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IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA **FILED**
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

DIVISION IV

MAR 26 2026

ANTHONY DAVIS,
Petitioner/Appellant,

vs.

OKLAHOMA PARDON AND
PAROLE BOARD,

Respondent/Appellee.

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Case No. 123,147

SELDEN JONES
CLERK

APPEAL FROM THE DISTRICT COURT OF
GREER COUNTY, OKLAHOMA

HONORABLE ERIC G. YARBROUGH, ASSOCIATE DISTRICT JUDGE

AFFIRMED IN PART AND VACATED IN PART

Anthony M. Davis
Granite, Oklahoma

Pro se

OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

Anthony Davis appeals the court's dismissal of his action against the Oklahoma Pardon and Parole Board. Upon review, we affirm the court's dismissal of the action because it was frivolous and because Mr. Davis failed to serve the board with the summons and the petition. However, we find that the court impermissibly ordered Mr. Davis to prepay filing costs in subsequent cases and vacate that portion of the court's order.

I.

Mr. Davis is an inmate who was sentenced to two consecutive life terms. According to his petition, in August 2023, Mr. Davis went before the board for stage one consideration for parole pursuant to 57 O.S. § 332.7, and his request for parole was denied. He filed a civil petition for declaratory relief against the board in district court, alleging that the board failed to comply with various mandates of Oklahoma's Administrative Procedures Act (APA), 75 O.S. § 250-307. The record shows that Mr. Davis filed a request to have the court clerk serve summons pursuant to 12 O.S. § 2004, which was addressed to "Oklahoma Pardon and Parole Board, 2501 N. Lincoln Boulevard, Suite 201." ROA 5.

Roughly one month later, Mr. Davis filed a motion for summary judgment, again alleging that the board had violated the APA. A certificate of mailing on the last page of Mr. Davis's motion shows that he mailed the motion to the "Oklahoma Pardon and Parole Board, 4345 N. Lincoln Blvd., Ste. 1082," which is a different address than the one used in the summons. ROA 11. The board then filed a special entry of appearance and motion to dismiss, alleging that it had not been properly served, that venue was improper, and that the action was frivolous or malicious pursuant to 57 O.S. § 566. The court agreed with the board, finding that the petition was frivolous and that the board had not been served within 180 days of the petition being filed as required by 12 O.S. § 2004(I). The motion to dismiss was granted, and it is from that order that Mr. Davis appeals.

II.

The trial court dismissed Mr. Davis's action as frivolous and for want of proper service of process. We review dismissal orders *de novo*. *Miller v. Miller*, 1998 OK 24, ¶ 15, 956 P.2d 887, 894. The trial court also imposed a sanction of precluding Mr. Davis from applying for *in forma pauperis* status as to any future filing. The imposition of sanctions is reviewed for abuse of discretion. *Garnett v. Government Employees Ins. Co.*, 2008 OK 43, ¶ 14, 186 P.3d 935, 941.

III.

A.

Mr. Davis first contends that the board's special entry of appearance and motion to dismiss was an acknowledgement of service pursuant to 12 O.S. § 2004(C)(5). If so, the trial court erred in dismissing his case for failure to serve the board within 180 days as contemplated by 12 O.S. § 2004(I).¹ Upon review, we find that the special appearance, which challenged the court's jurisdiction, did not constitute service by acknowledgment and, therefore, the court correctly found that the board was not served with the petition.

Section 2004(C)(5) states that "[a]n acknowledgment on the back of the summons or the voluntary appearance of a defendant is equivalent to service." Thus, the question before us is whether a special entry of appearance and motion

¹ "If service of process is not made upon a defendant within one hundred eighty (180) days after the filing of the petition and the plaintiff has not shown good cause why such service was not made within that period, the action shall be deemed dismissed as to that defendant without prejudice and Section 100 of this title shall be applicable to any refiling of the action." 12 O.S. O.S. § 2004(I); *see also Thibault v. Garcia*, 2017 OK CIV APP 36, ¶ 16, 398 P.3d 331, 334 (detailing statutory amendments).

to dismiss constitutes an acknowledgment of service. We find the Court's analysis in *Gray v. Gray*, 1969 OK 125, 459 P.2d 181, instructive here. In *Gray*, the defendant filed a variety of special appearances, claiming that publication service and service upon alias summons were defective. *Id.* ¶ 4. The Court held that because the attempted service was fatally defective, the trial court never acquired jurisdiction under either form of attempted service. *Id.* ¶ 14. In so holding, the Court reasoned that "[t]he law generally recognizes that filing of defensive pleadings, or pleading a defense or bar to a plaintiff's right of recovery, does not constitute demand for affirmative relief." *Id.* ¶ 15. The Court alternatively recognized that when "an answer makes claim for relief upon which a defendant might maintain an action independent of plaintiff's claim, and upon which defendant might proceed to recovery even should plaintiff's cause of action fail, there has been demand for affirmative relief which invokes jurisdiction of the court and waives the special appearance." *Id.*

In its motion to dismiss, the board argued that dismissal was warranted pursuant to 12 O.S. § 2012(B)(3) and 12 O.S. § 2012(B)(5). The board did not make any independent claims for relief that stand alone from the petition. Indeed, the board alleged improper venue and improper service as the bases for dismissal. We find that the request for dismissal on those bases constitutes pleading a defense or bar to the plaintiff's right to recovery, not a request for affirmative relief. Because the motion to dismiss is not a request for affirmative relief and the board therefore did not waive its ability to challenge the court's

jurisdiction, the question then becomes whether service was indeed “fatally defective.”

The record reflects that Mr. Davis attempted to serve the board with the summons and petition. However, as the board alleged in its motion to dismiss, “although the record shows Plaintiff requested certified delivery of a summons in this case, he has not made a showing that service was completed.” ROA 14. In his response and his petition in error, Mr. Davis does not dispute that this service was not completed. Rather, he exclusively argues that the board’s entry of appearance constituted service by acknowledgment. We find that this argument fails for the reasons articulated above. Thus, we hold, as the Supreme Court did in *Gray*, that because the attempted service was fatally defective, the trial court never acquired jurisdiction under either form of attempted service.

Title 12 O.S. § 2004(I) provides that “[i]f service of process is not made upon a defendant within one hundred eighty (180) days after the filing of the petition and the plaintiff has not shown good cause why such service was not made within that period, the action shall be deemed dismissed as to that defendant” Here, the petition was filed on September 18, 2024. The court’s order dismissing the case was filed on May 21, 2025, well after 180 days. Mr. Davis did not offer any explanation as to why service was defective in this case. Therefore, we find that the trial court dismissal was proper pursuant to 12 O.S. § 2004(I).

B.

Mr. Davis also contends that the court erred in dismissing his case on the basis that it was frivolous and malicious. The court below found as follows:

Defendant, Pardon and Parole Board, has entered a special appearance and has suggested that this case may have been prepared by another inmate. Upon review, it is found that Inmate James Patrick Lesley, Jr., has filed pleadings and utilized language found in CV-24-15 (James Patrick Lesley, Jr. v. State of Oklahoma, the Oklahoma Pardon and Parole Board), that is virtually identical to the form and language in this case. The signature of Anthony Davis on the Petition is not notarized. If this case was not filed by Anthony Davis, he should inform the Court.

...

The Court further Orders the General Counsel of the Pardon and Parole Board to forward a copy of this Order to the Administrative Director of the Courts, that Plaintiff/Petitioner's name (Anthony Davis) and case number be recorded in the Registry of Frivolous motions and pleadings, in accordance with 57 O.S. § 566.2.

ROA 22-23. Title 57 O.S. § 566(B)(1) defines frivolous as "having no reasonable basis in law or fact, or lacking any good faith legal argument for the extension, modification, or reversal of existing law, or being maintained solely or primarily for delay or to harass the party filed against." Malicious is defined as "filing numerous actions, or actions brought in bad faith on de minimus issues." *Id.* § 566(B)(3).

The board alleged that the petition was frivolous in part due to its similarity to a petition filed by another inmate, James Patrick Lesley Jr., in a different case. ROA 13. As referenced above, the court also noted the similarity

in its order. ROA 22-23.² A review of Mr. Lesley's case, CV-2024-15, shows that his petition and Mr. Davis's petition are practically identical.³ Additionally, further exploration of Mr. Lesley's litigation history reveals that he has raised nearly identical claims to those raised in his petition in CV-2024-15 against the board in several other cases.⁴

The Supreme Court has held as follows regarding the board's consideration of allegedly improper materials in the denial of an inmate's parole:

An inmate cannot confront the board in the context of an adversarial proceeding. None is statutorily provided. The board is explicitly exempted from compliance with the adjudicative process in Art. II of the Administrative Procedures Act [APA]. A trial-type hearing is neither mandated nor appropriate for review of the board's use of material placed in a prisoner's file. Because no trial-type procedure governs a parole consideration and there is no protectible liberty interest in one's earlier than his end-of-sentence release, the board is the sole judge of what materials may be considered in the decision-making process. In short, this court cannot dictate to the

² To the extent that the court was admonishing Mr. Davis for copying and pasting portions of another inmate's petition, we note that the act of copying in this context is not inherently frivolous, malicious, or wrong. "Plagiarism is rightfully a mortal sin in academic settings, where original expression is paramount. Litigation is different, with far more room for borrowing ideas and writings." Schatz and McGrath, *Beg, Borrow, Steal: Plagiarism vs. Copying in Legal Writing*, 26 California Litigation 3, 18 (2013).

³ The only differences in the two petitions are that Mr. Davis's contains his own name, the dates of his hearing, and he removed two paragraphs specifically related to Mr. Lesley's unique procedural history.

⁴ For example, in CV-2024-15, Mr. Lesley asked the trial court to declare the board's decision denying him parole null and void because the board should not have considered the facts of the underlying case, the report of the District Attorney, and other materials in determining whether Mr. Lesley should be considered for parole. In CV-2018-685, Mr. Lesley filed a petition alleging similar claims that was subsequently dismissed on the merits. This Court upheld the dismissal on appeal, specifically noting that 57 O.S. § 337(I) allows the board to consider the prior criminal record of inmates under consideration for parole recommendation and "[s]uch language is sufficiently broad enough to encompass a district attorney's narrative of the criminal acts leading to the conviction of an inmate seeking parole." *James Patrick Lesley Jr. v. Oklahoma Pardon and Parole Board*, No. 117,215, pg. 5 (COCA Div. III, June 19, 2021) (unpublished). It appears that Mr. Lesley has raised the same or similar claims to those in Mr. Davis's petition in CV-2019-2169, CV-2021-2159, and CV-2023-15 as well.

board what information may be taken into account in the course of its deliberations. No action will hence lie against the board either for expungement of public documents from the prisoner's file or for invalidation of a parole's denial.

Shabazz v. Keating, 1999 OK 26, ¶ 10, 977 P.2d 1089, 1094. Thus, we find it clear that neither Mr. Davis, nor Mr. Lesley, could bring a successful cause of action against the board based on their denial of parole or the board's consideration of any allegedly improper materials in denying their parole. Oklahoma courts have consistently held that "a party proceeding pro se in a civil action or a civil appeal is to be held to the same standards as an attorney." *Funnell v. Jones*, 1985 OK 73, ¶ 4, 737 P.2d 105, 107. Therefore, we find that the trial court correctly found that Mr. Davis's appeal was frivolous. *Shabazz* and several other cases dictate that inmates do not have protected liberty interest in parole, the board is free to consider whatever materials it wishes in denying an inmate's request for parole, and Mr. Davis made no "good faith legal argument for the extension, modification, or reversal" of *Shabazz*. 57 O.S. § 566 (defining "frivolous").

Nevertheless, we find that the court's order requiring Mr. Davis to prepay and forward in advance the court costs of any pleadings filed in future cases to be an abuse of discretion. Title 57 O.S. § 566.2(A) makes clear that:

A prisoner who has, *on three or more prior occasions*, while incarcerated or detained in any facility, or while on probation or parole, brought an action or appeal in a court of this state that has been dismissed on the grounds that the case was frivolous, or malicious, or failed to state a claim upon which relief could be granted, may not proceed in a matter arising out of a civil case, or upon an original action or on appeal without prepayment of all fees required by law, unless the prisoner is under immediate danger of serious physical injury.

Id. (emphasis supplied). Here, a review of the record reflects that there was no mention of or reference to any prior frivolous appeals filed by Mr. Davis. Additionally, a review of the registry itself shows that Mr. Davis is not currently listed.⁵ It is unclear how the court reached its determination that Mr. Davis had previously brought three or more actions that warranted an order that he prepay costs pursuant to § 566.2, and the court offered no alternative basis for such an order. Accordingly, we find the trial court erred in ordering Mr. Davis to prepay such costs moving forward and vacate that portion of the court's order.⁶ In all other respects, the trial court's order is affirmed.

AFFIRMED IN PART AND VACATED IN PART.

BARNES, J., and HIXON, C.J. (sitting by designation), concur.

March 26, 2026

⁵ The registry is available for viewing at: <https://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=380115>.

⁶ Specifically, we vacate the entirety of the final full paragraph of page two of the order, which begins with "[t]he Court additionally finds" The next paragraph, which directs a copy of the order be sent to the Administrative Office of the Courts for compliance with § 566.2, is specifically affirmed.