In the

United States Court of Appeals

For the Seventh Circuit

No. 22-1611

VARREN KING,

Plaintiff-Appellant,

v.

THOMAS J. DART, Sheriff of Cook County,
OFFICER R. SZUL, and COOK COUNTY, ILLINOIS,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 21-cv-0783 — **Sharon Johnson Coleman**, *Judge*.

ARGUED NOVEMBER 7, 2022 — DECIDED MARCH 22, 2023

Before FLAUM, EASTERBROOK, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Varren King is a pretrial detainee at the Cook County Jail. He sued Cook County Sheriff Thomas Dart, Officer R. Szul, and Cook County for claims arising out of a March 29, 2019, incident in which another detainee punched him and threw hot coffee on him, causing third-degree burns. The district court granted summary judgment to the defendants, finding that King had failed to exhaust his

administrative remedies as required by the Prison Litigation Reform Act ("PLRA"). For the reasons stated below, we affirm in part and reverse in part.

I. Background

On March 29, 2019, Varren King was in Division 9, Tier 3H of the Jail when another detainee punched him in the face and threw hot coffee on him. No officer was supervising Tier 3H at the time. Officer R. Szul, the assigned tier officer, had left for approximately thirty-two minutes to provide backup for another officer conducting a security check in another tier. When Szul returned, King told him that he needed medical attention, but Szul failed to facilitate such treatment. King was not examined until the next day. The nurse who evaluated him described his burns as "severe," and he was later transferred to Stroger Hospital.

Four days later, King filed a grievance contending that the Jail staff failed to protect him, resulting in his injuries. He filed a second grievance later that day, alleging a delay in treatment for third-degree burns. It stated in full:

> On 3-30-2019 around 8:00 am–11:00 pm Sgt. Heinz came and recorded me about the Incident that happened on 3-29-2019 with Inmate Ortiz. Sgt. Heinz and [Cook County Department of Corrections ("CCDOC")] Staff to inform and proceed to take me to Stroger Hospital of the Incident that occurred on 3-29-2019. For 24 hours, I did not receive any medical attention for the 3rd degree burn on my left side face and left side shoulder. Medical Staff are liable by not attending my medical needs.

In the box labeled "name and/or identifier(s) of accused," King wrote "Division 9 CCDOC Staff/ Sgt. Heinz" and "Division 9 Medical Staff."

That same day, a Jail employee gave him an "Inmate Grievance Response/Appeal Form" regarding his failure-to-protect grievance. The form directed him to an attached document, which stated: "Your allegation(s) have been forwarded to the Offices of Professional Review [('OPR')] and Divisional Superintendent for review and/or investigation. You may follow-up with [OPR] by contacting their office directly, by utilizing the address below or submitting an inmate request form, to speak with the Divisional Superintendent." The response form itself stated that "[t]o exhaust administrative remedies, grievance appeals must be made within 15 calendar days of the date the inmate received the response. An appeal must be filed in all circumstances in order to exhaust administrative remedies." King signed the grievance response form, acknowledging that he had received a copy of the grievance response.

Less than a week later, King received a response to his second grievance regarding his delayed-medical-treatment allegations, which stated: "Record reflects you were taken to Urgent Care where you were assessed [and] transferred to Stroger [H]ospital by ambulance. Received care." He acknowledged that he received a copy of the form by signing it. As with the first grievance response, this document stated, "[t]o exhaust administrative remedies, grievance appeals must be made within 15 calendar days of the date the inmate received the response. An appeal must be filed in all circumstances in order to exhaust administrative remedies." King appealed the response that same day.

A couple days later, Deputy Sheriff Felix Hernandez interviewed King as part of the OPR investigation. That day, King signed a form titled "Detainee/Complaint Notification," which stated, "I understand that if I do not file a complaint register within 10 days that OPR will close the investigation …." King did not file a complaint register, and his investigation was closed on May 29, 2019. He did not appeal the closure.

King filed this suit on February 11, 2021, bringing two claims against Szul and one claim against the Sheriff and County under 42 U.S.C. § 1983. With respect to Szul, King alleged that Szul failed to protect him by leaving Tier 3H unsupervised and failed to promptly facilitate medical treatment for him. Against the Sheriff and Cook County, King brought a *Monell* claim, alleging a widespread practice of tier officers abandoning their assigned tiers for prolonged periods of time. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978).

The district court granted the defendants' motion for summary judgment for failure to exhaust administrative remedies. On King's failure-to-protect claim, the court found that King had failed to exhaust because he did not appeal the grievance response, file a complaint register with OPR, or appeal the closure of its investigation. And although King appealed the response to his delayed-medical-treatment grievance, the court reasoned that his grievance failed to give the defendants notice of the claim because it did not allege any wrongdoing by Szul or any other correctional officer. Lastly, the district court found that King did not file a grievance alleging a practice of leaving detainees unsupervised and thus could not proceed on his *Monell* claim. King timely appealed this decision.

II. Analysis

King appeals the district court's grant of summary judgment regarding his failure-to-protect and delayed-medical-treatment claims against Szul.[1] The PLRA requires prisoners to exhaust all available administrative remedies before suing in federal court. *Pavey v. Conley*, 544 F.3d 739, 740 (7th Cir. 2008). As the Supreme Court has explained, "the benefits of exhaustion … include allowing a prison to address complaints about the program it administers before being subjected to suit, reducing litigation to the extent complaints are satisfactorily resolved, and improving litigation that does occur by leading to the preparation of a useful record." *Jones v. Bock*, 549 U.S. 199, 219 (2007).

The exhaustion requirement is strict but not absolute. *See Reid v. Balota*, 962 F.3d 325, 329 (7th Cir. 2020). "A prisoner need not exhaust remedies if they are not 'available.'" *Ross v. Blake*, 578 U.S. 632, 636 (2016). When "an administrative scheme [is] so opaque that it becomes, practically speaking,

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[1] King also argues, in a footnote, that the district court erred in granting summary judgment on his *Monell* claim. But as the defendants point out, King has waived this argument because he states only that he "adequately complained of an incident or event when he was attacked and alleges that the staff was not present to deter and prevent violence." *See Lanahan v. County of Cook*, 41 F.4th 854, 866 (7th Cir. 2022) (noting that "perfunctory, underdeveloped, and cursory" arguments are waived). Even if it were not waived, King's argument would fail. Neither of the grievances he filed contain any allegations of a widespread practice of tier officers leaving their tiers unsupervised to assist officers in other tiers. To plead a claim based on a defendant's widespread practice, it is not enough to allege that, in one instance, a tier officer left his tier unsupervised to provide backup for another officer in another tier. Summary judgment was therefore appropriate on this claim.

incapable of use," for example, prisoners are not required to exhaust. *Id.* at 643. The rules must be so confusing as to be "essentially unknowable—so that no ordinary prisoner can make sense of what it demands." *Id.* at 644 (internal quotation marks and citation omitted). "In our recent cases addressing the PLRA's exhaustion requirement, we have stressed that prisons should create understandable grievance procedures, ones clear and transparent enough to allow ordinary inmates to navigate them." *Hacker v. Dart*, --- F.4th ----, No. 21-2910, 2023 WL 2531505, at *1 (7th Cir. Mar. 16, 2023).

A. Failure to Protect

On the same day that King filed his failure-to-protect grievance, a Jail employee gave King a grievance response form with an attached document informing him that his complaint had been forwarded to OPR and the Divisional Superintendent for review and/or investigation. King does not dispute that he failed to appeal the grievance response, file a complaint register, or appeal the closure of his OPR investigation. Instead, he contends that he was not required to exhaust because the process of appealing a grievance that is referred to OPR or the Divisional Superintendent is so opaque that the remedy is unavailable. The standard set out in *Ross* is demanding and cannot be met by demonstrating that the process is "mere[ly] ambigu[ous]." *Reid*, 962 F.3d at 329. Nevertheless, we find that King has carried his heavy burden here.

We recently addressed this precise grievance procedure involving referrals to OPR and the Divisional Superintendent in *Hacker*. In that case, the prisoner had forfeited his contention that the grievance process was unavailable because he waited until his reply brief to make the argument. Despite reviewing only for plain error, we held that the prisoner was not

required to exhaust the Jail's grievance procedure because it "fell well short of" being "transparent enough for ordinary prisoners to navigate." *Hacker*, 2023 WL 2531505, at *6. Specifically, we held that "the Cook County Jail's grievance procedures became unavailable to Hacker after the jail involved OPR." *Id.* at *4.

Hacker applies with equal force here. On the same day that King filed his failure-to-protect grievance, the Jail gave him a response form stating that his grievance had been forwarded to OPR and the Divisional Superintendent. The defendants argue that King was supposed to appeal this response form to exhaust the grievance procedure, but nothing in its communications with King made this clear. To be sure, both the Inmate Handbook King signed when he was first booked into the Jail[2] and the response form he received after he filed his grievance state that inmates must appeal the response within fifteen calendar days to exhaust the grievance process. But neither addressed whether and how a referral to OPR or the Divisional Superintendent affects this obligation.

A commonsense reading of the referral notice suggested to King that there was nothing for him to do. As we explained in *Hacker*, "anyone receiving the notice of referral would have reacted by thinking the process was working and moving forward as it should." *Id.* at *3. To an ordinary prisoner, the notice appeared to be an update regarding the grievance

[2] The Inmate Handbook states in a section titled, "The Inmate Grievance Process": "If you are dissatisfied with the grievance response, you have 15 calendar days from receipt of the decision to appeal. A grievance appeal must be filed in all circumstances in order to exhaust administrative remedies under the CCDOC grievance procedure."

procedure, not a denial of his grievance. "[T]he clear and sensible takeaway from the notice was that [King] should stand by while OPR investigated his complaint." *Id.* The document did not suggest that King had to appeal at that time.

Indeed, it is difficult to imagine what purpose an appeal of the grievance response form could possibly have served. If King had appealed the referral notice, the Jail would have likely reiterated that it referred the grievance to OPR and advised him to wait for the results of that investigation. Under CCDOC policy, social workers who collect grievances do not make any determination on the merits of a grievance and merely forward the grievance to an entity for response. There is no evidence suggesting that the Jail had a different protocol for prisoners who appealed their referrals. And what if King attempted to sue after receiving this unsatisfactory response to his appeal? The district court might have dismissed his case because his OPR investigation was still pending. *See Reid*, 962 F.3d at 328 (noting that the district court found that the prisoner filed suit "too soon because an Internal Affairs 'investigation was pending'").

The district court here stated that King should have filed a complaint register regarding OPR's final disposition or appealed the closure of its investigation, but the Jail's communications suggested otherwise. In the referral notice, the Jail informed King that he could "follow up" on the investigation by contacting OPR or the Divisional Superintendent directly, which "suggested that the OPR process operated separately and apart from formal grievance channels." *Hacker*, 2023 WL 2531505, at *4; *see also Bowers v. Dart*, 1 F.4th 513, 518–19 (7th Cir. 2021) (depicting an internal-affairs investigation as separate from the grievance procedure). Moreover, the Jail did not

provide appeal forms or instructions for how to appeal after the closure of an OPR investigation. Like in *Hacker*, "the only appeals form that the jail had sent to [King] was attached to a different document (the notice of referral) and had apparently expired long before OPR closed the investigation." *Hacker*, 2023 WL 2531505, at *4. Lastly, the Jail provided little to no information concerning an OPR or Divisional Superintendent investigation. For all King knew, the investigations could have taken weeks or months, and "[i]f [King] believed he needed to hear from either or both entities before suing, he would have resigned himself to an indefinite wait—and might have continued to wait even after OPR closed its investigation." *Id.* "All of this suggested to [King] that there was nothing left for him to do." *Id.*

In sum, the Jail's communications to King presented unintuitive, conflicting directions regarding the grievance appeals process, effectively obscuring the process such that "there was no conceivable step for [him] to take." *Reid*, 962 F.3d at 330. The remedy was therefore unavailable, and King was not required to exhaust before bringing this claim in court. *Ross*, 578 U.S. at 636.

B. Delayed Medical Care

The district court also dismissed King's delayed-medical-care grievance for failure to exhaust. It found that, although King had filed a grievance and appealed the Jail's response, the allegations of the grievance did not give the Jail proper notice of his claim against Szul. We agree.

One of the purposes of the PLRA exhaustion requirement is to give the Jail "a fair opportunity to address [the prisoner's] complaint," *Maddox v. Love*, 655 F.3d 709, 722 (7th Cir. 2011),

but King's grievance did not even mention Szul. King stated only that medical staff were liable for his injuries, and where he did discuss the actions of correctional staff, he alleged only that they took him to the hospital. Because the allegations in the grievance do not support the claim he pursued in this lawsuit, King did not give the Jail notice of his claim against Szul. *See Bowers*, 1 F.4th at 517 (finding that the prisoner failed to exhaust because there was a "disconnect between the grievance and complaint").

King's arguments to the contrary are unpersuasive. First, King contends that his grievance gave sufficient notice to the Jail because it provided the same location and described the same incident as in the complaint and listed "Division 9 CCDOC Staff" as the accused. None of these facts, individually or taken together, point to Szul or any other correctional officer being liable for King's injuries. In fact, the grievance explicitly states that it was the medical staff, not the correctional officers who were responsible for his injuries. *See Roberts v. Neal*, 745 F.3d 232, 235–36 (7th Cir. 2014) (holding that the grievance failed to indicate that the defendant was the accused, in part, because the grievance suggested that a doctor was at fault and the defendant was not a doctor). The grievance further stated that the correctional officers took him to the hospital the day after his injury, suggesting that they fulfilled their duty to facilitate medical treatment for him.

Even if the Jail was aware that King thought some correctional officers were liable, King did not provide sufficient information for the Jail to determine that Szul was the accused. The grievance listed Sgt. Heinz by name and generally stated that CCDOC Staff on March 30, 2019, took him to receive medical treatment. But Szul was not on duty on March 30,

2019—he was on duty on March 29, 2019—so there would be no reason for the Jail to think that King believed Szul to be responsible for his injury. *See Schillinger v. Kiley*, 954 F.3d 990, 994–95 (7th Cir. 2020) (finding that the prisoner failed to give the defendants notice of his claim because his allegations did not "place these officers at the scene of the attack").

Second, King argues that he did not fail to exhaust because the Jail responded to his grievance on the merits. He cites *Maddox* for the proposition that "[w]here prison officials address an inmate's grievance on the merits without rejecting it on procedural grounds, the grievance has served its function of alerting the state and inviting corrective action, and defendants cannot rely on the failure to exhaust defense." 655 F.3d at 722. In *Maddox*, the prison was aware of the content of the prisoner's complaint and chose to forgive its untimeliness by deciding the issue on the merits. This is not what happened here. The Jail did not overlook a procedural deficiency regarding King's grievance. Unlike the prison in *Maddox*, the Jail was not aware of King's claim against Szul and was therefore unable to address the issue on the merits.

Lastly, King argues that the district court's opinion creates a requirement to name, identify, or describe the responsible officers, conflicting with the guidance in the Inmate Handbook, which requires only that prisoners "provide the specific date, location, and time of the incident." King misunderstands, however, the court's opinion. The requirement to provide some identifying information about the accused individuals does not stem solely from CCDOC policy. Independent of the requirements of the Jail, our case law provides that prisoners must give the prison "a fair opportunity to address his complaint" prior to filing suit. *Id.* Because King did not do so

here, the district court was right to grant summary judgment in favor of the defendants.

III. Conclusion

King appeals the district court's grant of summary judgment on his failure-to-protect claim and delayed-medical-treatment claim. We find that the district court erred regarding the former but affirm with respect to the latter. Because the Jail's procedure for grievances that are referred to OPR or the Divisional Superintendent is so obscure that no ordinary prisoner could make sense of it, the remedy was unavailable, and King was not required to exhaust it before bringing his failure-to-protect claim in federal court. King was, however, required to exhaust the grievance procedure with respect to his delayed-medical-treatment claim. He failed to do so. As such, summary judgment was warranted on that claim.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED