In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-18-00168-CV

TROY WIGLEY, APPELLANT

V.

BRYAN COLLIER, ET AL., APPELLEES

On Appeal from the 12th District Court
Walker County, Texas[1]
Trial Court No. 1728482, Honorable Donald L. Kraemer, Presiding

June 17, 2019

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PARKER, JJ.

Appellant Troy Wigley appeals the trial court's order dismissing his suit as frivolous and for failure to comply with Chapter 14 of the Texas Civil Practice and Remedies Code. We affirm.

[1] Pursuant to the Texas Supreme Court's docket equalization efforts, this case was transferred to this Court from the Tenth Court of Appeals. *See* TEX. GOV'T CODE ANN. § 73.001 (West 2013).

Background

Wigley, a Texas prison inmate proceeding pro se and *in forma pauperis*, filed suit against two Texas Department of Criminal Justice employees on October 19, 2017. According to Wigley, he completed five independent study program courses and earned five hours of transferable college credits while he was confined in the TDCJ and, as a result, he is entitled to additional good conduct time credits.[2] Wigley alleges that the defendant prison officials unfairly denied the good conduct time credits due him because they determined that he was enrolled in programs that do not count for such credits. Wigley sought declaratory judgment, injunctive relief, and monetary damages.

Appellees filed a motion to dismiss pursuant to Chapter 14 of the Texas Civil Practice & Remedies Code, asserting that Wigley failed to exhaust his administrative remedies, failed to submit an affidavit of previous lawsuits, and failed to state a non-frivolous claim. In response, Wigley filed an "Affidavit Relating to Previous Filings through More Specific Pleadings" and an affidavit relating to the exhaustion of administrative remedies.

Wigley then filed two motions for leave to amend and supplement his complaint, followed by his third amended and supplemental complaint. Appellees filed an amended motion to dismiss, again alleging that appellant's claims lack an arguable basis in law and that he failed to comply with Chapter 14. The trial court ordered Wigley's suit dismissed as frivolous and for failure to comply with Chapter 14.

[2] Good conduct time credits shorten the length of time before a qualified inmate becomes eligible for parole. *See* TEX. GOV'T CODE ANN. § 498.003 (West 2012). Wigley contends he is entitled to 3,870 days of good conduct time credits.

Analysis

Dismissal of Suit

Three of Wigley's points on appeal challenge, for various reasons, the trial court's dismissal of his suit. We will begin our analysis by addressing that issue.

Inmate litigation is governed by Chapter 14, which sets forth procedural requirements an inmate must satisfy as a prerequisite to filing suit. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 14.001-14.014 (West 2017). Even if the procedural requirements are satisfied, however, a trial court may dismiss an inmate's claim as frivolous or malicious if it has no arguable basis in law or in fact. *Id*. § 14.003(a)(2), (b)(2).

Generally, we review a dismissal under Chapter 14 for an abuse of discretion. *Brewer v. Simental*, 268 S.W.3d 763, 767 (Tex. App.—Waco 2008, no pet.). "To establish an abuse of discretion, an appellant must show the trial court's actions were arbitrary or unreasonable in light of all the circumstances. The standard is clarified by asking whether the trial court acted without reference to any guiding rules or principles." *Spurlock v. Schroedter*, 88 S.W.3d 733, 735-36 (Tex. App.—Corpus Christi 2002, pet. denied) (citations omitted). We will affirm the trial court's judgment if it can be upheld on any reasonable theory supported by the evidence. *Ex parte E.E.H.*, 869 S.W.2d 496, 497-98 (Tex. App.—Houston [1st Dist.] 1993, writ denied). When, as here, the trial court dismisses a claim without conducting a fact hearing, the issue on appeal is whether the claim had an arguable basis in law. *See Spurlock*, 88 S.W.3d at 736. In determining whether a trial court properly determined that a claim has no arguable basis in law, "we examine the types of relief and causes of action appellant pleaded in his petition to

determine whether, as a matter of law, the petition stated a cause of action that would authorize relief." *Jackson v. Tex. Dep't of Crim. Justice—Inst'l Div.*, 28 S.W.3d 811, 813 (Tex. App.—Corpus Christi 2000, pet. denied).

As set forth above, Wigley's lawsuit challenges the decision not to award him good conduct time credits. He seeks (1) a declaratory judgment that appellees' decision "was discriminatory, unreasonable, unfair, arbitrary and capricious . . . and violated [his] rights," (2) a preliminary injunction ordering appellees to begin awarding him good conduct time credits for his educational endeavors, and (3) $3.1 million in damages.

Section 501.0081 of the Texas Government Code sets forth the procedure to be followed in resolving complaints regarding time-served credit. TEX. GOV'T CODE ANN. § 501.0081 (West 2012); *In re Alvarado*, No. 13-05-00066-CR, 2005 Tex. App. LEXIS 3425, at *4 (Tex. App.—Corpus Christi Apr. 29, 2005, orig. proceeding) (per curiam) (mem. op., not designated for publication). An inmate who alleges an error in the time credited on his sentence must first present the claim to the TDCJ office of time credit resolution. *Id.*; *Ex parte Dunlap*, 166 S.W.3d 268, 269 (Tex. Crim. App. 2005) (orig. proceeding). "If still aggrieved after completion of the administrative process, the inmate may file an application for writ of habeas corpus under Article 11.07 of the Texas Code of Criminal Procedure." *Hudson v. Tex. Dep't of Crim. Justice—Inst'l Div.*, No. 12-06-00285-CV, 2007 Tex. App. LEXIS 6057, at *2 (Tex. App.—Tyler July 31, 2007, no pet.) (mem. op.).

In his Affidavit Relating to Exhaustion of Legal Remedies, Wigley avers that he presented his claim to the time credit resolution system of the TDCJ. He states that he

waited more than 180 days, received no response, and then filed a time credit error in an application for writ of habeas corpus. According to Wigley, the writ was forwarded to the Texas Court of Criminal Appeals, which denied the application without written order. Although Wigley attaches no documentation in support of these proceedings, our review of the Court of Criminal Appeals' decisions reflects that on August 16, 2017, that court denied without written order an application for writ of habeas corpus filed by Wigley.

Through this lawsuit, Wigley seeks to invalidate the denial of good conduct time credits. Such relief would necessarily imply the invalidity of the duration of his confinement.[3] Accepting Wigley's statements in his affidavit as true, he has already completed the procedure available to correct this alleged error, i.e., the process in section 501.0081 for the resolution of complaints regarding time-served credits, which culminates in an application for a writ of habeas corpus. *See* TEX. GOV'T CODE ANN. § 501.0081; *In re Castillo*, No. 10-18-00280-CR, 2018 Tex. App. LEXIS 7422, at *1 (Tex. App.—Waco Sept. 5, 2018, orig. proceeding) (the appropriate vehicle for correcting credits to which inmate is entitled is through a petition for writ of habeas corpus). Wigley's habeas corpus action has been finally decided by the Court of Criminal Appeals. Wigley's request for declaratory and injunctive relief here is merely an attempt to make an end run around the decision by that court. "It is axiomatic that a Court of Appeals has no power to 'overrule or circumvent [the] decisions, or disobey [the] mandates' of the Court of Criminal

[3] Wigley has expressed some of his claims for relief in terms of violations of 42 U.S.C. § 1983. The United States Supreme Court has held that an inmate in state custody cannot use a section 1983 action to challenge "the fact or duration of his confinement . . . ." *Wilkinson v. Dotson*, 544 U.S. 74, 78, 125 S. Ct. 1242, 161 L. Ed. 2d 253 (2005).

Appeals." *Wiley v. State*, 112 S.W.3d 173, 175 (Tex. App.—Fort Worth 2003, pet. ref'd) (quoting *State ex rel. Vance v. Clawson*, 465 S.W.2d 164, 168 (Tex. Crim. App. 1971)).

Because it seeks to circumvent a decision by the court of last resort in Texas in criminal matters, Wigley's lawsuit does not have an arguable basis in law and is therefore frivolous. Even if we assume, without deciding, that Wigley complied with the requirements of Chapter 14, we conclude that the trial court properly determined that the lawsuit is frivolous and should be dismissed.

Appointment of Counsel

Wigley also objects to the trial court's denial of his motion for appointment of counsel without holding a hearing. First, we find nothing in the record indicating that Wigley requested a hearing on his motion and it appears that the trial court never ruled on it. Second, an indigent inmate does not have an absolute right to appointed counsel in a civil case. *Gibson v. Tolbert*, 102 S.W.3d 710, 711 (Tex. 2003). The decision to appoint counsel for such an inmate is a matter for the trial court's discretion. *Id.* at 712-13. Appointment of counsel for civil litigants such as Wigley may be warranted "in some exceptional cases [in which] the public and private interests at stake are such that the administration of justice may be best served by appointing a lawyer to represent an indigent civil litigant." *Travelers Indem. Co. v. Mayfield*, 923 S.W.2d 590, 594 (Tex. 1996) (orig. proceeding). However, Wigley's case does not satisfy this test. We accordingly overrule this issue.

Amended and Supplemental Complaint

Finally, Wigley challenges the trial court's "decision and reason denying to consider" his Motion for Leave to Amend and Supplement Third Complaint. Wigley contends that the trial court erred by failing to rule on his motion for leave before granting appellees' Amended Motion to Dismiss. He further asserts that, had the trial court considered his Third Amended and Supplemental Complaint, the trial court might not have determined that his claims were frivolous. Our review of the record reveals that Wigley's Third Amended and Supplemental Complaint is nearly identical to his Amended and Supplemental Complaint, which itself closely tracks his Original Petition. Even if, as Wigley claims, the trial court did not consider his third pleading, Wigley's earlier pleadings allege the same facts and include the same legal claims and prayers for relief. We conclude this issue is without merit and it is therefore overruled.

Conclusion

Having overruled each of Wigley's issues on appeal, we affirm the judgment of the trial court.

Judy C. Parker
Justice