

NONPRECEDENTIAL DISPOSITION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 April 24, 2024*

Decided April 26, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 23-3293

TIMOTHY MARCUS MAYBERRY,
Plaintiff-Appellant,

v.

STACY HALL,
Defendant-Appellee.

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

No. 3:22-CV-45-DRL-MGG

Damon R. Leichty,
Judge.

ORDER

The Prison Litigation Reform Act mandates that before suing prison officials, a prisoner exhaust “such administrative remedies as are available.” 42 U.S.C. § 1997e(a). Timothy Mayberry is an Indiana prisoner at Miami Correctional Facility in Bunker Hill

* 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).

who sued a librarian at his prison. The district court entered summary judgment against him because Mayberry failed to exhaust his available administrative remedies before suing. The court's conclusion about exhaustion is correct; thus we affirm.

The events relevant to this appeal began on December 13, 2021. On that day Mayberry filed a grievance against the prison's librarian, Stacy Hall. He accused her of preventing him from pursuing a lawsuit by delaying a response to his request for documents. Mayberry received no response to his grievance for nearly two months, until February 3, when the prison denied it. The prison states that it responded to the grievance within 10 days of when its grievance officer received the grievance on January 26, as its rules required. Mayberry appealed the denial the day after he received it, and the prison rejected the appeal within two weeks, on February 14.

While the grievance was pending, Mayberry filed this suit on January 17, 2022. His complaint asserted that he was denied access to the courts, but he did not name Hall. The district court dismissed the complaint but allowed Mayberry to amend it. Mayberry did so on February 11, after the prison had denied his grievance but before it had rejected his administrative appeal. In the amended complaint, he named Hall. (With leave of court, Mayberry later amended his complaint again against only Hall.)

Hall successfully moved for summary judgment. She argued that Mayberry had failed to exhaust all remedies available to him before filing his suit. Mayberry replied that the nearly two-month wait between his grievance and the prison's response to it rendered his administrative remedies unavailable. In granting Hall's motion, the district court reasoned that it should evaluate the availability of grievance procedures at the time Mayberry amended his complaint on February 11, because that is when he first named Hall. By then, the prison had responded to his grievance but not his internal appeal. The pendency of the internal appeal meant available administrative remedies were still unexhausted before Mayberry sued Hall.

On appeal, the parties dispute whether administrative remedies were available to Mayberry when he filed suit. Mayberry urges us to assess availability from the date of his original complaint, and he argues that on that date remedies were unavailable because the prison had not responded to his grievance within 10 days of his submission of it. Hall responds that the prison rules allow the grievance officer 10 days from receipt (not submission) of the grievance to respond, and the officer did so. But, Hall continues, because Mayberry did not wait for that process to end before he sued, he failed to exhaust his available administrative remedies.

We review de novo the grant of summary judgment based on a failure to exhaust available administrative remedies. *Gooch v. Young*, 24 F.4th 624, 626 (7th Cir. 2022). State law defines the available procedures for exhaustion, *Jones v. Bock, et al.*, 549 U.S. 199, 218 (2007), which a prisoner must complete before suing. *See Ross v. Blake*, 578 U.S. 632, 635 (2016). Indiana’s procedure provides that grievances must be filed within 10 days of the underlying incident; the responsible officer must “review the grievance form within ten (10) business days of receiving it”; a first administrative appeal must be filed within 5 days of an adverse ruling; and a second administrative appeal must be filed within 5 days of an adverse appeal. IND. DEP’T OF CORR., OFFENDER GRIEVANCE PROCESS 9–14 (2020).

We need not decide whether we should measure the availability of Mayberry’s remedies from the time of the original complaint (as he prefers) or at the time of the amended complaint (as our case law suggests, *see Barnes v. Briley*, 420 F.3d 673, 678 (7th Cir. 2005)), because he loses under his preferred measure. By that date, Mayberry had not yet received a response to his grievance, let alone filed (or received responses to) either of his two possible administrative appeals. Because he sued before he completed these available administrative remedies, the district court properly ended the suit at summary judgment. *See Ross*, 578 U.S. at 638–39.

Mayberry correctly observes that a prison can render an administrative process unavailable by making prisoners wait “indefinitely” for a response to grievances, *Lewis v. Washington*, 300 F.3d 829, 833 (7th Cir. 2002), but this principle does not help him. The prison did not make Mayberry wait indefinitely. To the contrary, it adhered to its own rules, the validity of which Mayberry does not contest, by responding to his grievance on February 3, within 10 days of when the grievance officer received his grievance. And when the prison abides by its own rules in returning responses, we have considered remedies available to the prisoner. *See Ford v. Johnson*, 362 F.3d 395, 400 (7th Cir. 2004) (ruling that the grievance system was available even when a prisoner waited six months for a response, because the prison had not exceeded the time allotted by its policy). Further, because Mayberry raised no factual dispute about the date the grievance officer received the grievance, a *Pavey* hearing was not required before the district court entered summary judgement. *Pavey v. Conley*, 544 F.3d 739, 742 (7th Cir. 2008).

We understand that Mayberry assumed that, because almost two months passed from the time he submitted the grievance, the prison was ignoring its rules and thus its remedies were not available. But his misunderstanding of the rules (assuming

submission, not receipt, mattered) does not render the process unavailable.
See Smallwood v. Williams, 59 F.4th 306, 314–15 (7th Cir. 2023).

We conclude with a final matter about the briefs on appeal. Mayberry insists that Hall untimely filed her appellate brief because it was docketed in our court more than 30 days after he filed his opening brief. But Hall filed her brief by the deadline specified in our briefing schedule; therefore it is timely.

AFFIRMED