

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 CA 1639

BYRON RAGLAND

VERSUS

EMERGENCY MEDICAL SERVICES, INC., SID GAUTREAU, IN HIS  
CAPACITY AS THE EAST BATON ROUGE PARISH SHERIFF, AND THE  
PARISH OF EAST BATON ROUGE, AND THE CITY OF BATON ROUGE

Judgment Rendered: JUL 16 2014

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Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Docket No. 617,325

Honorable Timothy E. Kelley, Judge

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Gregory J. Miller  
Baton Rouge, LA

Counsel for  
Plaintiff/Appellant  
Byron Ragland

Mary G. Erlingson  
Tara L. Johnston  
Catherine S. St. Pierre  
Baton Rouge, LA

Counsel for  
Defendant/Appellee  
Sid Gautreaux, in his  
capacity as Sheriff of  
East Baton Rouge Parish

Mary E. Roper  
Parish Attorney  
Frank J. Gremillion  
Assistant Parish Attorney  
Tedrick K. Knightshead  
Assistant Parish Attorney  
Baton Rouge, LA

Counsel for  
Defendant/Appellee  
City of Baton Rouge/  
Parish of East Baton  
Rouge

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BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

*File*  
*RHP by [Signature]*  
*EGD by [Signature]*

**GUIDRY, J.**

The appellant, Byron Ragland, appeals the dismissal of his claims against Sid Gautreaux, in his capacity as Sheriff of East Baton Rouge Parish, pursuant to the district court's sustaining of a declinatory exception urging the objection of lack of subject matter jurisdiction. For the following reasons, we reverse the judgment of the district court, overrule the Sheriff's exception, and remand this matter for further proceedings.

From April 16, 2012, to September 14, 2012, Mr. Ragland was incarcerated in the East Baton Rouge Parish Prison. Following his release from prison, Mr. Ragland filed a petition for damages against Sheriff Gautreaux and the City of Baton Rouge/Parish of East Baton Rouge,<sup>1</sup> alleging that he was injured as a result of the inadequate medical care provided during his time of incarceration. In response, Sheriff Gautreaux filed a declinatory exception raising the objection of lack of subject matter jurisdiction. In his memorandum in support of the exception, Sheriff Gautreaux asserted that, because Mr. Ragland's claims arose during his time of incarceration in parish prison, Mr. Ragland was required to initiate a claim for administrative remedies for a delictual action for injury pursuant to La. R.S. 15:1172, which Mr. Ragland did not do. Hence, Sheriff Gautreaux sought dismissal of Mr. Ragland's suit, with prejudice, because Mr. Ragland failed to comply with La. R.S. 15:1171-79. Following a hearing on the declinatory exception, the district court sustained the exception and dismissed the action against Sheriff Gautreaux, with prejudice.

On appeal, Mr. Ragland argues that the district court improperly determined that a valid grievance procedure existed and that he had waived his right to pursue an action in district court.

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<sup>1</sup> Mr. Ragland also named Emergency Medical Services as a defendant in the suit, but as a department of the City of Baton Rouge/Parish of East Baton Rouge, the department lacks capacity to be sued in its own right. See La. C.C. art. 24.

## DISCUSSION

At issue in this appeal is whether Mr. Ragland has abandoned the right to file a suit for damages against the Sheriff, when he has not complied with La. R.S. 15:1172(B)(1), which provides that "[a]n offender shall initiate his administrative remedies for a delictual action for injury or damages within ninety days from the day the injury or damage is sustained." Subsection (C) of that same statute provides, "[i]f an offender fails to timely initiate or pursue his administrative remedies within the deadlines established in Subsection B of this Section, his claim is abandoned, and any subsequent suit asserting such a claim shall be dismissed with prejudice." La. R.S. 15:1172(C).

Mr. Ragland does not deny that he failed to comply with La. R.S. 15:1172(B)(1). He contends, however, that he did not have to comply with the statute, because the administrative remedy procedure for a delictual action established by the Sheriff at the East Baton Rouge Parish Prison exceeds the Sheriff's statutory grant of authority, and therefore, with respect to a delictual action, the administrative remedy procedure promulgated is null and void.

Although a regulatory agency is entitled to a certain amount of authority regarding the statutes it is entrusted to administer, it cannot go too far afield from the letter of the law, even if it perceives that it is furthering the law's spirit. The principle is well established that an administrative agency must act in conformity with its statutory authority, which it cannot exceed. Benson & Gold Chevrolet, Inc. v. Louisiana Motor Vehicle Commission, 403 So. 2d 13, 20 (La. 1981). An administrative agency or board has only the power and authority expressly granted by the constitution or statutes. In re Arnold, 07-2342, p. 5 (La. App. 1st Cir. 5/23/08), 991 So. 2d 531, 535.

Louisiana Revised Statute 15:1171(B) of the Corrections Administrative Remedy Procedure Act (CARP), provides in pertinent part:

The ... sheriff may also adopt, in accordance with the Administrative Procedure Act, administrative remedy procedures for receiving, hearing, and disposing of any and all complaints and grievances by adult or juvenile offenders against ... a sheriff, his deputies, or employees, which arise while an offender is within the custody or under the supervision of ... a sheriff. Such complaints and grievances include but are not limited to any and all claims seeking monetary, injunctive, declaratory, or any other form of relief authorized by law and by way of illustration includes actions pertaining to conditions of confinement, **personal injuries, medical malpractice**, time computations, even though urged as a writ of habeas corpus, or challenges to rules, regulations, policies, or statutes. **Such administrative procedures, when promulgated, shall provide the exclusive remedy available to the offender for complaints or grievances governed thereby insofar as federal law allows.** [Footnote deleted; emphasis added.]

Similarly, La. R.S. 15:1172(A), reiterates:

Upon adoption of the administrative remedy procedure, in accordance with the Administrative Procedure Act, and the implementation of the procedure ... by the sheriff, this procedure **shall constitute the administrative remedies available to offenders for the purpose of preserving any cause of action they may claim to have** against ... a sheriff, or his employees or deputies. Any administrative remedy procedure in effect on January 1, 2001, including the procedure published in LAC 22:I.325, is deemed to be in compliance with the provisions of this Section. [Emphasis added.]

The administrative remedy procedure implemented at the East Baton Rouge Parish Prison was adopted by the Sheriff on March 5, 1990, and the version of the administrative remedy procedure in effect during Mr. Ragland's incarceration was updated on March 24, 2009. The administrative remedy procedure then in effect stated that "[a] grievance procedure is begun by an inmate completing a Grievance form, and sending it to the Grievance Investigator[.] The Grievance must be received by the Grievance Investigator within thirty (30) days of the complained of event."

In order to require a petitioner to first exhaust administrative remedies, the remedies must be adequate. Haygood v. Dies, 47,765, p. 12 (La. App. 2d Cir. 5/15/13), 114 So. 3d 1206, 1214. The burden of establishing the existence of an available administrative remedy is on the Sheriff. See Cheron v. LCS Corrections

Services, Inc., 04-0703, p. 15 (La. 1/19/05), 891 So. 2d 1250, 1259. Dennis Grimes, warden of the East Baton Rouge Parish Prison, testified that, although the official written version of the East Baton Rouge Parish Prison administrative remedy procedure states that a grievance must be initiated within 30 days of the complained of event, prisoners were actually allowed 90 days to initiate a grievance. However, Mr. Grimes acknowledged that the written notice provided to inmates stated only a 30-day time period in which to initiate a grievance, and he further admitted that he had no record that Mr. Ragland received verbal notice of the procedure for filing a grievance.

Even when the Legislature has properly delegated to an agency certain administrative or ministerial authority, *the regulations promulgated by the agency may not exceed the authorization delegated by the Legislature.* State v. Alfonso, 99-1546, p. 8 (La. 11/23/99), 753 So. 2d 156, 162. When the legislative body, in delegating powers, clearly expresses its policy and provides sufficient standards, judicial review of the exercise of the means chosen by the agency in exercising its delegated power provides a safeguard against abuse by the agency. Alfonso, 99-1546 at p. 7, 753 So. 2d at 161.

In this case, we find that the Sheriff exceeded the authorization delegated to him by the Legislature by adopting rules that provide a shorter period of time for a prisoner to initiate an administrative remedy procedure for a grievance regarding a delictual action than what is provided for in La. R.S. 15:1172(B)(1). As the Sheriff can only adopt rules that are within the powers granted to him by CARP, those rules that fall outside of the limited authority granted by CARP are consequently invalid and without legal efficacy. See State Through Louisiana Riverboat Gaming Commission v. Louisiana State Police Riverboat Gaming Enforcement Division, 95-2355, p. 14 (La. App. 1st Cir. 8/21/96), 694 So. 2d 316, 324. Thus, Mr. Ragland was not required to exhaust any administrative remedies for a

delictual action before filing his tort suit, and the district court's ruling finding otherwise is erroneous.<sup>2</sup>

### **CONCLUSION**

For the foregoing reasons, we find that the administrative remedy procedure with respect to a delictual action adopted by the Sheriff for the East Baton Rouge Parish Prison exceeded the limited authority granted by CARP, and as such, the procedure is invalid and without legal efficacy. We therefore reverse the judgment of the district court sustaining the sheriff's declinatory exception and dismissing Mr. Ragland's petition, with prejudice. We hereby overrule the exception and remand this matter back to the district court for further proceedings. All costs of this appeal, in the amount of \$612.00, are cast to the Honorable Sid Gautreaux, as Sheriff of East Baton Rouge Parish.

**REVERSED, RENDERED, AND REMANDED.**

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<sup>2</sup> In contrast to La. R.S. 15:1172(B)(1), we note that the Sheriff has more discretion for nondelictual claims as set forth in La. R.S. 15:1172(B)(2), which provides:

The department is authorized to establish deadlines for an offender to initiate administrative remedies for any nondelictual claims.