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**JACK BRODIE, Plaintiff-Appellant, v. CORRECTIONAL MEDICAL SERVICES;
MICHIGAN DEPARTMENT OF CORRECTIONS; DR. GREGORY NAYLOR;
DR. ALLEN PRICE; RN DONNA DIXON; RN LINDA HAASE; CO GREGORY
MEREDITH; CO STEVEN LOW; CO STEVEN HAMMOND, Defendants-
Appellees.**

No. 00-2304

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

2001 U.S. App. LEXIS 18579

August 14, 2001, Filed

NOTICE: [*1] NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 28(g) LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 28(g) BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

SUBSEQUENT HISTORY: Writ of certiorari denied: *Brodie v. Corr. Med. Servs.*, 2002 U.S. LEXIS 3709 (U.S. May 20, 2002).

PRIOR HISTORY: Eastern District of Michigan. 99-73710. Cleland. 09-27-00.

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff inmate sued defendant prison and various staff members under 42 U.S.C.S. § 1983 alleging that he was refused adequate medical care after he suffered a heart attack while incarcerated, and that he was harassed after he filed the instant lawsuit concerning his medical care. The United States District Court for the Eastern District of Michigan dismissed the complaint. The inmate appealed.

OVERVIEW: The district court, acting on a federal magistrate's recommendation, dismissed the inmate's complaint without prejudice for failure to exhaust administrative remedies in part, and with prejudice for failure to state a claim upon which relief could be granted in part. On appeal, the inmate contended that his claims did not involve prison conditions that required him to pursue administrative remedies, and that he

adequately exhausted available remedies because prison officials did not respond to his grievance. Defendants essentially responded that the district court's judgment was proper. The appellate court concluded that the inmate's claim clearly involved conditions of confinement that required exhaustion of administrative remedies before filing suit. Moreover, the inmate did not establish that he exhausted administrative remedies before filing suit. Under these circumstances, the district court properly dismissed the inmate's complaint.

OUTCOME: The judgment was affirmed.

LexisNexis(R) Headnotes

Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies

Civil Procedure > Justiciability > Exhaustion of Remedies > Administrative Remedies

Civil Rights Law > Prisoner Rights > Prison Litigation Reform Act > Exhaustion

[HN1] Pursuant to 42 U.S.C.S. § 1997e(a), a prisoner must exhaust all available administrative remedies before filing a 42 U.S.C.S. § 1983 action in federal court. The prisoner has the burden of demonstrating exhaustion of any remedies. Before the district court adjudicates any claim set forth in the plaintiff's complaint, the court must determine that the plaintiff has complied with this exhaustion requirement.

Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies

Civil Procedure > Justiciability > Exhaustion of Remedies > Administrative Remedies

Civil Rights Law > Prisoner Rights > Prison Litigation Reform Act > General Overview

[HN2] Although money damages may not be available through the prison grievance process, prisoners must still exhaust administrative remedies where the prison has an administrative system with authority to review complaints and to take some action in response.

***Civil Rights Law > Prisoner Rights > Discrimination
Constitutional Law > Equal Protection > Scope of Protection
Criminal Law & Procedure > Sentencing > Cruel & Unusual Punishment***

[HN3] The prisoner must exhaust his remedies as to all claims arising from confinement, including excessive force, equal protection, and other constitutional claims.

***Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies
Civil Procedure > Justiciability > Exhaustion of Remedies > Administrative Remedies
Civil Rights Law > Prisoner Rights > Prison Litigation Reform Act > General Overview***

[HN4] To establish exhaustion of administrative remedies prior to filing suit, a prisoner should attach to the 42 U.S.C.S. § 1983 complaint any decision demonstrating the administrative disposition of his claims.

***Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies
Civil Procedure > Justiciability > Exhaustion of Remedies > Failure to Exhaust
Civil Procedure > Pleading & Practice > Defenses, Demurrers, & Objections > Failures to State Claims***

[HN5] A district court may dismiss a complaint if the claims are frivolous or fail to state a claim upon which relief can be granted despite a failure to exhaust administrative remedies. 42 U.S.C.S. § 1997e(c)(2).

COUNSEL: JACK BRODIE, Plaintiff - Appellant, Pro se, Jackson, MI.

For CORRECTIONAL MEDICAL SERVICES, Defendant - Appellee: Ronald W. Chapman, Brian J. Richtarcik, Chapman & Associates, Bloomfield Hills, MI.

For MICHIGAN DEPARTMENT OF CORRECTIONS, GREGORY NAYLOR, ALLEN PRICE, DONNA DIXON, LINDA HAASE, GREGORY MEREDITH, STEVEN LOW, STEVEN HAMMOND, Defendants - Appellees: Shannon N. Wood, Office of the Attorney General, Lansing, MI.

JUDGES: Before: KEITH, KENNEDY, and

BATCHELDER, Circuit Judges.

OPINION:

ORDER

Jack Brodie appeals a district court judgment that dismissed his civil rights action filed pursuant to 42 U.S.C. § 1983. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. *Fed. R. App. P. 34(a)*.

Brodie filed his complaint and several motions for leave to amend his complaint in the district court alleging that he was refused adequate medical care after he suffered a heart attack while incarcerated in 1998, and that he was harassed after he filed a grievance and the instant lawsuit concerning his medical care. Plaintiff named as defendants the Michigan [*2] Department of Corrections, Correctional Medical Services, two prison physicians, two prison nurses, and three corrections officers, and sought compensatory and punitive damages and injunctive relief. The defendants who were served by plaintiff moved to dismiss the complaint or for summary judgment, and plaintiff responded in opposition. The magistrate judge ordered plaintiff to show that he exhausted available administrative remedies regarding his claims, and plaintiff responded.

The magistrate judge recommended that plaintiff's complaint be dismissed without prejudice for failure to exhaust administrative remedies in part, and with prejudice for failure to state a claim upon which relief can be granted in part. After plaintiff filed objections and defendants responded, the district court referred the case back to the magistrate judge for further consideration. The magistrate judge issued a supplemental report and recommendation in which he reiterated his original recommendation, and plaintiff again filed objections. The district court adopted the magistrate judge's recommendation and dismissed the complaint. Plaintiff filed a timely notice of appeal.

On appeal, plaintiff contends [*3] that his claims do not involve prison conditions that require him to pursue administrative remedies and that he adequately exhausted available remedies because prison officials did not respond to his grievance at Step III in any event. Defendants essentially respond that the district court's judgment was proper. Upon consideration, we affirm the district court's judgment.

[HN1] Pursuant to 42 U.S.C. § 1997e(a), a prisoner must exhaust all available administrative remedies before filing a § 1983 action in federal court. *See Booth v. Churner*, 149 L. Ed. 2d 958, 121 S. Ct. 1819, 1822-25 (2001); *Brown v. Toombs*, 139 F.3d 1102, 1103-04 (6th Cir. 1998). The prisoner has the burden of demonstrating

exhaustion of any remedies. *See Brown, 139 F.3d at 1104*. Before the district court adjudicates any claim set forth in the plaintiff's complaint, the court must determine that the plaintiff has complied with this exhaustion requirement. *Id.* [HN2] Although money damages may not be available through the prison grievance process, prisoners must still exhaust administrative remedies where the prison has an administrative system with [*4] authority to review complaints and to take some action in response. *See Booth, 121 S. Ct. at 1819, 1822-25; Freeman v. Francis, 196 F.3d 641, 643 (6th Cir. 1999); Wyatt v. Leonard, 193 F.3d 876, 878-79 (6th Cir. 1999)*. [HN3] The prisoner must exhaust his remedies as to all claims arising from confinement, including excessive force, equal protection, and other constitutional claims. *See Hartsfield v. Vidor, 199 F.3d 305, 308 (6th Cir. 1999); Freeman, 196 F.3d at 643-44*. [HN4] To establish exhaustion of administrative remedies prior to filing suit, a prisoner should attach to the § 1983 complaint any decision demonstrating the administrative disposition of

his claims. *See Wyatt, 193 F.3d at 878; Brown, 139 F.3d at 1104*. Finally, it is noted that [HN5] a district court may dismiss a complaint if the claims are frivolous or fail to state a claim upon which relief can be granted despite a failure to exhaust administrative remedies. *See 42 U.S.C. § 1997e(c)(2); Brown, 139 F.3d at 1103*.

Here, plaintiff's claims clearly involve conditions of his [*5] confinement which require exhaustion of administrative remedies before filing suit. *See Hartsfield, 199 F.3d at 308; Freeman, 196 F.3d at 643-44*. Moreover, plaintiff did not establish that he exhausted administrative remedies before filing suit. Under these circumstances, the district court properly dismissed plaintiff's complaint.

For the foregoing reasons, the district court's judgment is affirmed. *See Rule 34(j)(2)(C), Rules of the Sixth Circuit*.