

**NONPRECEDENTIAL DISPOSITION**

To be cited only in accordance with FED. R. APP. P. 32.1

**United States Court of Appeals**

**For the Seventh Circuit**

**Chicago, Illinois 60604**

Submitted February 13, 2025\*

Decided February 20, 2025

**Before**

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-2759

LEONARD THOMAS,  
*Plaintiff-Appellant,*

*v.*

MARK R. SEVIER, et al.,  
*Defendants-Appellees.*

Appeal from the United States District  
Court for the Northern District of Indiana,  
South Bend Division.

No. 3:15-CV-548-JVB-JEM

Joseph S. Van Bokkelen,  
*Judge.*

**ORDER**

Leonard Thomas, an Indiana prisoner, appeals the summary judgment entered in favor of the prison officials he sued under 42 U.S.C. § 1983. The district court entered summary judgment against him on the grounds that he had failed to exhaust his administrative remedies for some claims and had untimely filed the rest. Because

---

\* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Thomas raises only an unpreserved argument about exhaustion, and no argument about timeliness, we affirm.

We construe the evidence on the issue of exhaustion in favor of Thomas, the nonmovant on the motion for summary judgment. *See McDaniel v. Syed*, 115 F.4th 805, 821–22 (7th Cir. 2024). Thomas was transferred to the Westville Correctional Facility Control Unit and placed in solitary confinement in March 2014, where he remained for 15 months. During that time, he attempted suicide at least once, reported hearing voices, and requested mental-health treatment.

The prison has a multi-step grievance process for challenging conditions of confinement (including medical treatment) and a one-step process for appealing housing classifications. While in solitary, Thomas used the grievance process to file an informal grievance objecting to his housing classification, his medical treatment, and other issues. His case manager responded by telling Thomas that he was housed properly. Interpreting this response to mean that he must channel all his issues through the appeals process for housing classifications, Thomas did not file a formal grievance for any of his issues. Instead, he now argues on appeal, he used the classification-appeal form and objected to, among other things, his housing classification. He eventually learned that his objection to his housing classification was denied and that the appeals process for housing classifications was unsuitable for his other issues regarding conditions of confinement and medical treatment.

Thomas responded with two lawsuits. He filed his first suit pro se in 2015, contending that his classification and conditions of confinement violated his Eighth Amendment rights. After denying his motion for counsel, the district court dismissed the case, concluding that Thomas had abandoned it. We vacated that dismissal and ordered that the district court recruit counsel for Thomas, *see Thomas v. Wardell*, 951 F.3d 854 (7th Cir. 2020), and counsel eventually filed the operative complaint in this case. Meanwhile, Thomas filed a second suit in 2018, bringing claims against a different set of defendants at his new prison, Wabash County Correctional Facility. The district court granted a motion to consolidate the cases. The defendants then jointly moved for summary judgment on the grounds that Thomas had failed to exhaust administrative remedies in the 2015 case and had untimely brought the 2018 case.

The district court granted the motion for summary judgment. In opposing the defendants' argument that he had not exhausted the claims in his 2015 case, Thomas argued "that the Grievance Process was unavailable to Mr. Thomas" because the case manager "inaccurate[ly]" told "Mr. Thomas to use the Classification Process." The

district court rejected this contention about unavailability of the grievance process as factually unfounded. It ruled that the case manager never told Thomas to avoid the grievance process, but merely responded to his informal grievance to the extent it objected to his housing classification. Finally, the court ruled that the 2018 case was untimely, and because Thomas does not contest this ruling on appeal, we do not address it.

Before addressing Thomas's arguments on appeal, we observe a threshold matter. One defendant, Corizon Health Inc., declared bankruptcy, precipitating a stay of this appeal until last year, when we granted Thomas's motion to proceed against all other defendants. We will decide this appeal against all other defendants and open a new appeal under a separate case number with Corizon as the sole appellee.

On appeal Thomas challenges only the ruling that he failed to exhaust administrative remedies for his claims in the 2015 case. He argues that he exhausted his complaint about his housing assignment by going through the classification-appeals process. The Prison Litigation Reform Act requires that prisoners who seek to sue correctional officers over claims against them first exhaust their available administrative remedies. 42 U.S.C. § 1997e(a). In contending on appeal that he fully exhausted his objection to his housing classification, Thomas has replaced the position he took in the district court—that the grievance process was “unavailable” to him—with his new contention that he completed the appeals process properly.

Thomas is not entitled to have us consider his new argument that he properly exhausted the appeals process. Thomas—who had counsel in the district court—never argued there, as he now asserts on appeal, that he complied with the requirements for properly appealing his housing classification. Instead, he relied on his contention that his case manager misled him into thinking that the grievance process was unavailable to him. By newly asserting on appeal that he timely and properly used the classification-appeals process, he deprived the defendants of a chance to develop evidence in the district court to rebut that contention. *See Henry v. Hulett*, 969 F.3d 769, 786 (7th Cir. 2020). His new argument is thus waived. *See Williams v. Rajoli*, 44 F.4th 1041, 1047 (7th Cir. 2022). And because Thomas has not supplied any “exceptional circumstances” that justify forgiving his waiver, *see Henry*, 969 F.3d at 786, we enforce it.

For completeness, we observe that it is undisputed that Thomas never went through the multi-step grievance process for his complaints about the conditions of his confinement and mental-health treatment. These complaints were grievable. *See* IND. DEP'T OF CORR., OFFENDER GRIEVANCE PROCESS 4 (2015). Thomas reprises his argument

that the case manager misled him into thinking that he could not use the grievance process to grieve these issues, but that argument does not hold water. No communication from the case manager, or anyone else for that matter, stated that the appeals process for housing classification is the appropriate avenue for resolving his complaints about the conditions at a housing assignment or his medical treatment. The only evidence in the record on the point is to the contrary: When Thomas learned that the prison would not change his classification decision, at least one official told him that he *should* use the grievance procedure to resolve the other, non-classification objections. Although Thomas misunderstood the response he received to his informal grievance, a prisoner's mistake about grievance procedures does not by itself render those procedures unavailable. *Ross v. Blake*, 578 U.S. 632, 641–42 (2016).

We thus AFFIRM the judgment with respect to all defendants other than Corizon Health, Inc. The Clerk will open a new appeal under a new appellate case number with Corizon Health as the sole appellee. No additional filing fee will be required.