



NUMBER 13-19-00122-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

ARDELL NELSON JR.,

Appellant,

v.

**LORI DAVIS, DIRECTOR OF TDCJ-CID,
TEXAS BOARD OF PARDONS AND
PAROLES, WARDEN FURR, K. GAITAN,
CHIEF OF CLASSIFICATION, D. BRYANT, ISC,
CRUZ ALEJANDRO, CORRECTIONS
OFFICER, AND CAPTAIN PICHURDO, CAPTAIN,**

Appellees.

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

MEMORANDUM OPINION

**Before Justices Benavides, Perkes, and Tijerina
Memorandum Opinion by Justice Benavides**

Appellant Ardell Nelson Jr. appeals the trial court's order dismissing his lawsuit against appellees Lori Davis, Director of TDCJ–CID; Texas Board of Pardons and

Paroles; Warden Furr; K. Gaitan, Chief of Classification; D. Bryant, ISC; Cruz Alejandro, Corrections Officer; and Captain Pichurdo, Captain, for failure to comply with Chapter 14 of the Texas Civil Practice and Remedies Code and being frivolous. See TEX. CIV. PRAC. & REM. CODE ANN. § 14.005. In three issues, which we construe as one, Nelson argues he was denied his due process rights under the United States and Texas Constitutions, as well as the equal protection clause. See U.S. CONST.; TEX. CONST. We affirm.

I. BACKGROUND

Nelson is a Texas Department of Criminal Justice (TDCJ) inmate at the McConnell Unit in Beeville, Texas. Nelson alleges that he was assaulted by another inmate and his previously filed offender protection investigation (OPI) was wrongly decided. In his OPI, Nelson had claimed he was in fear of Jerome Johnson, another inmate. The OPI disposition found no evidence to support the claim.

Nelson filed his Step 1 Grievance on October 23, 2017, regarding the October 5, 2017 alleged assault. The Step 1 Grievance was rejected on November 27, 2017. Nelson claims he filed his Step 2 Grievance on December 7, 2017, but the document shows a received by date of February 7, 2018.¹ The Attorney General, in an advisory to the trial court, pointed out that Nelson failed to comply with the requirements of Chapter 14 of the civil practice and remedies code, by failing to exhaust his administrative remedies and alleging frivolous claims that lacked an arguable basis in law. See TEX. CIV. PRAC. & REM. CODE ANN. § 14.005. On September 28, 2018, the trial court entered an order dismissing

¹ Included in the Clerk's Record were additional grievances Nelson filed near the same time as the grievance at issue. However, those grievances were not challenged at the trial court and not subject to this appeal.

as frivolous all claims against appellees for failure to comply with Chapter 14 of the Texas Civil Practice and Remedies Code. See *id.* This appeal followed.

II. CHAPTER 14 INMATE LITIGATION

A. Standard of Review

The Court reviews the dismissal of inmate lawsuits for abuse of discretion. *Thomas v. Knight*, 52 S.W.3d 292, 294 (Tex. App.—Corpus Christi—Edinburg 2001, pet. denied). To establish an abuse of discretion, the appellant must show that the trial court's actions were arbitrary or unreasonable considering all surrounding circumstances. See *Smithson v. Cessna Aircraft Co.*, 665 S.W.2d 439, 443 (Tex. 1984); see also *Readeaux v. Velasquez*, No. 13-13-00217-CV, 2013 WL 4399189, at *1 (Tex. App.—Corpus Christi—Edinburg 2013, no pet.) (mem. op.).

B. Applicable Law

The prison grievance system provides an administrative remedy for claims that would consume valuable judicial resources with little offsetting benefit. *Diles v. Henderson*, 76 S.W.3d 807, 810 (Tex. App.—Corpus Christi—Edinburg 2002, no pet.); see *Amir-Sharif v. Quarterman*, No. 13-09-00504-CV, 2010 WL 3279501, at *2 (Tex. App.—Corpus Christi—Edinburg 2013, no pet.) (mem. op.). Chapter 14 sets forth procedural requirements an inmate must satisfy as a prerequisite to filing suit. *Hamilton v. Williams*, 298 S.W.3d 334, 339 (Tex. App.—Fort Worth 2009, pet. ref'd). Should an inmate fail to comply with these requirements, the suit will be dismissed. *Id.*

However, even if an inmate satisfies the necessary filing requirements, the trial court may dismiss an inmate's claim if it finds the claim to be frivolous or malicious. TEX.

CIV. PRAC. & REM. CODE ANN. § 14.003. A claim is frivolous or malicious if it has no basis in law or fact. *Hamilton*, 298 S.W.3d at 339. When an inmate's lawsuit is dismissed as frivolous for having no basis in law or in fact, but no fact hearing is held, our review focuses on whether the inmate's lawsuit has an arguable basis in law. TEX. CIV. PRAC. & REM. CODE ANN. § 14.003; *Hamilton*, 298 S.W.3d at 339. A clear failure by the trial court to analyze or apply the law correctly is an abuse of discretion. *Hamilton*, 298 S.W.3d at 339.

In conducting our review, we take as true the allegations in the 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.*; *Harrison v. Tex. Dep't of Criminal Justice, Inst. Div.*, 164 S.W.3d 871, 875 (Tex. App.—Corpus Christi–Edinburg 2005, no pet.). A claim has no arguable basis in law if it relies upon an indisputably meritless legal theory. *Hamilton*, 298 S.W.3d at 339. Further, a claim has no arguable basis in law if the inmate has failed to exhaust his administrative remedies. *Id.*; *Leachman v. Dretke*, 261 S.W.3d 297, 311 (Tex. App.—Fort Worth 2008, no pet.). If an inmate fails to exhaust his administrative remedies, we may affirm a dismissal even if the ground was not presented in a motion to dismiss. TEX. CIV. PRAC. & REM. CODE ANN. § 14.005; *Retzlaff v. Tex. Dep't of Criminal Justice*, 94 S.W.3d 650, 653 (Tex. App.—Houston [14th Dist.] 2002, pet. denied).

C. Discussion

Nelson's Step 2 grievance, from which this appeal is taken, was returned to him as "untimely" filed within the grievance system. Section 14.005 states that an inmate who files a claim that is subject to the grievance system shall file with the court: (1) an affidavit

or unsworn declaration stating that the date that the grievance was filed and the date that the *written decision* as described by Section 501.008(d), Government Code was received; and (2) a copy of the written decision from the grievance system. *Id.* § 14.005(a)(1), (2) (emphasis added).

The administrative process includes deadlines within the grievance system and for filing suit. See TEX. CIV. PRAC. & REM. CODE ANN. § 14.005(b) (“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.”). An inmate may not file a claim in state court regarding operative facts for which the grievance system provides the exclusive administrative remedy until: (1) the inmate receives a written decision issued by the highest authority provided for in the grievance system; and (2) if the inmate has not received a written decision described by Subdivision (1), the 180th day after the grievance is filed. TEX. GOV’T CODE ANN § 501.008.

A violation of “section 14.005(b) calls for a mandatory dismissal.” *Remsburg v. Marquez*, 542 S.W.3d 823, 827 (Tex. App.—Amarillo 2018, no pet.); see also *Moorhead v. Salinas*, No. 13-18-00367-CV, 2019 WL 2847447, at *1 (Tex. App.—Corpus Christi—Edinburg July 3, 2019, no pet.) (mem. op.) (“Suits that are not filed within the allotted time frame are barred from proceeding.”). Nelson’s appeal does not contain a “written decision” by the highest authority in the grievance system. See TEX. GOV’T CODE ANN § 501.008. Therefore, he did not exhaust all the administrative remedies and has not presented an appeal with an arguable basis in law. See *Hamilton*, 298 S.W.3d at 339; *Leachman*, 261 S.W.3d at 311. The trial court did not abuse its discretion. We overrule

Nelson's issue.²

III. CONCLUSION

We affirm the trial court's judgment.

GINA M. BENAVIDES,
Justice

Delivered and filed the
7th day of May, 2020.

² Because Nelson did not comply with the mandatory requirements of section 14.003 of the civil practices and remedies code regarding inmate litigation, we do not need to reach the merits of his alleged constitutional claims. See TEX. CIV. PRAC. & REM. CODE ANN. § 14.003.