

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Enrique Villasenor-Gomez,
Appellant-Plaintiff,

v.

Wexford Health Sources, Inc.,
et al.,
Appellees-Defendants.

June 14, 2021

Court of Appeals Case No.
21A-CT-71

Appeal from the Henry Circuit
Court

The Honorable David L. McCord,
Judge

Trial Court Cause No.
33C03-1908-CT-34

Altice, Judge.

Case Summary

- [1] While confined at the New Castle Correctional Facility (NCCF), Enrique Villasenor-Gomez injured his right hand. Claiming he was denied adequate

and timely treatment for his injury, Villasenor-Gomez filed a complaint in the Henry County Circuit Court against the Indiana Department of Correction (IDOC),¹ NCCF, the GEO Group, Inc., Keith Butts, Wexford Health Sources, Inc., Wexford of Indiana, LLC, and unnamed individuals for violation of his federal constitutional rights and for negligence. Wexford Health Sources is a private corporation that provides healthcare to inmates at NCCF through its subsidiary, Wexford of Indiana. Wexford filed its answer and asserted the affirmative defense of failure to exhaust administrative remedies. Wexford then filed a motion for summary judgment based on this affirmative defense. Following a hearing, the trial court granted summary judgment in favor of Wexford. Villasenor-Gomez appeals claiming summary judgment was improper because he substantially complied with NCCF's grievance procedure.

[2] We dismiss.

Facts & Procedural History

[3] On January 22, 2019, there was an altercation between several inmates in cell block D2 at NCCF. Villasenor-Gomez, who was housed in cell block D2,² claims he was not initially involved in the altercation, but that he intervened to break up the fight and injured his hand as a result. Once order was restored to the cell block, Villasenor-Gomez was removed from his cell and placed in

¹ The chronological case summary includes an entry indicating that IDOC was dismissed without prejudice from the action.

² Villasenor-Gomez was released to parole in December 2019.

segregation. He claims he told correctional staff about his injured hand, but no action was taken. He further claims that once in segregation, he repeatedly asked another correctional staff member for medical care for his hand. He maintains that this staff member eventually informed him that he needed to submit a written medical request, but the staff member did not provide him with a form or a writing instrument with which he could make such request. According to Villasenor-Gomez, more than four days passed before he was provided with a pencil so he could make a written request for medical treatment. He claims he then presented his written request to a nurse on the night shift, but no action was taken. He also claims that he filed six additional requests for medical care and begged to have his hand evaluated by medical staff but that his pleas were “ignored.” *Appellant’s Amended Appendix* at 24.

[4] After fifteen days in segregation, Villasenor-Gomez was released back to a different housing unit at which time he spoke with two different grievance counselors about the fact that he had not received medical treatment for his hand. A counselor filled out the grievance form for him because of his injured hand and then gave the completed form to him to sign. He claims that after signing the grievance form, he gave it back to the grievance counselor, who told him “she was going to take care of it.” *Id.* at 76. No grievance, however, was filed.

[5] Approximately eighteen days after the altercation during which he was injured, Villasenor-Gomez was seen by a nurse and received an x-ray of his hand. On

March 27, 2019, Villasenor-Gomez learned that his right hand was fractured at the fourth metacarpal bone.

[6] On August 5, 2019, Villasenor-Gomez, while still incarcerated at NCCF, filed a complaint against IDOC, NCCF, GEO Group, Inc., Keith Butts, Wexford, and unidentified individuals, asserting federal constitutional claims as well as a state negligence claim and seeking compensatory and punitive damages. On October 28, 2019, Wexford filed its responsive pleading and asserted the affirmative defense of failure to exhaust administrative remedies available to him through the prison grievance process.³ On April 15, 2020, after initial discovery was completed, Wexford filed a motion for summary judgment based on Villasenor-Gomez's failure to comply with the exhaustion requirement. Villasenor-Gomez filed a response in opposition on May 14, 2020. Following a hearing on November 9, 2020, the trial court entered its order granting summary judgment in favor of Wexford on December 22, 2020. Specifically, the court determined that Villasenor-Gomez "did not exhaust all available remedies" and that "Wexford is entitled to judgment as a matter of law." *Appellant's Amended Appendix Vol. 2* at 19. Villasenor-Gomez now appeals. Additional facts will be provided, as necessary.

³ Exhaustion of administrative remedies is mandatory for all inmates under the Prison Litigation Reform Act (PLRA). *See Higgason v. Stogsdill*, 818 N.E.2d 486, 489 (Ind. Ct. App. 2004) (discussing the PLRA, 42 U.S.C. § 1997(e)).

Discussion & Decision

[7] This court has jurisdiction in all appeals from final judgments. *In re Estate of Botkins*, 970 N.E.2d 164, 166 (Ind. Ct. App. 2012) (citing Ind. Appellate Rule 5(A)). “A ‘final judgment’ is one which ‘disposes of all claims as to all parties[.]’” *Id.* (quoting Ind. Appellate Rule 2(H)(1)); *see also Bueter v. Brinkman*, 776 N.E.2d 910, 912-13 (Ind. Ct. App. 2002) (a final judgment is one that “disposes of all issues as to all parties, to the full extent of the court to dispose of the same, and puts an end to the particular case” and “reserves no further question or direction for future determination.”) (internal quotations and citations omitted). “Whether an order is a final judgment governs the appellate courts’ subject matter jurisdiction.” *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 757 (Ind. 2014).

[8] Ind. Trial Rule 56(C) provides:

A summary judgment upon less than all the issues involved in a claim or *with respect to less than all the claims or parties shall be interlocutory* unless the court *in writing expressly determines that there is no just reason for delay and in writing expressly directs entry of judgment as to less than all the issues, claims or parties.*

(Emphasis supplied); *see also* App. R. 2(H)(2) (stating that an otherwise non-final judgment may be deemed final if “the trial court in writing *expressly determines that there is no just reason for delay and in writing expressly directs entry of judgment as to less than all the issues, claims or parties*”) (emphasis supplied).

[9] Here, the record shows that Wexford is the only defendant that sought summary judgment and Wexford was the only defendant who appeared for the summary judgment hearing. The trial court's order expressly granted summary judgment in favor of only Wexford. Thus, summary judgment was not entered as to all claims and as to all parties. Nor does the court's order contain the magic language required by T.R. 56(C). We therefore conclude that the trial court's ruling on Wexford's motion for summary judgment was interlocutory in nature. Because it is not a final appealable judgment and Villasenor-Gomez did not follow the proper procedure for bringing an interlocutory appeal, *see* Ind. Appellate Rule 14, we do not have jurisdiction and must dismiss this appeal without prejudice. *See Truelove v. Kinnick*, 163 N.E.3d 344, 347 (Ind. Ct. App. 2021) ("we dismiss this appeal without prejudice to Truelove's right to file an appeal once a final judgment has been entered or the order has been certified for an interlocutory appeal.") (citing *Indy Auto Man, LLC v. Keown & Kratz, LLC*, 84 N.E.3d 718, 722 (Ind. Ct. App. 2017) (dismissal of a non-final judgment without prejudice)).

[10] Dismissed.

Kirsch, J. and Weissmann, J., concur.