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Summary of Berry v. Feil, 131 Nev. Adv. Op. 37 (June 11, 2015)

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CIVIL PROCEDURE: PRE-FILING REQUIREMENTS FOR PRISONER § 1983 ACTIONS

Summary

The exhaustion requirement applies regardless of what court the complaint is filed in, and that a state court has no discretion to stay a § 1983 action to allow for administrative remedies to be pursued.

Background

William J. Berry (an inmate at Lovelock Correctional Center) alleged that Pamela Feil (the prison law library supervisor) and Dennis Brown (an inmate library clerk) failed to send Berry's confidential legal mail and conspired to conceal evidence of such. Berry also alleged that Feil retaliated against Berry for filing a grievance against her by refusing his request for legal supplies and confiscating his books. According to the complaint filed in the Nevada Sixth Judicial Court, this constituted a violation of Berry's rights to free speech under the First Amendment and to due process and unobstructed access to the courts under the Fifth and Fourteenth Amendments.

Feil moved to dismiss the complaint for failure to exhaust administrative remedies because Berry did not complete all steps of the grievance process. Berry opposed the motion. The district court dismissed Berry's complaint without prejudice based on his failure to exhaust administrative remedies.

Analysis

The Nevada Court of Appeals considered whether prisoner civil rights complaints, pursuant to 42 U.S.C. § 1983, filed in state courts are subject to the exhaustion of administrative remedies requirement.² The Court also considered whether such claims must be stayed so that administrative remedies can be exhausted or whether claims filed prior to exhaustion must be dismissed.

The Prison Litigation Reform Act of 1995 ("PLRA") requires that no civil rights action regarding prison conditions may be brought "until such administrative remedies as are available are exhausted."³ In finding that Berry failed to exhaust his administrative remedies, the district court concluded that Berry's complaint must be dismissed.

¹ By Patrick Phippen.

² See 42 U.S.C.A. § 1997e(a) (West 2015).

³ *Id.*

Applicability of 42 U.S.C. § 1997e(a) to inmate 42 U.S.C. § 1983 civil rights actions filed in Nevada district courts

On appeal, Berry argued the district court improperly applied the PLRA's exhaustion requirement to his state court civil rights action. A civil rights action may be brought under § 1983 to seek redress for civil rights violations by persons acting under color of law of any state or federal government.⁴ Both state and federal courts have jurisdiction over § 1983 actions.⁵ While Berry insinuates the exhaustion requirement does not apply because the action was brought in state court, federal and state courts confronting this issue have "widely recognized" that the PLRA's exhaustion requirement applies to § 1983 actions filed in state courts.⁶

Nowhere does the PLRA contain language restricting its applicability to federal court actions,⁷ and its "unequivocal" plain language makes it applicable to all § 1983 actions brought by prisoners.⁸ The Court therefore concluded that the PLRA's exhaustion requirement applies to § 1983 actions challenging prison conditions. Since Berry did not dispute that his complaint challenged his prison conditions, the district court properly applied the PLRA's exhaustion requirement to his claims.⁹

Nevada district courts may not stay inmate civil rights claims brought under 42 U.S.C. § 1983 to allow exhaustion of administrative remedies

Berry also argued the district court impermissibly refused to stay his claims to allow him to exhaust his administrative remedies.¹⁰ However, NRS 41.0322(3) applies only to certain state tort claims, but Berry's complaint only alleged federal civil rights violations. Therefore, NRS 41.0322(3) is inapplicable to the instant action and did not require the district court to stay Berry's claim to allow him to exhaust all administrative remedies. Furthermore, both federal and state courts have recognized that dismissal of the complaint is mandatory when administrative remedies have not been exhausted.¹¹

⁴ See *Butler ex. rel. Biller v. Bayer*, 123 Nev. 450, 458, 168 P.3d 1055, 1061 (2007).

⁵ *Haywood v. Drown*, 556 U.S. 729, 731 (2009).

⁶ See, e.g., *Johnson v. Louisiana ex. rel. La. Dep't of Pub. Safety & Corr.*, 468 F.3d 278, 280 (5th Cir. 2006); *Baker v. Rolnick*, 110 P.3d 1284, 128–89 (Ariz. Ct. App. 2005).

⁷ *Johnson*, *supra* note 6, at 280.

⁸ *Baker*, *supra* note 6, at 1288.

⁹ Although Berry stated one of the issues on appeal was whether the district court erroneously concluded he failed to exhaust his administrative remedies, he presented no arguments explaining how he believed he had actually done so, and thus this was not addressed on appeal. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n. 38, 130 P.3d 1280, 1288 n. 38 (2006) (recognizing that appellate assertions not cogently argued need not be considered on appeal).

¹⁰ See NEV. REV. STAT. § 41.0322(3) (West 2014) ("An action filed by a person in [the custody of the Nevada Department of Corrections seeking to recover compensation for loss or injury] before the exhaustion of the person's administrative remedies must be stayed by the court in which the action is filed until the administrative remedies are exhausted.")

¹¹ See, e.g., *Neal v. Goord*, 267 F.3d 116, 122 (2d Cir. 2001), *overruled on other grounds by Porter v. Nussle*, 534 U.S. 516, 532 (2002) (concluding the PLRA clearly and unambiguously requires the exhaustion of administrative remedies prior to filing a § 1983 action); *State v. Circuit Court for Dane Cnty.*, 599 N.W.2d 45, 48 n. 6, 49 (Wis. Ct. App. 1999).

The PLRA eliminated a 180-day continuance period designed to allow complainants to exhaust administrative remedies, and instead requires inmate-plaintiffs to exhaust their administrative remedies prior to filing actions. Since 42 U.S.C. § 1997e(a) requires exhausting administrative remedies prior to filing a § 1983 action in Nevada state court, it prohibits a district court from staying a complaint to allow an inmate-plaintiff to exhaust administrative remedies. Therefore, a § 1983 action filed by an inmate in Nevada district court who has not first exhausted all administrative remedies must be dismissed.

Conclusion

Berry's § 1983 claims challenge his conditions of confinement, and he provides no support for his assertion that he exhausted his administrative remedies. Thus, the district court properly refused to stay his claims and properly dismissed his complaint for failure to exhaust his administrative remedies prior to filing the action. Accordingly, the Court affirmed the district court's dismissal of Berry's § 1983 action.