

Affirmed and Opinion filed October 21, 1999.



In The

Fourteenth Court of Appeals

NO. 14-98-00647-CV

CARL WILLIAMS, Appellant

V.

WAYNE SCOTT, KENNETH NEGBENEBOR AND WILBURN GORE, Appellees

On Appeal from the 268th District Court
Fort Bend County, Texas
Trial Court Cause No. 103,412

OPINION

Appellant, Carl Williams, appeals from the trial court's order dismissing his *pro se, in forma pauperis* lawsuit as frivolous. Finding no abuse of discretion by the trial court, we affirm.

Appellant is an inmate of the Texas Department of Criminal Justice - Institutional Division (TDCJ-ID). He filed suit against appellees, Wayne Scott, Kenneth Negbenebor, and Wilburn Gore,¹ under the Texas Tort Claims Act, the Texas Penal Code, and the federal civil

¹ Appellees are officials or employees of the TDCJ-ID.

rights statutes. Appellant alleged that appellees, acting in their individual and official capacities, forced him to eat poisoned food, shot him with electrons from an unknown object, placed him on a hit list, used AIDS inmates to infect him, seized his legal materials and mail, deprived him of medical care, fabricated his medical records, and housed him with gang inmates. Claiming conspiracy, negligence and gross negligence, appellant sought compensatory and punitive damages. Appellees filed a motion to dismiss the suit as frivolous under section 14.003 of Texas Civil Practice and Remedies Code. Without a hearing, the trial court granted appellees' unopposed motion and this appeal ensued.

Appellant raises eleven points of error that apparently complain about the dismissal of his suit.² Chapter 14 of the Texas Civil Practice and Remedies Code applies to suits brought by an inmate who has filed an affidavit or unsworn declaration of inability to pay costs. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.002(a) (Vernon Supp. 1999); *see also Hickson v. Moya*, 926 S.W.2d 397, 398 (Tex. App.--Waco 1996, no writ). Section 14.003(a) permits a court to dismiss an inmate's claim if it finds, among other things, that the claim is "frivolous or malicious." *See* TEX. CIV. PRAC. & REM. CODE ANN. § 14.003(a)(2). In determining whether a claim is frivolous or malicious, the court 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 to support 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 acts. *See id.* § 14.003(b); *Hickson*, 926 S.W.2d at 398.

We review a trial court's dismissal of an inmate's claim under section 14.003(a) under an abuse of discretion standard. *See Thomas v. Wichita General Hosp.*, 952 S.W.2d 936, 939 (Tex. App.--Fort Worth 1997, writ denied); *see also Hickson*, 926 S.W.2d at 398. To establish an abuse of discretion, the complaining party must show the trial court's action was arbitrary or unreasonable in light of all of the circumstances in the case. *See McCollum v. Mt. Arafat*

² We note that these points are not briefed with argument. Appellant simply lists case annotations that espouse general principles of law relating to inmate civil rights litigation or to the causes of action he attempts to assert.

Baptist Church, Inc., 980 S.W.2d 535, 536 (Tex. App.--Houston [14th Dist.] 1998,). In other words, a court abuses its discretion when it acts without reference to any guiding rules or principles. *See Thomas*, 952 S.W.2d at 939.

When, as here, the trial court dismisses a suit without a fact hearing, the only issue before the appellate court is whether the trial court properly determined that was no arguable basis in law for the suit. *See Lentworth v. Trahan*, 981 S.W.2d 720, 722 (Tex. App.--Houston [1st Dist.] 1998, no pet.); *see also Harrison v. Texas Dept. of Criminal Justice-Institutional Div.*, 915 S.W.2d 882, 887 (Tex. App.--Houston [1st Dist.] 1995, no writ). *Pro se* pleadings are evaluated by standards less stringent than those applied to formal pleadings drafted by lawyers. *See Lentworth*, 881 S.W.2 at 722. Accordingly, appellant's petition must be construed liberally in the light most favorable to appellant. *See Perales v. Kinney*, 891 S.W.2d 731, 732 (Tex. App.--Houston [1st Dist.] 1994, no writ).

Appellant seeks relief under the Texas Tort Claims Act, which provides a limited waiver of governmental immunity in three general areas: (1) use of publicly owned vehicles, (2) premise defects, and (3) the condition or use of personal property. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 101.021, 101.022 (Vernon 1997); *see also Aguilar v. Chastain*, 923 S.W.2d 740, 744 (Tex. App.--Tyler 1996, no writ). The Act does not provide for recovery against individuals employed by the State, regardless of the capacity in which they acted. *See Lentworth*, 881 S.W.2 at 722; *see also Aguilar*, 923 S.W.2d at 744. Thus, "the pleadings of the suit must name as defendant, the governmental unit against which liability is to be established" TEX. CIV. PRAC. & REM. CODE ANN. 101.102(b); *see Perales*, 891 S.W.2d at 732. In the instant case, appellant failed to name either the State of Texas or any other governmental unit as a party. Because appellees are not governmental units, they have no liability under the Texas Tort Claims Act and dismissal of appellant's claim was proper. *See Harrison*, 915 S.W.2d at 889-90.

Appellant also seeks relief pursuant to the Texas Penal Code. *See* TEX. PEN. CODE ANN. §§ 39.01-39.06 (Vernon 1994 & Supp. 1999). The Penal Code does not create private

causes of action and a victim does not have standing to participate as a party in a criminal proceeding. *See* TEX. CONST. art. I, § 30(e); TEX. CODE CRIM. PROC. ANN. Art. 56(d) (Vernon Supp. 1999); *see also Aguilar*, 923 S.W.2d at 745. Because there is no arguable basis in law for appellant's Penal Code claim, dismissal of this claim was also proper.

Finally, appellant seeks relief under the federal civil rights statutes. *See* 42 U.S.C. §§ 1983, 1985, 1986 (1994). In order to state a claim under section 1983, a litigant must allege that a person acting under color of state law deprived him of rights, privileges or immunities secured by the Constitution or laws of the United States. *See Aguilar*, 923 S.W.2d at 743. Here, appellant's petition does not allege any specific deprivation of a constitutional right, but merely contains a general citation to various constitutional amendments. Even when construed liberally and in a light most favorable to appellant, such pleadings are insufficient to state a claim under section 1983. Appellant also fails to state claim to the extent he seeks relief based on negligence, or against appellees in their official capacities. *See Spacek v. Charles*, 928 S.W.2d 88, 93 (Tex. App.–Houston [14th Dist.] 1996, writ dismissed w.o.j.) (section 1983 does not impose liability for violations of duties of care arising under tort law); *see also Thomas v. Brown*, 927 S.W.2d 122, 125 (Tex. App.–Houston [14th Dist.] 1996, writ denied) (officials acting in their official capacities are not "persons" who may be liable under section 1983).

Similarly, to state a claim for conspiracy under section 1985(3) based on a deprivation of equal rights or privileges under the law, a litigant must allege some class-based animus. *Burns-Toole v. Byrne*, 11 F.3d 1270, 1276 (5th Cir.), *cert. denied*, 512 U.S. 1207 (1994). Because of the absence of such allegations in appellant's petition, the trial court properly dismissed the section 1985 claim. In as much as appellant did not state a claim under section 1985, the trial court also properly dismissed appellant's section 1986 claim. *See Newberry v. East Texas State Univ.*, 161 F.3d 276, 281 n.3 (5th Cir. 1998).

Finding that the trial court properly concluded that appellant's suit has no arguable basis in law, we hold that the trial court did not abuse its discretion in dismissing appellant's suit. Accordingly, we affirm the trial court's judgment.

PER CURIAM

Judgment rendered and Opinion filed October 21, 1999.

Panel consists of Justices Yates, Fowler and Frost.

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