

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

DALLAS COBBS, #164276,
Plaintiff,

Case No.: 07-CV-14644
Hon. Anna Diggs Taylor
Magistrate Judge Charles E. Binder

v.

GEORGE J. PRAMSTALLER, ET AL,
Defendants.

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**DEFENDANTS, CRAIG HUTCHINSON, M.D. AND BENCY MATHAI, M.D.'S
REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS
PURSUANT TO 42 U.S.C. § 1997e(a) AND FED. R. CIV. P. 12(b)(6)**

Defendants, Craig Hutchinson, M.D. and Bency Mathai, M.D., respectfully request this Honorable Court to grant their Motion To Dismiss Pursuant To 42 U.S.C. § 1997e(a) And Fed. R. Civ. P. 12(b)(6), and dismiss Plaintiff's claims against them with prejudice. Plaintiff has failed to file a single grievance against the moving Defendants prior to filing the instant action, and, therefore, his claims should be dismissed as they are barred by 42 U.S.C. § 1997e(a).

According to 42 U.S.C. § 1997e(a), a prisoner may not file suit under 42 U.S.C. § 1983 until the prisoner has first exhausted his administrative remedies. The United States Supreme Court has made clear that the exhaustion requirement of 42 U.S.C. § 1997e(a) requires a prisoner to "properly exhaust" his administrative remedies. Woodford v. Ngo, 126 S. Ct. 2378, 2386, 165

L. Ed. 2d 368 (2006). The Court has further explained that “proper exhaustion” requires an inmate to comply with the specific procedural rules set forth in the individual prison’s grievance policy: “The level of detail in a grievance to comply with the grievance procedures will vary from system to system and claim to claim, **but it is the prison’s requirements, and not the Prison Litigation Reform Act (“PLRA”), that define the boundaries of proper exhaustion.”** Jones v. Bock, 127 S. Ct. 910, 923, 166 L.Ed. 2d 798 (2007). In the present case, Paragraph T of MDOC Policy Directive 03.02.130, the relevant grievance policy, explicitly requires a grievant to name in the grievance each individual against whom the grievance is filed. (See **Dkt #86, Exhibit A, Attachment 1, ¶T** (“Dates, times, places and **names of all those involved in the issue being grieved are to be included**”)). Although Plaintiff pursued two grievances through the entire grievance procedure prior to filing the present action, neither of the two grievances name Dr. Hutchinson or Dr. Mathai, as explicitly required by Paragraph T of the grievance policy. (See **Dkt #86, Exhibit A, Attachments 3 and 4**). Therefore, Plaintiff failed to “properly exhaust” a single grievance against Dr. Hutchinson or Dr. Mathai prior to filing the instant action, and Plaintiff’s claims against them should be dismissed because they are barred by 42 U.S.C. § 1997e(a). See Sullivan v. Kasajaru, 2009 U.S. App. LEXIS 5362 (6th Cir. March 13, 2009) (holding that **where the relevant grievance policy explicitly required a grievant to specifically name each person against whom the grievance was filed, the Plaintiff’s failure to specifically name each Defendant in his grievance amounted to a failure to properly exhaust that grievance as to each non-named Defendant**).¹

In his Response, Plaintiff disingenuously argues that he “fully exhausted his administrative remedies prior to filing his lawsuit.” (**Dkt #88, Brief, p.2**). In making this argument, Plaintiff fails to adequately address the deficiencies in his two grievances, and instead,

¹ While Plaintiff attempts to minimize the authority of Sullivan v. Kasajaru due to the fact that it is unpublished, the moving Defendants note that this is the most relevant authority from the Sixth Circuit Court of Appeals, and that Plaintiff has put forth absolutely no authority that has any precedential value in this Court.

sets forth three tenuous and meritless arguments.

First, Plaintiff mistakenly argues that the MDOC policy does not require an inmate to name in a grievance every individual whom he later sues. In support of this argument, Plaintiff first argues that the PLRA does not have a naming requirement and does not mandate that a prisoner name individuals whose identities are unknown to him, but merely requires an inmate to exhaust those administrative remedies available to him. Plaintiff further argues that because he did not know the identities of Dr. Hutchinson and Dr. Mathai at the time in which he filed his grievances, the MDOC grievance procedure was not an administrative remedy that was available to him. In support of this argument, Plaintiff improperly relies upon the 2002 11th Circuit case of Brown v. Sikes, 212 F.3d 1205 (11th Cir. 2000), which allegedly held that the Prison Litigation Reform Act does not require an inmate to name individuals in a grievance whose identities are unknown to the grievance. Brown, however, has no precedential value in this Court. Furthermore, it was decided well before Woodford and Jones, and runs contrary to their holdings. Contrary to the 11th Circuit's reasoning in Brown, the United States Supreme Court has made clear in Woodford and Jones that it is not the PLRA that provides the requirements for "proper exhaustion," but rather the specific requirements of the individual prison's grievance policy. As explained above, the grievance policy at issue in this case requires a grievant to specifically name each individual involved in the issue being grieved. (See **Dkt #86, Exhibit A, Attachment 1, ¶T**). Therefore, contrary to Plaintiff's misguided interpretation of the exhaustion requirement, Plaintiff was required to specifically name each individual involved in the issue being grieved in order to have "properly exhausted" his administrative remedies. Because Plaintiff failed to name either Dr. Hutchinson or Dr. Mathai in a single grievance prior to filing this action, Plaintiff failed to "properly exhaust" his administrative remedies against them and his claims against them should be dismissed as they are barred by 42 U.S.C. § 1997e(a).

For his second argument, Plaintiff disingenuously argues that he exhausted his

administrative remedies by naming the MSAC and CMS in his grievances. In support of his argument, Plaintiff relies upon the 5th Circuit case of Johnson v. Johnson, 385 F.3d 503 (5th Cir. 2004), which has no precedential value in this Court and which was superceded by the firmly established holdings of the Supreme Court in Woodford and Jones. In Johnson, the Court looked to its own interpretation of the PLRA's exhaustion requirement, as opposed to the specific requirements of the individual prison's grievance policy, and found that the exhaustion requirement could be satisfied even if the grievance does not provide actual names, so long as it sufficiently identifies the persons against whom it is filed. In Woodford and Jones, however, the United States Supreme Court made explicit that it is the individual prison's grievance policy, not the PLRA, that defines the boundaries of proper exhaustion. 126 S. Ct. at 2386; 127 S. Ct. at 923. In the present case, MDOC Policy Directive 03.02.130 requires a grievant to name each individual involved in the issue being grieved. Therefore, "proper exhaustion" in this case requires the grievant to specifically name each individual involved in the incident being grieved. Because Plaintiff failed to name either Dr. Hutchinson or Dr. Mathai in a single grievance, he failed to properly exhaust his administrative remedies against them and his claims should be dismissed pursuant to 42 U.S.C. § 1997e(a).

In his final argument, Plaintiff argues that his failure to properly exhaust his grievances as to Dr. Hutchinson and Dr. Mathai due to his failure to name either of them in his two grievances should be excused because his two grievances were considered on their merits, rather than being rejected for failing to specifically name the moving Defendants. In making this argument, Plaintiff relies on outdated cases from other circuits or other district courts, which found that where an untimely filed grievance was considered on its merits, the Defendants cannot later contend that the Plaintiff failed to exhaust that grievance. Many of the cases cited by Plaintiff, however, were decided well before the Supreme Court clarified the exhaustion requirement in Woodford and Jones. Furthermore, the factual scenarios of the cases cited by

Plaintiff are substantially different than that of the instant action. While Plaintiff's "considered on the merits" argument may make some sense with respect to the issue of timeliness, as the grievance reviewer could clearly tell from the face of the grievance whether the grievance complied with the time requirements of the applicable grievance policy, the limited rationale of such an argument does not make sense with respect to a grievant's failure to name everyone that he alleges was involved in the incidents being grieved. No one is in a better position than the Plaintiff to identify each individual with whom he has an issue. The person reviewing the grievance could not possibly be expected to guess which persons were involved in every issue being grieved. Therefore, the grievance policy properly places this burden on the grievant, requiring him to specifically name each individual involved in the issue being grieved. As demonstrated repeatedly above, and as conceded by Plaintiff, he failed to name either Dr. Hutchinson or Dr. Mathai in a grievance. Therefore, he failed to properly exhaust his administrative remedies as to Dr. Hutchinson and Dr. Mathai, and his claims against them should be dismissed pursuant to 42 U.S.C. § 1997e(a).

RELIEF REQUESTED

WHEREFORE, the Defendants, CRAIG HUTCHINSON, M.D. and BENCY MATHAI, M.D., respectfully request this Honorable Court to grant their motion, dismiss Plaintiff's claims against them with prejudice, and tax all reasonable costs and attorney's fees against Plaintiff where permissible.

Respectfully submitted,

CHAPMAN AND ASSOCIATES, P.C.

Dated: June 25, 2009

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PROOF OF SERVICE

I hereby certify that on June 25, 2009, I presented the foregoing paper to the Clerk of the Court for filing and uploading to the ECF system, which will send notification of such filing to the attorneys of record listed herein and I hereby certify that I have mailed by US Postal Service the document to the involved non participants.

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