

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Derek Fingers,
Appellant-Plaintiff,

v.

Robert Carter, *et al.,*
Appellees-Defendants.

August 15, 2023

Court of Appeals Case No.
23A-PL-132

Appeal from the LaPorte Superior
Court

The Honorable Richard R.
Stalbrink, Jr., Judge

Trial Court Cause No.46D02-2001-
PL-27

Memorandum Decision by Judge Riley
Judges Bradford and Weissmann concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Plaintiff, Derek Fingers (Fingers), appeals the trial court's summary judgment in favor of Appellees-Defendants, Robert Carter, *et al*, finding no genuine issue of material fact with respect to Fingers' Complaint brought pursuant to 42 U.S.C. § 1983.

[2] We affirm.

ISSUE

Fingers presents this court with three issues on appeal, one of which we find dispositive and which we restate as: Whether there is a genuine issue of material fact that Fingers exhausted his administrative remedies prior to filing this cause of action, as required by the Prison Litigation Reform Act.

FACTS AND PROCEDURAL HISTORY

[3] Fingers is an offender confined at the Department of Correction (DOC) and housed at the Westville Correctional Facility (Westville). On January 7, 2020, Fingers brought an action under 42 U.S.C. § 1983 against four employees of the DOC, John Galipeau (Galipeau), warden of Westville, correctional officer Brown, Robert Carter, Jr.¹ (Carter), DOC Commissioner, and John Salyer (Salyer), unit team manager at Westville (State Defendants), and against four

¹ Although the current DOC commissioner is Christina Reagle, Carter remains a defendant because he was sued in both his official and personal capacities.

employees of Wexford Medical Corporation (Wexford), which provides medical services at Westville (Medical Defendants). In his Complaint, Fingers sued all defendants in their official and personal capacities, alleging the use of excessive force when locking Fingers in his cell on August 17, 2019, resulting in injuries, as well as deliberate indifference to his mental health needs, all in violation of his Eight Amendment rights.

[4] On August 11, 2022, the State Defendants filed a motion for summary judgment and memorandum in support, contending that Fingers' claims were barred because he failed to exhaust his administrative remedies prior to filing this lawsuit. Moreover, the State Defendants alleged that the record demonstrated that Defendants Carter, Galipeau, and Salyer were not personally involved in the August 17, 2019, incident and that the State Defendants were not deliberately indifferent to Fingers' medical needs.

[5] Together with its memorandum, the State Defendants filed designated evidence which reflected that Fingers was evaluated by mental health staff on numerous occasions while at Westville and had the opportunity to attend Wexford's medical staff's weekly rounds. Fingers was also seen by medical staff on a monthly basis and was consistently given medication as part of his mental health treatment.

[6] With respect to grievances filed by offenders, the State submitted evidence indicating that Westville has an established grievance program to file grievance complaints. DOC Policy and Administrative Procedure 00-02-301, the

Offender Grievance Process, governed the grievance procedure in effect from October 1, 2017, through March 31, 2020, and details the proceedings an offender must follow to exhaust his administrative remedies. Pursuant to the grievance procedure, an offender may submit grievances concerning the actions of individual staff members, DOC policies, procedures and rules, including grievances related to treatment by staff and medical health, and any other concerns or issues that relate to conditions of care or supervision. The procedure specifies that prior to bringing a formal grievance, the offender must attempt to resolve a complaint informally with the staff member involved, with the person in charge of the area where the situation occurred, or with the staff person's immediate supervisor. If no informal resolution can be reached, the offender grievance procedure requires the offender to proceed with filing a formal grievance.

- [7] To file a formal grievance, the offender must submit a completed State Form 45471, Offender Grievance, to the Grievance Specialist no later than ten business days from the date of the incident giving rise to the complaint or concern. Within five business days of receiving the grievance, the Grievance Specialist will either accept and record the complaint or reject it. Once a grievance is accepted and assigned a grievance number, the Grievance Specialist has fifteen business days to investigate and provide a response to the offender, unless the time is extended. If the offender is dissatisfied with the response to his grievance, the offender may appeal to the warden or designee at the institutional level through State Form 45473, Grievance Appeal. If no

timely grievance response is received, the grievance should be treated as denied and an appeal can be filed. The appeal must be responded to within five business days. If an offender is dissatisfied with the response to his appeal, he may appeal to the Department Grievance Manager by using State Form 45473. The decision by the Department Grievance Manager is final. The State designated the affidavit by Shannon Smith (Smith), Grievance Specialist at Westville, who affirmed that she never received a grievance regarding Fingers' excessive force and mental health claims, nor did Fingers file a grievance appeal.

[8] On September 9, 2022, Fingers filed his response to the State Defendants' motion for summary judgment. Attached to his motion in response, Fingers filed documents, reflecting that he attempted to submit an informal grievance as to the excessive force claim, followed by a formal grievance using State Form 45471. On September 23, 2019, Fingers submitted on plain paper, not on the required State Form, a message to the Grievance Specialist, and a message to the warden, dated October 2, 2019, in which he complained that he had not received a response to his formal grievance. On August 9, 2019, Fingers filed a classification appeal with the DOC director of classification about his alleged denial of mental health treatment. On September 16, 2019, the warden informed Fingers that his appeal was denied, and Fingers appealed the denial on October 4, 2019. On October 23, 2019, the executive director of classification informed Fingers that his mental health code was assigned by mental health staff, not classifications. He was also informed that the Wexford

mental health staff had reviewed his mental health status before his admission to the facility's disciplinary unit, and that any concerns about his mental health should be addressed to the facility's mental health staff.

[9] On December 20, 2022, the trial court granted summary judgment to the State Defendants, holding that Fingers' claims were barred because he failed to exhaust his administrative remedies; that Carter, Galipeau, and Salyer were not personally involved in the perceived use of excessive force as required by 42 U.S.C. § 1983; and that the State Defendants were not deliberately indifferent to Fingers' mental health needs.

[10] Fingers now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Standard of Review

[11] When reviewing the grant or denial of summary judgment, we apply the same test as the trial court: summary judgment is appropriate only if the designated evidence shows there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); *Sedam v. 2JR Pizza Enters., LLC*, 84 N.E.3d 1174, 1176 (Ind. 2017). "A fact is 'material' if its resolution would affect the outcome of the case, and an issue is 'genuine' if a trier of fact is required to resolve the parties' differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences." *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). The moving party bears the

initial burden of showing the absence of any genuine issue of material fact as to a determinative issue. *Id.*

[12] Our review is limited to those facts designated to the trial court, and we construe all facts and reasonable inferences drawn from those facts in favor of the non-moving party. T.R. 56(H); *Meredith v. Pence*, 984 N.E.2d 1213, 1218 (Ind. 2013). Because we review a summary judgment ruling *de novo*, a trial court’s findings and conclusions offer insight into the rationale for the court’s judgment and facilitate appellate review but are not binding on this court. *Denson v. Estate of Dillard*, 116 N.E.3d 535, 539 (Ind. Ct. App. 2018). Additionally, we are not constrained by the claims and arguments presented to the trial court, and we may affirm a summary judgment ruling on any theory supported by the designated evidence. *Id.*

II. *Analysis*

[13] Because Fingers brought his Complaint under 42 U.S.C. § 1983, Fingers was mandated to comply with the requirements of the Prison Litigation Reform Act (PLRA). The PLRA provides that “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1977e. “[T]he PLRA’s exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong.” *Porter v. Nussle*, 534

U.S. 516, 532, 122 S.Ct. 983, 992, 152 L.Ed.2d 12 (2002). Moreover, a “prisoner must now exhaust administrative remedies even where the relief sought—monetary damages—cannot be granted by the administrative process.” *Woodford v. Ngo*, 548 U.S. 81, 85, 126 S.Ct. 2378, 2382, 165 L.Ed.2d 368 (2006). As such, the PLRA “attempts to eliminate unwarranted federal court interference with administration of prisons and thus seeks to affor[d] corrections officials time and opportunity to address complaints internally[.]” *Id.* at 93. Requiring proper exhaustion “gives prisoners an effective incentive to make full use of the prison grievance process and accordingly provides prisons with a fair opportunity to correct their own errors. This is particularly important in relation to state corrections systems because it is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons.” *Id.*

[14] Indiana’s grievance system for prisoners who seek to challenge the conditions of their confinement is detailed in DOC Policy and Administrative Procedure 00-02-301 (Policy), which was in effect during Fingers’ pursuit of his complaints. This Policy applies to “[c]omplaints that involve the requirements of policies, procedures, and rules of the [DOC] as well as any other concerns or issues that relate to the conditions of care or supervision are issues that may be grieved.” (Appellees’ App. Vol. II, p. 17). Examples include, but are not limited to, “[t]he substance and requirements of policies, procedures, and rules of the Department or facility (including, but not limited to, correspondence, staff

treatment, medical or mental health, some visitation, and food service); [t]he manner in which staff members interpret and apply the policies, procedures, or rules of the Department or of the facility; and [] [a]ctions of individual staff, contractors, or volunteers[.]” (Appellees’ App. Vol. II, p. 25).

[15] The designated evidence establishes that although Fingers attempted to submit an informal grievance regarding his excessive force claims² followed by a formal grievance using State Form 45471, he did not submit any evidence establishing that he filed an informal or formal grievance complaint for his mental health complaints. Smith, the Grievance Specialist at Westville, affirmed that she never received a grievance or a grievance appeal regarding Fingers’ mental health claims.

[16] While the record reflects that on August 9, 2019, Fingers filed a classification appeal with the DOC director of classification about his alleged denial of mental health treatment, and Fingers appealed the denial of this appeal on October 4, 2019, to the executive director of classification, at no point did Fingers commence a formal or informal grievance proceeding with respect to his mental health claims. Fingers is aware of the offender grievance process and has successfully filed multiple grievance appeals regarding access to medical care and forced treatment. Even in his appellate brief, Fingers appears to acknowledge that his subsequent appeals to the executive director of

² On appeal, Fingers does not specifically argue that he exhausted his administrative remedies with regard to the excessive force claim and instead focuses on his mental health complaints.

classification do not equate to a formal grievance complaint as he—
incorrectly—contends that the classification of his mental health needs falls
outside the formal grievance process. The uncontested designated evidence
clearly establishes that the DOC’s “policies and procedures (including those
related to staff treatment and medical)” must be submitted through the
grievance process, as detailed in the Policy. (Appellees’ App. Vol. II, p. 17).
Accordingly, as Fingers failed to exhaust his administrative remedies, the trial
court properly held that this failure barred his claims pursuant to 42 U.S.C. §
1983.

[17] Even if we were to conclude that Fingers exhausted his administrative remedies
and his appeal is properly before us, Fingers did not establish that the State
Defendants were deliberately indifferent to his mental health needs. To prevail
on a deliberate indifference to a medical needs claim, a “plaintiff must show
that (1) the medical condition was objectively serious, and (2) the State officials
acted with deliberate indifference to his medical needs, which is a subjective
standard.” *Sherrod v. Lingle*, 223 F.3d 605, 610 (7th Cir. 2000). “A condition is
objectively serious if the failure to treat it could result in further significant
injury or the unnecessary and wanton infliction of pain.” *Id.* Prison officials
who are not medical professionals are entitled to rely on the professional
judgment of medical professionals without subjecting themselves to section
1983 liability. *Estate of Perry v. Wenzel*, 872 F.3d 439, 458-59 (7th Cir. 2017); *see*
also Greeno v. Daley, 414 F.3d 645, 656 (7th Cir. 2005) (“If a prisoner is under the
care of medical experts . . . a nonmedical prison official will generally be

justified in believing that the prisoner is in capable hands.”); *Arnett v. Webster*, 658 F.3d 742, 755 (7th Cir. 2011) (“Non-medical defendants . . . can rely on the expertise of medical personnel.”).

[18] The State Defendants designated evidence reflecting that Fingers received appropriate medical care while at Westville. In his deposition Fingers admitted to being seen by mental health staff on multiple occasions and during the mental health staff’s weekly rounds. He also acknowledged being evaluated by mental health staff on a monthly basis and receiving medication as part of his mental health needs. Fingers now contends that the mental health staff failed to qualify him as being seriously mentally ill and he takes issue with the care provided. Although Fingers may dispute the classifications of his mental health needs as determined by the mental health professionals, in the absence of any evidence of intentional mistreatment, the State Defendants were entitled to rely on the expertise of the mental health staff. *See Snipes v. DeTella*, 95 F.3d 586, 592 (7th Cir. 1996) (a prisoner’s dissatisfaction with a doctor’s prescribed treatment does not give rise to a constitutional claim unless the medical treatment is “so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate the prisoner’s condition.”). Because there is no designated evidence establishing that the State Defendants were deliberately

indifferent to Fingers' mental health needs, they were entitled to summary judgment with respect to Fingers' mental health claims.³

CONCLUSION

[19] Based on the foregoing, we conclude that there is no genuine issue of material fact that Fingers failed to exhaust his administrative remedies prior to bringing his cause of action pursuant to 42 U.S.C. § 1983 and therefore the trial court properly concluded that his claims are barred.

[20] Affirmed.

Bradford, J. and Weissmann, J. concur

³ The State also presented an argument that the trial court properly dismissed the claims of excessive force against defendants Carter, Galipeau, and Salyer because they were not personally involved in the alleged use of excessive force, as required for liability under 42 U.S.C. § 1983. However, as Fingers does not address this issue on appeal, we will not develop arguments for him. See *Receveur v. Buss*, 919 N.E.2d 1235, 1238 n.4 (Ind. Ct. App. 2010) (“Indeed, it has long been the rule in Indiana that *pro se* litigants without legal training are held to the same standard as trained counsel and are required to follow procedural rules.”); *Basic v. Amouri*, 58 N.E.3d 980 (Ind. Ct. App. 2016) (We will not become an advocate for a party[.]).

Fingers also includes an argument with respect to the State of Indiana using “a mechanism that push out magnetic currents and using it to carry their current into the [c]ourt undetected and into the Judge Mr. Stalbrink, Jr. unknown to him and manipulating his decision making causing him to suffer ‘Havana syndrome’ which is a concussion.” (See Appellant’s Br. pp. 21-23, 54-60) [sic throughout]. As Fingers did not raise this issue in his response to the State Defendants’ motion for summary judgment and now raises this issue for the first time on appeal, the argument is waived for our review. *Welty Bldg. Co. Ltd. v. Indy Fedreau Co., LLC*, 985 N.E.2d 792, 799 (Ind.Ct.App.2013) (Generally, a party cannot raise an argument for the first time on appeal).