NUMBER 13-19-00566-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

ARTIS CHARLES HARRELL, **Appellant,**

v.

MICHAEL S. MAJEFSKI, **Appellee.**

On appeal from the 156th District Court
of Bee County, Texas.

MEMORANDUM OPINION

Before Justices Hinojosa, Perkes, and Tijerina
Memorandum Opinion by Justice Hinojosa

Appellant Artis Charles Harrell, a Texas prison inmate, appeals the trial court's judgment dismissing his negligence suit against appellee Michael Majefski, a correctional officer employed by the Texas Department of Criminal Justice–Institutional Division

(TDCJ–ID).[1] In one issue, Harrell argues the trial court erred in dismissing his suit as frivolous pursuant to Chapter 14 of the Texas Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 14.001–.014. We affirm.

I. BACKGROUND

Harrell, an inmate at the McConnell Unit in Beeville, Texas, filed this action pro se and *in forma pauperis* under Texas Civil Practice & Remedies Code Chapter 14. *See id*. In his live pleading, Harrell alleges that Majefski searched his cell while Harrell was in the medical unit. When Harrell returned to his cell, he discovered that some of his legal materials were destroyed by water. Harrell claims that Majefski's search violated applicable TDCJ–ID policy. Harrel sought actual and exemplary damages.

The Texas Office of the Attorney General (OAG) filed an amicus curiae advisory urging the trial court to dismiss Harrell's suit as frivolous. *See id*. The OAG contended that Harrell's individual capacity claim was foreclosed by the election-of-remedies provision of the Texas Tort Claims Act (TTCA). *See id*. § 101.106(f). The OAG contended in the alternative that Majefski was protected from individual liability by official immunity. Finally, the OAG argued that Harrell's official capacity claim was barred by sovereign immunity.

The trial court held an evidentiary hearing, during which Harrell provided testimony reiterating the allegations in his pleadings. Harrell further testified that another correctional officer informed him that Majefski was searching for materials that belonged

[1] Harrell sued Majefski in his individual and official capacities.

to the law library, which would be contraband. The trial court admitted into evidence an excerpt from the TDCJ-ID handbook relating to inmate cell searches. Harrell contended that Majefski violated TDCJ-ID policy by searching his legal materials outside of Harrell's presence and without authorization from a warden or assistant warden. At the conclusion of the hearing, the trial court signed a final judgment dismissing Harrell's suit with prejudice. Harrell now appeals.

II. STANDARD OF REVIEW AND APPLICABLE LAW

To control frivolous, malicious, and excessive inmate litigation, the Legislature enacted Chapter 14 of the civil practice and remedies code. *See id*.; *Hamilton v. Pechacek*, 319 S.W.3d 801, 809 (Tex. App.—Fort Worth 2010, no pet.). Chapter 14 governs inmate litigation in which an affidavit or unsworn declaration of inability to pay costs is filed by the inmate. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 14.002. A trial court may dismiss a suit under Chapter 14 if it is frivolous, and 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.* § 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–Edinburg 2002, no pet.). Therefore, 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, we review de novo the issue 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.). 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. Att'y 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.*

III. DISCUSSION

In his sole issue, Harrell argues that the trial court erred in dismissing his negligence claim against Majefski based on immunity. Because Harrell sued Majefski in both his individual and official capacity, we will address each claim in turn.

A. No Individual Capacity Claim

Government employees are individually liable for their own torts, even when committed in the course of employment; therefore, suit may be brought against a government employee in his individual capacity. *Franka v. Velasquez*, 332 S.W.3d 367, 383 (Tex. 2011). However, under the election-of-remedies provision of the TTCA,

> [i]f a suit is filed against an employee of a governmental unit based on conduct within the general scope of that employee's employment and if it could have been brought under this chapter against the governmental unit, the suit is considered to be against the employee in the employee's official capacity only.

TEX. CIV. PRAC. & REM. CODE ANN § 101.106(f). Under this provision, a governmental employee is entitled to a dismissal when the plaintiff's suit (1) is based on conduct within the scope of the defendant's employment with a governmental unit and (2) could have been brought against the governmental unit under the TTCA. *See Franka*, 332 S.W.3d at

369. "The statute strongly favors dismissal of governmental employees." *Anderson v. Bessman*, 365 S.W.3d 119, 124 (Tex. App.—Houston [14th Dist.] 2011, no pet.).

The TTCA defines scope of employment as "the performance for a governmental unit of the duties of an employee's office or employment and includes being in and about the performance of a task lawfully assigned to an employee by a competent authority." TEX. CIV. PRAC. & REM. CODE ANN. § 101.001(5). "The scope-of-employment analysis [is] fundamentally objective: Is there a connection between the employee's job duties and the alleged tortious conduct?" *Laverie v. Wetherbe*, 517 S.W.3d 748, 753 (Tex. 2017). Such a connection can exist "even if the employee performs negligently or is motivated by ulterior motives or personal animus so long as the conduct itself was pursuant to her job responsibilities." *Id*.

First, Harrell admits in his pleadings that Majefski is an employee of the TDCJ–ID, a state agency. Second, the allegations relate to actions taken within the scope of Majefski's employment. Scope of employment "extends to job duties to which the official has been assigned, even if the official errs in completing the task." *Lopez v. Serna*, 414 S.W.3d 890, 894 (Tex. App.—San Antonio 2013, no pet.). The searching of inmate cells for contraband is a task lawfully assigned to correctional officers. *See id*. (concluding that a correctional officer sued for theft was acting within scope of employment when confiscating inmate property during the search of a cell). The fact that a correctional officer may have acted negligently or with personal animus is not relevant to our inquiry. *See Laverie*, 517 S.W.3d at 753; *see also Lopez*, 414 S.W.3d at 894.

Finally, we note that "if a state employee is alleged to have committed negligence or other 'wrongful conduct' in the general scope of employment, then the suit is subject to section 101.106(f) because it could have been brought against the state agency." *Lopez*, 414 S.W.3d at 895. We conclude that the election-of-remedies provision applies to Harrell's negligence claim. Therefore, his suit is against Majefski in his official capacity only. *See id.*

B. Immunity for Negligence Claim

Under Texas law, a suit against a government employee in his official capacity is a suit against his government employer. *Franka*, 332 S.W.3d at 382. "[A]n employee sued in his official capacity has the same governmental [or sovereign] immunity, derivatively, as his government employer."[2] *Id*. at 382–83. TDCJ–ID, a state agency, enjoys sovereign immunity from suit unless the legislature expressly waives that immunity. *See Tex. Office of Comptroller of Pub. Accounts v. Saito*, 372 S.W.3d 311, 313 (Tex. App.—Dallas 2012, pet. denied).

The TTCA provides a limited waiver of immunity for certain suits against governmental entities. *Mission Consol. Indep. Sch. Dist. v. Garcia*, 253 S.W.3d 653, 655 (Tex. 2008); *see* TEX. CIV. PRAC. & REM. CODE ANN. § 101.025(a) (providing waiver of immunity from suit "to the extent of liability created by this chapter"). As relevant here, the TTCA waives immunity for property damage claims arising from the operation or use of a

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[2] An exception to this principle is when an employee acts ultra vires. *See Franka v. Velasquez*, 332 S.W.3d 367, 382 (Tex. 2011). Sovereign immunity provides broad protection to the state and its officers; however, it does not bar a suit against a government officer for acting outside his authority—i.e., an ultra vires suit. *See Tex. Parks & Wildlife Dep't v. Sawyer Trust,* 354 S.W.3d 384, 393 (Tex. 2011). Harrell did not plead, and does not contend on appeal, that Majefski acted ultra vires. At any rate, the ultra vires exception does not apply to a suit for money damages, which Harrell sought in this case. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

motor-driven vehicle or motor-driven equipment. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 101.021(1). Harrell's claim that Majefski negligently destroyed his legal materials with water does not invoke this limited waiver of immunity. *See Retzlaff v. Tex. Dep't of Criminal Justice*, 135 S.W.3d 731, 743 (Tex. App.—Houston [1st Dist.] 2003, no pet.). Further, having failed to invoke a waiver of immunity, Harrell cannot maintain a claim for negligent implementation of policy concerning inmate cell searches. *See Jones v. Tex. Dep't of Criminal Justice—Institutional Div.*, 318 S.W.3d 398, 405 (Tex. App.—Waco 2010, pet. denied) (explaining that a plaintiff must state a waiver of immunity under the TTCA before he can invoke a claim of negligent implementation of policy).

Because sovereign immunity deprives a trial court of subject matter jurisdiction over a pleaded cause of action, *see Tex. Dep't. of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 (Tex. 2004), we conclude that Harrell's negligence claim against Majefski in his official capacity has no arguable basis in law. *See Lopez*, 414 S.W.3d at 895; *see also McCray v. Langehenning*, No. 13-07-00143-CV, 2008 WL 3906395, at *1 (Tex. App.—Corpus Christi–Edinburg Aug. 26, 2008, no pet.) (mem. op.) (noting that a case barred by sovereign immunity has no arguable basis in law and renders a lawsuit frivolous under Chapter 14).

C. Summary

We conclude that the trial court did not err in dismissing Harrel's suit because it lacked an arguable basis in law. *See Moreland*, 95 S.W.3d at 394. We overrule Harrel's sole issue.

IV. CONCLUSION

We affirm the trial court's judgment.

LETICIA HINOJOSA
Justice

Delivered and filed the
2nd day of July, 2020.