

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
PICKAWAY COUNTY

|                                   |   |                        |
|-----------------------------------|---|------------------------|
| ROBERT MARTIN,                    | : | Case No. 00CA37        |
|                                   | : |                        |
| Plaintiff-Appellant,              | : | <u>DECISION AND</u>    |
|                                   | : | <u>JUDGMENT ENTRY</u>  |
| vs.                               | : |                        |
|                                   | : |                        |
|                                   | : |                        |
| OHIO DEPARTMENT OF REHABILITATION | : | <b>Released 1/4/01</b> |
| AND CORRECTION, et al.,           | : |                        |
|                                   | : |                        |
| Defendants-Appellees.             | : |                        |
|                                   | : |                        |

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APPEARANCES:

Robert Martin, Pro Se Appellant, Orient Correctional  
Institute, Orient, Ohio

Betty D. Montgomery, Attorney General of Ohio, Philip A.  
King, Assistant Attorney General, Columbus, Ohio, for  
Appellees.

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Harsha, J.

Appellant, Robert Martin, appeals the dismissal of his  
federal civil rights action by the Pickaway County Court of  
Common Pleas.

Appellant is an inmate at the Orient Correctional  
Institute in Orient, Ohio (OCI). He initiated his original  
complaint against the Ohio Department of Rehabilitation and  
Correction, Orient Correctional Institution and Bill Blaney,  
an investigator, alleging violations of his constitutional  
rights and seeking declaratory and injunctive relief.  
Specifically, appellant alleged that appellees placed him in

solitary confinement under "investigation status" without affording him notice and opportunity to respond. He claimed to have suffered from a lack of hot water and lack of adequate ventilation while in solitary confinement. He also claimed that appellees violated his constitutional rights by requiring him to disclose certain personal information--such as his name, prison number, and date of birth--in order to access telephone services. With his original complaint, appellant filed a Motion to Waive Exhaustion of Grievance Remedies.

Appellees responded by filing an Answer and a Motion for Judgment on the Pleadings under Civ.R. 12(C). Thereafter, appellant filed a Motion for leave to amend his complaint. In his proposed amended complaint, appellant sought to add Sharon K. Cline, Clerk of Court for Pickaway County under the theory that Cline had conspired with original appellees to violate his constitutional rights. Appellant also added to his allegation of lack of hot water and inadequate ventilation, allegations that he was denied state pay, hygiene products and outdoor sunshine during solitary confinement. Finally, the appellant added a prayer for money damages in his amended complaint.

The trial court construed appellant's original complaint as a civil rights case brought pursuant to Section 1983, Title 42, U.S. Code; it denied appellant's motion to amend his complaint; and it granted the appellees' motion for judgment on the pleadings by dismissing his original

complaint for failure to exhaust available administrative remedies. Appellant filed a timely notice of appeal that raises the following assignments of error:

- I. "THE TRIAL COURT ABUSED ITS DISCRETION DISMISSING VERIFIED COMPLAINT AND AMENDED COMPLAINT WHEN IT USED ERRONEOUS FACT AND LAW."
- II. "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED THE AMENDED COMPLAINT."
- III. "THE TRIAL COURT ABUSED ITS DISCRETION HOLDING PLAINTIFF TO A HEIGHTENED PLEADING STANDARD."
- IV. "THE TRIAL COURT ABUSED ITS DISCRETION STATING THE PLAINTIFF MUST EXHAUST GRIEVANCE REMEDIES UNDER THE PLRA, 42 U.S.C. § 1997(e)."

Appellant's first and second assignments of error are related, as are the third and fourth, thus we will address them accordingly.

We begin by addressing the later assignments, which we read to assert that the trial court erred by dismissing appellant's complaint for failure to exhaust his administrative remedies pursuant to 42 U.S.C. § 1997e(a). The dismissal of a complaint for failure to exhaust administrative remedies pursuant to 42 U.S.C. § 1997e(a) presents us with a question of law which we review de novo. King v. Stump (Dec. 28, 1998), Ross App. No. 97CA2349, unreported, citing White v. McGinnis (1997), 131 F.3d 593.

42 U.S.C. § 1997e(a) provides:

"No 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."

We now read this language to address a substantive requirement in § 1983 actions.

Under the plain language of § 1997e(a), appellant is required to exhaust all available administrative remedies prior to bringing his complaint. King v. Stump (Dec. 28, 1998), Ross App. No. 97CA2349, unreported; see, also, Wyatt v. Leonard (C.A.6, 1999), 193 F.3d 876 (No action can be brought until whatever remedies are available are tried and exhausted). In Brown v. Toombs (C.A.6, 1998), 139 F.3d 1102, the Sixth Circuit Court of Appeals held that prisoners filing § 1983 cases involving prison conditions must allege and show in their complaint that they have exhausted all available state administrative remedies. A prisoner must plead his claim with specificity and show that he has exhausted available administrative remedies by attaching a copy of the applicable administrative dispositions to the complaint or, in the absence of written documentation, describe with specificity the administrative proceeding and its outcome. Knuckles El v. Toombs (C.A.6, 2000), 215 F.3d 640, 642.

In King v. Peoples (Mar. 31, 1998), Ross App. No. 97CA2295, unreported, we held that failure to plead exhaustion of administrative remedies did not necessarily render a § 1983 complaint subject to dismissal under Civ.R. 12(B). See, also, Parks v. Lazaroff (Feb. 1, 1999), Pickaway App. No. 98CA16, unreported, citing King, supra (The failure to exhaust administrative remedies ought to be raised by

summary judgment and not on a motion to dismiss). We reasoned that § 1997e(a) is merely a procedural, non-jurisdictional limitation that has nothing to do with the substantive elements of a § 1983 claim, and thus, is not a necessary allegation in a claim for relief. King, supra, citing Wright v. Morris (C.A.6, 1997), 111 F.3d 414. On the other hand, we have held that a trial court does not err by dismissing a prisoner's § 1983 claim when it is apparent on the face of the complaint that he has failed to satisfy the exhaustion requirements in § 1997e(a). See, also, Parks, supra (Harmless error for the trial court to dismiss a § 1983 claim when the record demonstrated that the administrative process had not been completed at the time of the filing of the complaint).

In light of our review of the Sixth Circuit's case law regarding § 1997e(a), we overrule King and Parks to the extent that they are inconsistent with our holding today. As pointed out in King, section 1997e(a) is not jurisdictional. See, also, Chelette v. Harris (C.A.8, 2000), \_\_ F.3d \_\_. Trial courts may dismiss a claim on the merits, despite the lack of exhaustion, if the claim on its face is frivolous or fails to state a claim. See § 1997e(c)(2); Brown, 139 F.3d at 1103. Nevertheless, exhaustion of administrative remedies pursuant to § 1997e(a) is a requirement, or condition precedent, which must be met before a prisoner's § 1983 cause of action can accrue.

In Brown, the Sixth Circuit stated that, "'[t]he statutory language, 'no action shall be brought' until all available remedies are 'exhausted,' should be interpreted to mean precisely what is obviously intended -- that a \* \* \* [trial] \* \* \* court should not prematurely 'decide' the merits of any such action \* \* \* [and] should not adjudicate any such claim until after exhaustion unless the complaint satisfies § 1997e(c)(2)."

Brown, 139 F.3d at 1104.

Moreover, in Knuckles El, the court reasoned that, "[trial] courts should not have to hold time-consuming evidentiary hearings in order simply to determine whether it should reach the merits or decline under the mandatory language of § 1997e ('No action shall be brought....')." Knuckles El, 125 F.3d at 642

In accord with the Sixth Circuit Court of Appeals, we construe § 1997e(a) as a condition precedent to a § 1983 claim, whether the claim is brought in federal court or state court. Brown, supra. Accordingly, we find that exhaustion of administrative remedies is a requirement in a prisoner's § 1983 claim that must be specifically averred in the complaint, and that failure to do so renders the complaint subject to dismissal. Civ.R. 9(c).

Since the appellant failed to allege in his original complaint--or his amended complaint--that he had exhausted available administrative remedies prior to filing suit, the trial court properly dismissed the complaint pursuant to Civ.R. 12(C), and § 1997e(a).

In his brief, appellant argues that the § 1997e(a) exhaustion requirement does not apply to a claim that seeks only declaratory and injunctive relief. Appellant cites Smith v. Arkansas Dept. of Corrections (C.A.8, 1996), 103 F.3d 637, in which the Eighth Circuit Court of Appeals held that a prisoner's failure to file a grievance with prison administration was not fatal to a § 1983 claim seeking injunctive relief. However, the Eighth Circuit did not create an exemption to the requirement that a prisoner exhaust available state administrative remedies before bringing his or her § 1983 claim seeking injunctive relief. Rather, the court recognized that pursuit of administrative grievances may not always be required when it appears that state officials are unwilling to address them.<sup>1</sup>

That is not the situation in this case. Appellant had available administrative remedies pursuant to Ohio Adm. Code 5120-9-31, and there is no indication that pursuit of those remedies would have been futile. Therefore, appellant's third and fourth assignments of error are overruled.

We now turn to appellant's first and second assignments of error challenging the trial court's denial of his motion

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<sup>1</sup>In Smith, unsafe conditions in an open barracks system had existed in the Arkansas State Prison for more than twenty-five years, which officials had been reluctant to remedy. The Court of Appeals stated that "[g]iven the prison officials' long standing reluctance to implement the necessary supervision of the open barracks, we do not believe that one prisoner's grievance complaining of the situation would have had any significant impact." Smith, 103 F.3d at 647.

for leave to amend his complaint. The decision whether or not to grant a motion to amend the pleadings rests within the sound discretion of the trial court and will not be reversed absent an abuse of that discretion. Spisak v. McDole (1984), 15 Ohio St.3d 62, 63. An abuse of discretion involves more than an error of judgment; it connotes an attitude on the part of the court that is unreasonable, unconscionable or arbitrary. Brannan v. Fowler (Feb. 1, 1995), Scioto App. No. 94CA2233, unreported, citing Franklin Cty. Sheriff's Dept. v. State Emp. Relations Bd. (1992), 63 Ohio St.3d 498, 506.

Pursuant to Civ.R. 15(A), once an answer to a complaint is served, a party may amend a pleading only by leave of the court or by written consent of the adverse party. A liberal policy is favored when the trial court is faced with a motion to amend a pleading beyond the time limit when such amendments are automatically allowed. Willmington Steel Products, Inc. v. Cleveland Elec. Illum. Co. (1991), 60 Ohio St.3d 120, 121-122. Civ.R. 15(A) mandates that such motions should be freely granted when justice so requires. See, also, Peterson v. Teodosio (1973), 34 Ohio St.2d 161, 175. However, this does not mean that leave to amend should be granted without limitation. The party seeking leave to amend the complaint must at least demonstrate a prima facie showing that the movant can marshal support for the new matter sought to be pleaded. See Willmington Steel, supra,

citing Solowitch v. Bennett (1982), 8 Ohio App.3d 115, 117. "It is not an abuse of discretion to refuse to permit a party to amend a complaint when amending the complaint would be a vain act." Cisneros v. Birck (Apr. 11, 1995), Franklin App. No. 94APE08-1255, unreported.

The trial court in this case decided appellant's motion to amend his complaint, and appellee's motion for judgment on the pleading in the same judgment entry. Like his original complaint, appellant's amended complaint failed to allege and show exhaustion of available administrative remedies. Thus, appellant's amended complaint failed to establish a prima facie case for relief, and could not have survived appellees' motion to dismiss. It is of no consequence that the appellant sought damages in his amended complaint. A prisoner is required to exhaust administrative remedies in an action for damages, even though the damages remedy sought is not an available remedy in the administrative process. See Wyatt, supra. Accordingly, the trial court did not abuse its discretion by denying appellant's motion for leave to amend since the amended complaint suffered from the same fatal defect as the original. Having found no abuse of discretion, we overrule appellant's first and second assignments of error.

For all the foregoing reasons, the judgment of the trial court is affirmed.

JUDGMENT AFFIRMED

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT BE AFFIRMED and that Appellee recover of Appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pickaway County Common Pleas Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Abele, J. & Evans, J.: Concur in Judgment and Opinion

For the Court

BY: \_\_\_\_\_  
William H. Harsha, Judge

**NOTICE TO COUNSEL**

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.