

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE ALBERT SIMMONS,
Appellant,
vs.
THE STATE OF NEVADA,
DEPARTMENT OF PRISONS; ROBERT
BAYER, DIRECTOR, SUED
INDIVIDUALLY AND IN HIS
OFFICIAL CAPACITY; SHERMAN
HATCHER, WARDEN, SUED
INDIVIDUALLY AND IN HIS
OFFICIAL CAPACITY; LT. DAVID
MILLER, SUED INDIVIDUALLY AND
IN HIS OFFICIAL CAPACITY;
OFFICER THOMAS BRUNMEIER,
SUED INDIVIDUALLY AND IN HIS
OFFICIAL CAPACITY; AND BRENDA
SEXSON, SUED INDIVIDUALLY AND
IN HER OFFICIAL CAPACITY,
Respondents.

No. 42137

FILED

JUL 11 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting summary judgment in a tort and civil rights action. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

FACTS AND PROCEDURAL HISTORY

On May 13, 1999, appellant George Simmons filed a complaint against numerous defendants, including the State of Nevada, in district court alleging negligence on the part of Southern Desert Correction Center (SDCC). The action was based upon an April 14, 1997, incident where Simmons was brutally beaten in his cell by another inmate. Simmons's injuries consisted of a broken jaw, fractured vertebrae, a fractured

clavicle, and soft tissue swelling around the brain. Simmons fell into a coma and remained unresponsive for six weeks.

After regaining consciousness, Simmons was returned to SDCC. On April 6, 1998, Simmons was paroled and admitted to Nevada Community Enrichment Program (NCEP).¹ While at NCEP, Simmons relearned how to speak and walk, and he also redeveloped his motor skills.

The State removed Simmons's case to federal court on October 6, 2000, and the federal court remanded the case to state court, explaining that the removal was untimely. Simmons then amended his complaint on April 5, 2002, to add another tort claim and a 42 U.S.C. § 1983 civil rights claim. On September 2, 2003, the State moved for summary judgment, arguing that pursuant to NRS 41.0322 and NRS 209.423, Simmons failed to exhaust the administrative remedies on his state tort claims before filing suit in district court. Additionally, with respect to his civil rights claim, the State argued that Simmons failed to exhaust his administrative remedies pursuant to 42 U.S.C. § 1997(e). The district court granted the State's motion, and Simmons now appeals.

Simmons contends that the district court erred in granting summary judgment for the State on his claims based upon a finding of non-exhaustion of administrative remedies. Simmons argues that he was not required to exhaust his administrative remedies.

¹NCEP is a rehabilitation center that specializes in treating patients who have suffered neurological trauma.

DISCUSSION

“An appeal from an order granting a motion for summary judgment is reviewed de novo.”² Summary judgment should be granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”³ “A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party.”⁴

“[I]n deciding whether summary judgment is appropriate, the evidence must be viewed in the light most favorable to the party against whom summary judgment is sought, and the factual allegations of that party must be presumed to be correct.”⁵

Simmons’s tort claims

Simmons argues that his six-week coma and a subsequent “cover-up” by prison officials excused his failure to initiate his administrative remedies. The State counters that the court correctly

²United Nat’l Ins. Co. v. Frontier Ins. Co., 120 Nev. ___, ___, 99 P.3d 1153, 1156 (2004) (citing Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992)).

³NRCP 56(c).

⁴Coury v. Robison, 115 Nev. 84, 87, 976 P.2d 518, 520 (2000) (quoting Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441 (1993)).

⁵Ferreira v. P.C.H. Inc., 105 Nev. 305, 306, 774 P.2d 1041, 1042 (1989) (citing Pacific Pools Constr. v. McClain’s Concrete, 101 Nev. 557, 706 P.2d 849 (1985)).

granted summary judgment and dismissed Simmons's state tort claims because he failed to exhaust his administrative remedies by not filing an administrative claim with the department of prisons within six months of the incident as mandated by statute.⁶

Simmons fails to provide any statutory or case authority to support his argument that he is excused from the filing requirements on his state tort claims. However, "[w]here the danger of prejudice to the defendant is absent, and the interests of justice so require, equitable tolling of the limitations period may be appropriate."⁷ In Copeland v. Desert Inn Hotel, this court applied the doctrine of equitable tolling in the context of Nevada's antidiscrimination statutes.⁸ This court cited several factors to consider when determining if equitable tolling "should apply in a given case."⁹ The factors are:

[(1)] the diligence of the claimant; [(2)] the claimant's knowledge of the relevant facts; [(3)]

⁶NRS 41.0322(1) allows a current or former prisoner to sue the department of corrections or its agents in tort only after exhausting his administrative remedies. NRS 209.243(1) states that the prisoner or former prisoner must initiate his administrative remedies within six months of the alleged incident. Pursuant to NRS 41.0322(3), should the prisoner or former prisoner fail to timely file an administrative claim the district court shall then dismiss the pending action.

⁷Seino v. Employers Ins. Co. of Nevada, 121 Nev. ___, ___, 111 P.3d 1107, 1112 (2005) (quoting Azer v. Connell, 306 F.3d 930, 936 (9th Cir. 2002)).

⁸99 Nev. 823, 826, 673 P.2d 490, 492 (1984) ("We therefore adopt the doctrine of equitable tolling in this context; procedural technicalities that would bar claims of discrimination will be looked upon with disfavor.").

⁹Id.

the claimant's reliance on authoritative statements by the administrative agency that misled the claimant about the nature of the claimant's rights; [(4)] any deception or false assurances on the part of the employer against whom the claim is made; [(5)] the prejudice to the employer that would actually result from delay during the time that the limitations period is tolled; and [(6)] any other equitable considerations appropriate in the particular case.¹⁰

Since Copeland, this court has expanded the doctrine of equitable tolling to "operate in other areas of law" as well.¹¹ Yet, this court has never applied equitable tolling to "statutory periods that are mandatory and jurisdictional."¹² (Emphasis added.)

NRS 41.0322(3) mandates that the district court dismiss a case if the claimant has failed to file an administrative claim within six months of the alleged incident pursuant to NRS 209.243(1). Therefore, the statutory six-month period is a mandatory requirement for all current or former prisoners who wish to bring tort claims against prisons and prison officials.

However, the statutory provision is not jurisdictional. Under NRS 41.0322(2), filing an administrative claim is not a condition precedent to filing suit in the district court. Indeed, if a prisoner files in district court before filing an administrative claim, the district court must stay the proceedings until the claimant exhausts his administrative

¹⁰Id.

¹¹Seino, 121 Nev. at ___, 111 P.3d at 1112.

¹²Id.

remedies.¹³ Essentially, the district court has subject matter jurisdiction over the claim pending the claimant's effectuation of his administrative remedies. Therefore, the six-month limitation period in which a prisoner or former prisoner must file an administrative claim¹⁴ does not divest the district court of jurisdiction over a claim filed pursuant to NRS 41.031.¹⁵

Therefore, we reverse that portion of the district court's summary judgment pertaining to Simmons's state law claims and remand to the district court to consider whether the doctrine of equitable tolling excuses Simmons's failure to file an administrative claim and to exhaust his administrative remedies.

Simmons's 42 U.S.C. § 1983 claim

Simmons argues that the district court erred in granting the State's motion for summary judgment on his 42 U.S.C. § 1983 claim due to his failure to exhaust his administrative remedies. Simmons contends that the exhaustion requirement only applies to prisoners currently in custody, not prisoners who sue after their release. The State contends that the exhaustion requirement applies to all suits dealing with prison life, whether the suits involve general complaints about prison conditions

¹³See NRS 41.0322(3).

¹⁴See NRS 209.243(1).

¹⁵See also Underwood v. Wilson, 151 F.3d 292, 295 (5th Cir. 1998) (concluding that subsection 1997e of the Prison Litigation Reform Act of 1995 which requires a prisoner to exhaust his administrative remedies does not deprive the federal courts of jurisdiction over the action because the federal court is empowered to screen complaints and dismiss claims).

or complaints involving particular episodes that occurred while the inmate is detained in prison.¹⁶

“The construction of a statute is a question of law subject to review de novo.”¹⁷ “In construing a statute, this court must give effect to the literal meaning of its words.”¹⁸ Furthermore, where the plain language meaning does not lead to absurd results, it controls the court’s interpretation.¹⁹

Pursuant to the Prison Litigation Reform Act of 1995 (“PLRA”), amended by 42 U.S.C. § 1997e(a), a prisoner is required to exhaust all available administrative remedies before filing a 42 U.S.C. § 1983 claim.²⁰ “[P]risoner means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for . . . violations of

¹⁶See generally Porter v. Nussle, 534 U.S. 516 (2002).

¹⁷Diamond v. Swick, 117 Nev. 671, 674, 28 P.3d 1087, 1089 (2001); see also Garcia v. State, 117 Nev. 124, 127, 17 P.3d 994, 996 (2001) (“The determination of whether the Vienna Convention contemplates suppression of evidence as a remedy for a violation is a question of law, which this court reviews de novo.”); Page v. Torrey, 201 F.3d 1136, 1138 (9th Cir. 2000) (“Interpretation of the PLRA is a question of law which [the court] review[s] de novo.”).

¹⁸Diamond, 117 Nev. at 675, 28 P.3d at 1089 (citing State v. Webster, 88 Nev. 690, 696, 504 P.2d 1316, 1320 (1972)).

¹⁹Flores-Arellano v. INS, 5 F.3d 360, 362 (9th Cir. 1993); see also U.S. v. X-Citement Video, Inc., 513 U.S. 64, 68-69 (1994) (a statutory interpretation that leads to an absurd result yields to another, more logical, interpretation).

²⁰Blackmon v. Crawford, 305 F. Supp. 2d 1174, 1176 (D. Nev. 2004); see also Booth v. Churner, 532 U.S. 731, 731 (2001).

criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.”²¹

In Kritenbrink v. Crawford, the United States District Court for the District of Nevada held that a prisoner who files a 42 U.S.C. § 1983 claim after his release from prison, regarding an incident that occurred while he was in prison, is not subject to the PLRA’s exhaustion of remedies doctrine.²² The court held that to qualify as a “prisoner” within the meaning of 42 U.S.C. § 1997e, the individual must be “currently detained as a result of accusation, conviction, or sentence for criminal offense.”²³

Moreover, a broad interpretation of the word “prisoner” under 42 U.S.C. § 1997e would lead to absurd results. “[T]he definition of ‘prisoner’ would include every person detained in any facility who had ever been accused of, convicted of, or sentenced for a criminal offense.”²⁴

²¹42 U.S.C. § 1997e(h).

²²313 F. Supp. 2d 1043, 1047 (D. Nev. 2004); see also Page, 201 F.3d at 1139 (a person civilly committed after completion of his prison term was not a “prisoner” under PLRA; therefore, he did not have to exhaust administrative remedies pursuant to 42 U.S.C. § 1997e(a) before filing his 42 U.S.C. § 1983 claim).

²³Kritenbrink, 313 F. Supp. 2d at 1047 (citing Page, 201 F.3d at 1139-40); see also Greig v. Goord, 169 F.3d 165, 167 (2d Cir. 1999) (a former prisoner is not required to comply with the PLRA); Doe v. Washington County, 150 F.3d 920, 914 (8th Cir. 1998); Kerr v. Puckett, 138 F.3d 321, 323 (7th Cir. 1998); West v. Macht, 986 F. Supp. 1141, 1143 (W.D. Wis. 1997).

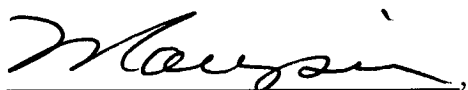
²⁴Page, 201 F.3d at 1139 n.5.

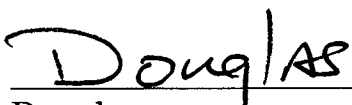
Simmons had already been released from prison after serving his sentence when he filed his claim pursuant to 42 U.S.C. § 1983. Under the plain language meaning of 42 U.S.C. § 1997e(h) Simmons was not a prisoner. Therefore, the district court erred in granting summary judgment against Simmons on his 42 U.S.C. § 1983 claim for failing to exhaust his administrative remedies.

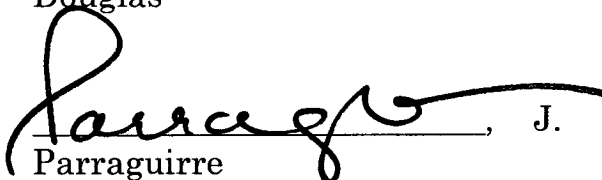
CONCLUSION

We conclude that the district court erred in granting summary judgment against Simmons for failing to exhaust his administrative remedies. Therefore, we reverse the district court's order and remand this case to the district court to determine if there was equitable tolling on Simmons's state tort claims. Additionally, because Simmons was not required to exhaust administrative remedies on his 42 U.S.C § 1983 claim, on remand we order the district court to reinstate the claim.

It is so ORDERED.

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

cc: Hon. Stewart L. Bell, District Judge
Potter Law Offices
Attorney General Brian Sandoval/Las Vegas
Clark County Clerk