



**In The  
Court of Appeals  
Sixth Appellate District of Texas at Texarkana**

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No. 06-11-00002-CV

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IN RE: CARLOS A. ARMENTA

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Original Mandamus Proceeding

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Before Morriss, C.J., Carter and Moseley, JJ.  
Memorandum Opinion by Justice Carter

## MEMORANDUM OPINION

While incarcerated in the Telford Unit of the Texas Department of Criminal Justice (TDCJ), Carlos A. Armenta was allegedly assaulted by another prisoner. Armenta brought suit against the TDCJ and a guard, Walter Ayers, claiming that the TDCJ and Ayers “misused property” and negligently failed to follow procedure, improperly supplied electricity to an outlet in the alleged assailant’s cell, and ignored Armenta’s warnings that the assailant would attack him. The TDCJ moved to dismiss Armenta’s claims against it, arguing that it could not be sued under 42 U.S.C. § 1983. In his response, Armenta argued that “he did not sued [sic] TDCJ but under TEX. CIV. PRAC. REM. CODE ANN. §101.021(2).” The trial court granted the TDCJ’s motion and dismissed it from the suit, leaving Ayers as the sole defendant.

In *Armenta v. TDCJ-ID*, No. 06-10-00039-CV, 2010 WL 1986638 (Tex. App.—Texarkana May 19, 2010, pet. denied) (mem. op.), Armenta appealed the dismissal. However, this Court dismissed his appeal for lack of jurisdiction because the trial court’s dismissal order did not dispose of all named defendants, and therefore, it was not a final, appealable judgment. *Id.*

Here, Armenta seeks mandamus relief, arguing, as he did in his direct appeal, that the trial court: (1) “erred and abused its discretion in dismissing defendant TDCJ from the suit”; and (2) failed to analyze and correctly apply the law regarding “whether Armenta has standing to suit [sic] TDCJ for negligence and misuse of property pursuant to TEX. CIV. PRAC. REM. CODE ANN. § 101.021.(2).”

We deny the petition for writ of mandamus because Armenta has an available remedy by appeal.

Mandamus is an extreme remedy, and to be entitled to mandamus relief, a petitioner must show that the trial court clearly abused its discretion and that the relator has no adequate remedy by appeal. *In re McAllen Med. Ctr., Inc.*, 275 S.W.3d 458 (Tex. 2008) (orig. proceeding). Armenta may appeal the dismissal of the TDCJ when the trial court enters a final judgment disposing of all claims and all parties. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001); *Jack B. Anglin Co. v. Tipps*, 842 S.W.2d 266, 272 (Tex. 1992). Armenta does not cite to any authority demonstrating that the available remedy by appeal is inadequate in this case, and we are aware of none. Accordingly, we deny the petition for writ of mandamus.

Jack Carter  
Justice

Date Submitted: January 18, 2011  
Date Decided: January 19, 2011