 (Tex. App.—Fort Worth 2008, no pet.). Because this is purely a question of

law, we review *de novo* the question of whether a claim has an arguable basis in law. *Moreland v. Johnson*, 95 S.W.3d 392, 394 (Tex. App.—Houston [1st Dist.] 2002, no pet.).

STANDARD OF REVIEW

We review the dismissal of an inmate's suit pursuant to chapter 14 based on an abuse of discretion standard. *Bishop v. Lawson*, 131 S.W.3d 571, 574 (Tex. App.—Fort Worth 2004, pet. denied); *Retzlaff v. Tex. Dep't of Criminal Justice*, 94 S.W.3d 650, 654 (Tex. App.—Houston [14th Dist.] 2002, pet. denied). A trial court abuses its discretion when it acts without reference to any guiding rules or principles. *Quixtar Inc. v. Signature Mgmt. Team, LLC*, 315 S.W.3d 28, 31 (Tex. 2010) (citing *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985)). The fact that a trial court might decide a matter within its discretion in a different manner than an appellate court would under similar circumstances does not demonstrate an abuse of discretion. *Downer*, 701 S.W.2d at 242. Furthermore, we will affirm an order of dismissal if it was proper under any legal theory. *Hamilton v. Pechacek*, 319 S.W.3d 801, 809 (Tex. App.—Fort Worth 2010, no pet.) (involving dismissal of inmate's suit pursuant to chapter 14).

Where, as here, no hearing was held, our review focuses on whether the inmate's lawsuit has an arguable basis in law. *Williams*, 298 S.W.3d at 339. In conducting our review, we accept as true the factual allegations in an inmate's petition and review the types of relief and causes of action set out therein to determine whether, as a matter of law, the petition stated a cause of action that would authorize relief. *Id.* A claim has no arguable basis in law if the facts alleged are wholly incredible or it relies

on a meritless legal theory. *Id.* Under this analysis, a clear failure by the trial court to analyze or apply the law correctly constitutes an abuse of discretion. *Id.*

ANALYSIS

Here, without conducting an evidentiary hearing, the trial court dismissed Boyd's lawsuit pursuant to the provisions of section 14.003(a)(2) of the Texas Civil Practice and Remedies Code because his claims had no arguable basis in law and were frivolous. By his brief, Boyd does not challenge the trial court's findings and conclusions that his claims are frivolous or that they lack any basis in law. Rather, relying on *De La Vega v. Taco Cabana*, 974 S.W.2d 152 (Tex. App.—San Antonio 1998, no pet.), he contends his constitutional rights were violated when the trial court denied him a free record (issue one). We disagree.

First, *De La Vega* does not support Boyd's claim that he was entitled to a free record. That case dealt with the dismissal of a cause of action pursuant to chapter 13 of the Texas Civil Practice and Remedies Code which governs cases where an affidavit of inability to pay costs has been filed. There, an employee had sued her employer and lost and thereafter sought to pursue an appeal from the adverse judgment. She filed an affidavit of indigence which was contested by the court reporter. A hearing was held on the reporter's contest, and although the trial court overruled the court reporter's contest, it denied a free reporter's record on the ground that the appeal was frivolous. *Id.* at 153. On appeal, the appellate court ordered the court reporter to prepare and file a record of the hearing underlying the court's order denying a free reporter's record because it was necessary to determine whether the trial court erred in finding that the appellant's appeal was frivolous as a question of fact.

Here, Boyd does not challenge the trial court's findings and conclusions that his claims are frivolous or that they lack any basis in law. Therefore, this court must accept those findings and conclusions as conclusively established. *Morgan v. Harris*, No. 06-16-00049-CV, 2017 Tex. App. LEXIS 2452, at *5 (Tex. App.—Texarkana Mar. 23, 2017, no pet.). Because these facts are conclusively established, a record is unnecessary to determine the factual basis of a “frivolous” finding and his failure to challenge the trial court's grounds for dismissal render his arguments moot. *Id.*

Furthermore, even if his arguments were not moot, section 14.003(c) provides that, in determining whether to dismiss a claim pursuant to chapter 14, a “court *may* conduct a hearing.” See TEX. CIV. PRAC. & REM. CODE ANN. § 14.003(c) (West 2017) (Emphasis added). As such, a hearing is discretionary and no abuse of discretion is shown where the claimant does not demonstrate that there was evidence he would have presented had a hearing been held. *Hall v. Treon*, 39 S.W.3d 722, 724 (Tex. App.—Beaumont 2001, no pet.) (noting that a hearing is discretionary and the inmate had not shown there was evidence he would have presented if there had been a hearing); *Thomas v. Wichita Gen. Hosp.*, 952 S.W.2d 936, 938 (Tex. App.—Fort Worth 1997, pet. denied) (concluding the same).

Here, Boyd complains that his constitutional right of access to the courts was violated by the trial court's failure to hold a hearing (issue two). A hearing to determine whether Boyd's civil complaint was frivolous would have been an exercise in futility given his lack of any effort to demonstrate to this court that there was evidence he would have presented had a hearing been held. Accordingly, we conclude the trial

court did not abuse its discretion in failing to hold a hearing and Boyd's right of access to courts was not infringed. See *Hall*, 39 S.W.3d at 724; *Thomas*, 952 S.W.2d at 938.

Because the trial court did not err in dismissing Boyd's claims without a hearing, it could not have erred in failing to provide a free record of a hearing that did not occur. Issues one and two are overruled.

After this appeal was fully briefed, Boyd filed a motion requesting that this court abate this appeal and remand the cause to the trial court with an order directing the trial court to hold a hearing pursuant to section 14.003(c). Having determined that a hearing is discretionary and that the trial court did not abuse its discretion nor violate Boyd's constitutional rights by failing to hold a hearing, that motion is denied.

CONCLUSION

The trial court's *Amended Order of Dismissal* is affirmed.

Patrick A. Pirtle
Justice