



ORIGINAL

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See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

DAVID COKER,

Plaintiff/Appellant,

vs.

CODY CROSS, SEAN SKARECKY,
ERIC CRAMER, JAMES DEMPSEY
and MATTHEW SINNETT, individually
and in their Official Capacity as DOC
Officers, STATE OF OKLAHOMA ex rel.
Department of Corrections, and
LEXINGTON ASSESSMENT AND
RECEPTION CENTER,

Defendants/Appellees.

OCT - 1 2025

SELDEN JONES
CLERK

Case No. 122,807

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APPEAL FROM THE DISTRICT COURT OF
CLEVELAND COUNTY, OKLAHOMA

HONORABLE THAD BALKMAN, DISTRICT JUDGE

AFFIRMED

David Coker
Lawton, Oklahoma

Pro se

Lexie P. Norwood
ASSISTANT ATTORNEY GENERAL
Oklahoma City, Oklahoma

For Defendants/Appellees

OPINION BY GREGORY C. BLACKWELL, JUDGE:

David Coker appeals the trial court's grant of the defendants' motion to dismiss. The defendants, the State of Oklahoma ex rel the Oklahoma Department of Corrections (DOC) and the Lexington Assessment and Reception Center

(LARC), moved to dismiss Mr. Coker's action, arguing the defendants were immune from suit under the Oklahoma Governmental Tort Claims Act (GTCA). Upon review, under facts as specifically alleged, we agree and thereby affirm the court's grant of defendants' motion to dismiss.¹

BACKGROUND

Mr. Coker is an inmate who is currently incarcerated at the Lawton Correctional Facility. Before placement there, Mr. Coker was held at the LARC facility, which is also part of DOC. In his amended petition, Mr. Coker alleged that he suffered harm as the result of DOC guards allowing him to be housed with inmates that the guards knew would harm him. Indeed, those inmates did batter Mr. Coker on two separate occasions. As a result, Mr. Coker brought this action against the DOC officers, "individually and in their official capacity," as well as the DOC and LARC for intentional infliction of emotional distress and negligence. He also brought a specific claim of "government liability: assault and

¹ The defendants contend that Mr. Coker's appeal was untimely because the judgment was filed in this case on November 12, 2024, and "[a]n appeal to the Supreme Court of Oklahoma, if taken, must be commenced by filing a petition in error with the Clerk of the Supreme Court of Oklahoma within thirty (30) days from the date a judgment, decree, or appealable order." 12 O.S. § 990A(A). The petition in error in this case was filed on January 16, 2025, and the judgment was entered on November 12, 2024. Thus, according to the defendants, the appeal was untimely. However, the defendants failed to address the rest of the statute, which states: "If the appellant did not prepare the judgment, decree, or appealable order ... and the court records do not reflect the service of a copy of the judgment, decree, or appealable order to the appellant within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the petition in error may be filed *within thirty (30) days after the earliest date on which the court records show that a copy of the judgment, decree, or appealable order was served upon the appellant.*" *Id.* (emphasis supplied). The Supreme Court, in interpreting this section of the statute has held: "The petition will be accepted as timely if proof of service is absent, unless it is clear that the appellant prepared the judgment." *Owens v. Owens*, 2023 OK 12, ¶ 30, 529 P.3d 905, 915. It is clear from the record that Mr. Coker did not prepare the judgment. As the November 12 order contains no proof of service to Mr. Coker, we hold that the present appeal was timely.

battery and negligence as to the Oklahoma Department of Corrections” and a vicarious liability claim alleging that the DOC officers were acting as agents for the LARC, DOC, and the state, and that those entities should be liable for the actions of their agents. ROA 10-11.

The defendants filed a motion to dismiss pursuant to 12 O.S. § 2012(b)(6). The defendants argued that they were immune from suit for any claims of negligence or constitutional violations under GTCA and that the institutional defendants could not be held liable for the intentional torts of their employees, if any. The motion was granted and Mr. Coker appeals.²

² Shortly thereafter, Mr. Coker filed a motion to vacate the trial court’s judgment. To avoid inconsistent orders, we stayed the appeal pending resolution of the motion to vacate. Mr. Coker filed a status report indicating that the that court denied the motion to vacate. As such, we proceed to resolve this appeal.

We also note that Mr. Coker has not filed any amended or supplemental petition in error seeking review of the court’s denial of his motion to vacate. Rather, he filed three separate amended designations of record and a motion to for leave to supplement his petition in error (further discussed below), each of which attempt to add post-dismissal documents into the record. Having failed to amend his petition in error to include the denial of the motion to vacate below, we cannot consider any papers subsequent to the granting of the motion to dismiss as part of the record on appeal. “Materials which were not before the trial court at the time of the decision appealed are not properly part of the record on appeal without order of the trial court or the appellate court.” Okla.Sup.Ct.R. 1.28(b).

As to Mr. Coker’s motion seeking leave to supplement his petition in error, filed August 27, 2025, we note that his motion contains several exhibits which appear to relate to the named DOC officers’ criminal cases relating to the events in question. These exhibits do not appear in the record we have before us, nor were they before the trial court prior to the order of dismissal under review. The first time these exhibits appear below is in a supplemental amendment to Mr. Coker’s motion to vacate. As discussed above, this Court may not consider any of the papers filed after the trial court’s dismissal of Mr. Coker’s case. Accordingly, Mr. Coker’s August 27th motion to supplement the petition in error is denied.

Nevertheless, having reviewed the attachments to the August 27th motion in order to decide the same, we note that the attachments would not have aided Mr. Coker in holding the state liable in this case because, as alleged by Mr. Coker in his amended petition, the DOC officers were at all times acting within the scope of their employment. Although those documents might be helpful to prove that the defendants were acting *outside* the scope of their employment during the events in question, Mr. Coker’s pleading was adamant that the officers were at all times acting within the scope of their employment, as further discussed

STANDARD OF REVIEW

At the motion to dismiss stage, the Court seeks to test the law of the claims rather than the facts which are asserted in support thereof. *Gens v. Casady School*, 2004 OK 5, ¶ 8, 177 P.3d 565 (citation omitted). Dismissal for failure to state a claim upon which relief may be granted is appropriate when the Court finds a “lack of any cognizable legal theory to support the claim or for insufficient facts under a cognizable theory.” *Id.*

ANALYSIS

On appeal, Mr. Coker alleges that the trial court erred in granting the defendants’ motion to dismiss because he contends his amended petition was sufficient to withstand a motion to dismiss. However, we agree with the defendants that they are immune from suit under the GTCA under the facts alleged.

“The GTCA is the exclusive remedy by which an injured plaintiff may recover against a governmental entity for its negligence.” *Smith v. City of Stillwater*, 2014 OK 42, ¶ 14, 328 P.3d 1192, 1198. The GTCA adopts the doctrine of sovereign immunity and provides that the state, its political subdivisions, and all of their employees acting within the scope of their employment, whether performing governmental or proprietary functions, shall

below. Although, pursuant to 51 O.S. § 153(C), persons such as the DOC officers in this case “may be named as defendant[s] under alternative allegations that such person[s] did not act within the scope of employment,” Mr. Coker, despite naming the officers “individually,” made no such allegations in his amended petition.

be immune from liability for torts except as provided therein. Title 51 O.S. § 152.1(A); *Nelson v. Pollay*, 1996 OK 142, ¶ 5, 916 P.2d 1369.

Mr. Coker's claims against the defendants arise from incidents that occurred while Mr. Coker was in custody of the DOC. The GTCA specifically preserves immunity for DOC on claims arising from the "[p]rovision, equipping, operation or maintenance of any prison, jail or correctional facility, or injuries resulting from the parole or escape of a prisoner or *injuries by a prisoner to any other prisoner*" *Id.* § 155(25) (emphasis added).

Mr. Coker's petition alleges that DOC employees allowed him to be attacked by other inmates, which led to permanent emotional and physical harm. Mr. Coker does not allege that any of the named correctional officers laid hands on him, but rather, that other inmates assaulted and battered him and that the officers were negligent—or worse—in preventing or stopping the attack. Pursuant to 51 O.S. § 155(25), the DOC employees shall not be liable if a loss or claim results from "injuries by a prisoner to any other prisoner." Under any fair reading of Mr. Coker's amended petition, we find it clear that his alleged injuries occurred because other prisoners beat him up. As such, under the plain language of § 155(25), the state cannot be held liable.

Mr. Coker also brought negligence claims against "all defendants" and a claim for vicarious liability. However, the alleged tortious inaction of the defendants in this case occurred, as specifically alleged in the amended petition, in the course of the defendants' employment in operating and maintain the correctional facility. Mr. Coker specifically concedes this point, stating in his

amended petition that “[e]ach and every action complained of as to Defendants Cross, Cramer, Skarecky, Dempsey and Sinnett ... was committed while [they] were employees of the Oklahoma Department of Corrections, and said causes of action were suffered by Plaintiff in the course of the defendants’ employment and within the scope of their duties and authority.” ROA 10. Should there be no doubt, the amended petition further alleges that “the torts committed by Defendants Cross, Cramer, Skarecky, Dempsey, and Sinnet as herein described were incidental to and done in furtherance of the business of the DOC.” *Id.* Thus, while Mr. Coker named the defendants “individually,” we find it clear that his claims only relate to the defendants in their official capacity. As such, the dismissal of the individual defendants was appropriate.³

As to his claim of intentional infliction of emotional distress, we note that this tort “necessarily requires proof that an employee was acting in bad faith, in which case the employee’s actions would be outside the scope of their employment and the political subdivision has no liability.” *Shaw v. City of Oklahoma City*, 2016 OK CIV APP 55, ¶ 13, 380 P.3d 894, 897 (approved for publication by the Oklahoma Supreme Court). Thus, we find that no defendant can be held liable for intentional infliction of emotional distress.

³ The naming of the individual defendants “in their official capacity” was also improper given these allegations. See 51 O.S. § 163 (“Suits instituted pursuant to the provisions of this act shall name as defendant the state or the political subdivision against which liability is sought to be established. In no instance shall an employee of the state or political subdivision acting within the scope of his employment be named as defendant with the exception that suits based on the conduct of resident physicians and interns shall be made against the individual consistent with the provisions of Title 12 of the Oklahoma Statutes.”).

As stated above, the GTCA provides that the state, its political subdivisions, and all state employees acting within the scope of their employment shall be immune from liability for torts, except as provided therein. See Title 51 O.S. § 152.1(A); *Nelson v. Pollay*, 1996 OK 142, ¶ 5, 916 P.2d 1369. The state has specifically preserved its immunity for “injuries by a prisoner to any other prisoner” *Id.* § 155(25). Accordingly, because that is what occurred here, and because Mr. Coker specifically avoided alternative allegations seeking to hold the individual defendants personally responsible for any actions taken outside the scope of their employment, we affirm the dismissal.

AFFIRMED.

WISEMAN, P.J., concurs in result, and FISCHER, J., concurs.

October 1, 2025