



NUMBER 13-16-00608-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

ROMARCUS MARSHALL,

Appellant,

v.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE,

Appellee.

On appeal from the 343rd District Court
of Bee County, Texas.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Contreras and Hinojosa
Memorandum Opinion by Justice Contreras

Appellant Romarcus Marshall, an inmate proceeding pro se and *in forma pauperis*, appeals by two issues¹ the trial court's dismissal with prejudice of his claim for conversion against appellee, the Texas Department of Criminal Justice (TDCJ). We affirm.

¹ Marshall presents four issues in his brief. However, we construe the first three as a single issue asking whether the trial court abused its discretion by dismissing Marshall's claim with prejudice for failing to satisfy the statutory limitations period. See TEX. CIV. PRAC. & REM. CODE ANN. § 14.005(b) (West,

I. BACKGROUND

Marshall alleges that on July 24, 2015, prison officials confiscated personal items which were later destroyed. Marshall filed a grievance regarding these events. On January 7, 2016, Marshall received the final disposition from the grievance system provided for by TDCJ stating that no further action was warranted. On April 28, 2016, Marshall filed suit against William Stephens, a former TDCJ-Correctional Institutions Division Director, and Rafael Menchaca, a property officer for the unit where Marshall is housed, for conversion, theft, a violation of his due process rights, and a violation of his right of access to courts. Stephens and Menchaca filed a motion to dismiss for failure to comply with Chapter 14 of the Texas Civil Practice & Remedies Code. Before the trial court ruled on the motion to dismiss and reached its final disposition of the case, Marshall amended his pleadings multiple times and ultimately listed TDCJ as defendant² and only proceeded with his claim for conversion. The trial court concluded Marshall's suit had no basis in law and dismissed it with prejudice for failure to comply with chapter 14. This appeal followed.

II. INMATE LITIGATION

Chapter 14 of the Texas Civil Practice and Remedies Code governs inmate litigation. See TEX. CIV. PRAC. & REM. CODE ANN. § 14.002 (West, Westlaw through 2017 1st C.S.); see also *id.* §§ 14.001–.014 (Inmate Litigation statute). A trial court may dismiss a suit under chapter 14 if it is frivolous, considering 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

Westlaw through 2017 1st C.S.). Marshall's second issue asks whether the trial court properly dismissed his claim with prejudice for a failure to demonstrate a valid waiver of sovereign immunity.

² Marshall dropped all claims against Stephens, and Menchaca's status as defendant was changed to "the employee in this matter."

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. § 14.003(b). The trial court has broad discretion to dismiss an inmate's claim as frivolous. *Spurlock v. Schroedter*, 88 S.W.3d 733, 736 (Tex. App.—Corpus Christi 2002, no pet.). Generally, we review a trial court's dismissal of a lawsuit under chapter 14 for an abuse of discretion. *In re Douglas*, 333 S.W.3d 273, 293 (Tex. App.—Houston [1st Dist.] 2010, pet. denied). However, when, as here, a trial court dismisses a claim as frivolous without a hearing, the issue on appeal is limited to whether the claim had no arguable basis in law. *Moreland v. Johnson*, 95 S.W.3d 392, 394 (Tex. App.—Houston [1st Dist.] 2002, no pet.). This is a legal issue which we review de novo. *Id.*

In reviewing the pleadings, we take the inmate's allegations as true and must determine "whether, as a matter of law, the petition stated a cause of action that would authorize relief." *Brewer v. Simental*, 268 S.W.3d 763, 770 (Tex. App.—Waco 2008, no pet.). We review pro se pleadings "by standards less stringent than those applied to formal pleadings drafted by lawyers." *Id.* A claim has no arguable basis in law only if it is based on (1) wholly incredible or irrational factual allegations, or (2) an indisputably meritless legal theory. *Nabelek v. Dist. Attorney of Harris Cty.*, 290 S.W.3d 222, 228 (Tex. App.—Houston [14th Dist.] 2005, pet. denied). An inmate's claim may not be dismissed merely because the court considers the allegations "unlikely." *Id.* The judgment of the trial court will be affirmed if that judgment can be upheld on any reasonable theory supported by the evidence. *Hamilton v. Pechacek*, 319 S.W.3d 801, 809 (Tex. App.—Fort Worth 2010, no pet.).

III. STATUTORY DEADLINE

By his first issue, Marshall argues that the trial court abused its discretion when it dismissed his claim with prejudice for having no basis in law.

Section 501.008 of the Texas Government Code establishes a statutory requirement that inmate grievance procedures be exhausted against all parties before a subsequent suit is initiated in court. TEX. GOV'T CODE ANN. § 501.008 (West, Westlaw through 2017 1st C.S.). Section 14.005 of the civil practice and remedies code allows the trial court to ensure that an inmate proceeding *in forma pauperis* has first exhausted the grievance procedure, if applicable. See *Smith v. Tex. Dep't of Crim. Justice—Institutional Div.*, 33 S.W.3d 338, 341 (Tex. App.—Texarkana 2000, pet. denied). In addition, section 14.005(b) of the civil practice and remedies code provides that “[a] court shall dismiss a claim if the inmate fails to file the claim before the 31st day after the date the inmate receives the written decision from the grievance system.” TEX. CIV. PRAC. & REM. CODE ANN. § 14.005(b). A suit that is not timely filed pursuant to section 14.005(b) is barred and may be dismissed with prejudice. *Moreland v. Johnson*, 95 S.W.3d 392, 395 (Tex. App.—Houston [1st Dist.] 2002, no pet.).

Here, Marshall exhausted his administrative remedies, but failed to file suit within the 31-day window. As noted, Marshall received notice of the final disposition of the grievance system on January 7, 2016. This meant that Marshall had until February 6, 2016, to file suit against TDCJ. However, Marshall did not file suit until April 28, 2016, well beyond the deadline. Therefore, Marshall's claim had no basis in law as it had been barred by statute, and the trial court did not err in dismissing appellant's claim against TDCJ with prejudice and as frivolous.

Marshall argues that his suit was timely because he filed a subsequent grievance on November 25, 2015, for which he received the final disposition on March 14, 2016.

However, when a second subsequent grievance against TDCJ involves the same issues as the first grievance, the 31-day statute of limitations for filing a state court action begins to run on the date the first grievance was denied. *Allen v. Tex. Dep't of Crim. Justice-Institutional Div.*, 80 S.W.3d 681, 683 (Tex. App.—Houston [1st Dist.] 2002, pet. denied). Marshall's other argument that his claim is saved by the mailbox rule is therefore also incorrect, as it relies on an incorrect calculation of his filing deadline as just noted. Finally, Marshall argues that the trial court erred by not acting on his motion for reconsideration. Here, the trial court specifically found that Marshall's suit was untimely as he filed it beyond the 31-day deadline, and Marshall failed to present any evidence to the contrary. Therefore, the trial court did not abuse its discretion by not granting Marshall's motion for reconsideration or by dismissing his suit with prejudice. We overrule appellant's first issue.³

IV. CONCLUSION

We affirm the judgment of the trial court.

DORI CONTRERAS
Justice

Delivered and filed the
9th day of November, 2017.

³ Because we find this first issue dispositive, we need not address Marshall's second issue. See TEX. R. APP. P. 47.1.