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# ARKANSAS COURT OF APPEALS

DIVISION II

No. CV-23-421

DETRIC WILSON

APPELLANT

V.

DEXTER PAYNE

APPELLEE

Opinion Delivered May 1, 2024

APPEAL FROM THE JEFFERSON  
COUNTY CIRCUIT COURT  
[NO. 35CV-23-259]

HONORABLE JODI RAINES DENNIS,  
JUDGE

AFFIRMED

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## WENDY SCHOLTENS WOOD, Judge

Detric Wilson appeals an order of the Jefferson County Circuit Court denying his petition to proceed in forma pauperis. Wilson filed the petition in a case in which he is seeking to have the circuit court declare his state remedies exhausted in order to pursue a federal civil-rights lawsuit against Dexter Payne, the director of the Arkansas Department of Correction (ADC). We affirm the circuit court’s denial of Wilson’s petition.

On March 29, 2023, Wilson filed a petition against Director Payne in circuit court requesting a declaration that he had exhausted his state remedies “in support of 42 U.S.C. § 1983 civil claims.” He explained in the petition that he wanted to pursue a section 1983 action against Director Payne for false imprisonment and the violation of his constitutional rights. Wilson simultaneously filed a separate petition requesting that the court allow him to proceed in forma pauperis—that is, without prepayment of the court filing fee. On May 4, the circuit court denied his request, and Wilson filed this appeal.

Pursuant to Rule 72 of the Arkansas Rules of Civil Procedure, the right to proceed in forma pauperis in civil matters is conditioned on the circuit court’s finding of indigency and its satisfaction from the facts alleged that the petitioner has “a colorable cause of action.” Ark. R. Civ. P. 72(c) (2023). A colorable cause of action is a claim that is legitimate and may reasonably be asserted given the facts presented and the current law or a reasonable and logical extension or modification of it. *Morgan v. Kelley*, 2019 Ark. 189, at 2, 575 S.W.3d 108, 109.

We review the denial of a petition to proceed in forma pauperis for an abuse of discretion, and we will not reverse the circuit court’s factual findings in support of its exercise of discretion unless they are clearly erroneous. *Clemmons v. Kelley*, 2021 Ark. 47, at 3, 618 S.W.3d 128, 130. Discretion is abused when the court acts arbitrarily or groundlessly. *Id.*, 618 S.W.3d at 130. If the underlying petition clearly fails to state a colorable cause of action, there has been no abuse of discretion, and this court may affirm the denial of in forma pauperis status. *Morgan*, 2019 Ark. 189, at 3, 575 S.W.3d at 110.

On appeal, Wilson asks us to remand this case to the circuit court for further findings regarding whether he stated a colorable cause of action. In support of his argument, he cites *Gardner v. Kelley*, 2018 Ark. 212, 549 S.W.3d 349, and *Whitney v. Kelley*, 2018 Ark. 384, 562 S.W.3d 208, in which the supreme court remanded for the circuit court to make the findings required by Rule 72—in *Gardner*, for a finding of indigency, and in *Whitney*, for specific findings regarding a colorable cause of action. However, it is unnecessary for us to remand this case because the court’s findings are sufficient here, and it is clear from the record that

Wilson has failed to state a colorable cause of action. *Timmons v. Kelley*, 2018 Ark. 361, at 2–3, 562 S.W.3d 824, 825.

In its May 4 order, the circuit court first found that Wilson had presented sufficient evidence to establish that he was indigent. The court then set forth Wilson’s claim: permission from the court to exhaust his state remedies in order to file a section 1983 lawsuit in federal court. The order then provided that given “this allegation and the current law or a reasonable and logical extension or modification of it,” no colorable cause of action is stated.

It appears that Wilson is intending to file a section 1983 lawsuit in federal court. To do so, he must exhaust “such administrative remedies as are available[.]” 42 U.S.C. § 1997e(a). In *Booth v. Churner*, 532 U.S. 731, 739, 741 (2001), the Supreme Court held that courts have no discretion in excusing exhaustion. The rationale for the exhaustion requirement is to allow prison officials the time and opportunity to review and address complaints internally before the prisoner is allowed to initiate a federal section 1983 claim. *Early v. Crockett*, 2019 Ark. 274, at 4, 584 S.W.3d 247, 250. While an analysis of exactly what exhaustion entails in this case is beyond the scope of this appeal, proper exhaustion of administrative remedies does not include filing a petition in circuit court requesting the court to declare those remedies exhausted, as Wilson did here. Wilson cites no authority otherwise. Therefore, we hold that the circuit court did not abuse its discretion by finding that Wilson stated no colorable cause of action and denying his petition to proceed in forma pauperis.

Finally, Director Payne asks this court to “designate this appeal as a ‘strike’ under Ark. Code Ann. § 16-68-607” because the underlying claim is frivolous and fails to state a claim upon which relief may be granted. Arkansas Code Annotated section 16-68-607 provides that an incarcerated person “may not bring a civil action or appeal a judgment in a civil action or proceeding under the Arkansas indigency statutes” if, on three or more prior occasions while incarcerated, he brought an action “that was determined by a court to: (1) Be frivolous or malicious; or (2) Fail to state a claim upon which relief may be granted.” Ark. Code Ann. § 16-68-607(b) (Supp. 2023).

Because we have affirmed the circuit court’s determination that Wilson failed to state a colorable cause of action, we hold that a strike is warranted because Director Payne has demonstrated that the instant appeal was frivolous. *See Rea v. Kelley*, 2019 Ark. 339, 588 S.W.3d 715; *Morgan, supra* (both considering similar requests but denying them because the underlying habeas petitions set out cognizable claims).

Affirmed.

HIXSON and BROWN, JJ., agree.

*Detric Wilson*, pro se appellant.

*Tim Griffin*, Att’y Gen., by: *Kesia Morrison*, Ass’t Att’y Gen., for appellee.