

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE WEBER AND MARK
CHAVEZ,
Appellants,
vs.
THE STATE OF NEVADA EX REL.
DEPARTMENT OF PRISONS,
SHERMAN HATCHER, WARDEN, AND
GEORGE COFFIN,
Respondents.

No. 39595

FILED

AUG 20 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal of a district court order granting summary judgment on behalf of the Nevada Department of Prisons, which is now known as the Nevada Department of Corrections, and two of its employees, in a tort action filed by two inmates for injuries suffered during violence at the Southern Desert Correctional Center.

A person must exhaust all available administrative remedies before instituting a lawsuit, and failure to do so deprives the district court of subject matter jurisdiction.¹ The exhaustion doctrine gives administrative agencies an opportunity to correct mistakes and conserves judicial resources, so its purpose is valuable; requiring exhaustion of

¹State, Dep't of Taxation v. Scotsman Mfg., 109 Nev. 252, 254, 849 P.2d 317, 319 (1993) (citing Washoe County v. Golden Road Motor Inn, 105 Nev. 402, 403-04, 707 P.2d 358, 359 (1989)).

administrative remedies often resolves disputes without need for litigation.²

Parties must exhaust their administrative remedies prior to pursuing legal action against the department of corrections or its agents.³ Actions filed by inmates prior to the exhaustion of administrative remedies must be stayed by the district court pending resolution of the administrative actions and must be dismissed by the district court if administrative claims are not timely filed.⁴ Parties seeking to file an administrative claim arising out of a tort occurring during incarceration must file within six months of the alleged injury.⁵

Here, Weber and Chavez contend that the six month time limit on filing a claim is waived by a clause in the Nevada Department of Corrections Administrative Regulation that provides that there are no time limits for filing grievances alleging use of excessive force or harassment/retaliation. There is nothing in the record to indicate that there was any harassment or retaliation associated with this incident. Further, the department of corrections is not empowered to waive the six month time limit imposed by NRS 209.243(1). Thus, Weber and Chavez failed to file a timely administrative claim within six months pursuant to

²State of Nevada v. Glusman, 98 Nev. 412, 419, 651 P.2d 639, 643 (1982) (citing First Am. Title Co. v. State of Nevada, 91 Nev. 804, 543 P.2d 1344 (1975)).

³NRS 41.0322(1).

⁴NRS 41.0322(3).


⁵NRS 209.243(1).

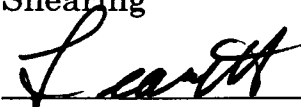
NRS 209.243 and the district court was obligated pursuant to NRS 41.0322(3) to dismiss the action.


With respect to the federal § 1983 claim, the Prison Litigation Reform Act of 1995 amended 42 U.S.C. § 1997e(a) to require prison inmates to address their grievances through the prison administrative grievance process before suing over prison conditions.⁶ Inmates seeking money damages must exhaust all administrative remedies, even if the grievance process does not make provisions for monetary relief.⁷ The exhaustion requirement is mandatory and applies to all claims, including claims of excessive force.⁸ Thus, federal case law supports the exhaustion of administrative remedies dictated by Nevada's statutory provisions before courts may consider § 1983 claims.

The assertion by Weber and Chavez that pursuit of their claims through administrative channels would have been futile is unsupported by the record. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

⁶Booth v. Churner, 532 U.S. 731, 731 (2001).

⁷Id. at 732.

⁸Porter v. Nussle, 534 U.S. 516, 518 (2002).

cc: Hon. Gene T. Porter, District Judge
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