

NONPRECEDENTIAL DISPOSITION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 June 23, 2023*

Decided June 23, 2023

Before

DIANE P. WOOD, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 22-3200

ROY BESSLER,
Plaintiff-Appellant,

v.

WEXFORD OF INDIANA, LLC,
Defendant-Appellee.

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

No. 3:21-CV-691 JD

Jon E. DeGuilio,
Chief Judge.

ORDER

Roy Bessler, an Indiana prisoner, appeals the summary judgment rejecting his claims that Wexford of Indiana (the company contracted to provide medical care to Indiana state prisoners) inadequately treated his broken hip. Because the undisputed

* 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).

facts show that Bessler did not exhaust the prison's administrative remedies in the time and manner required of him, *see* 42 U.S.C. § 1997e(a), we affirm.

Bessler fell and severely injured his hip in July 2020, while incarcerated at the Miami Correctional Facility in Bunker Hill, Indiana. Wexford medical providers evaluated Bessler and gave him pain medication, which he says was ineffective. Three days after his fall, he received an x-ray and was diagnosed with a hip fracture. Wexford staff placed him on bed rest and gave him more pain medication. About three weeks later, Bessler saw an orthopedic surgeon, who evaluated him and determined that he would need a total hip replacement. Bessler remained on bed rest until he received the surgery in late 2020.

In connection with his injury, Bessler filed two grievances. First, a few days after his fall, he submitted a grievance stating that he had bumped his foot into a door stop that was "about 2–3 inches high," throwing him off balance and causing him to fall and break his pelvis. Bessler wrote that he needed "an operation to repair [his] pelvis because of the position of the door stops," adding that he wouldn't know what relief to seek "until [his] operation is final." A grievance specialist denied his grievance, explaining that the door stops served a purpose and would not be removed, and that Bessler should follow his doctor's instructions to help regain his quality of life. Bessler filed a formal appeal, which was also denied. He did not further appeal to the Department Offender Grievance Manager.

Bessler filed his second grievance in February 2021, after his hip-replacement surgery. He complained of "major issues with [his] blood pressure" after his surgery and sought the assistance of a cardiologist "to check on [his] heart and get [his] meds under control." A grievance specialist contacted a health care administrator about the matter, and then responded to Bessler: "It is up to the onsite provider to determine what medication and treatment plan you are given ... If you need additional medical, please submit a Health Care Request Form." Bessler did not file such a form or take an appeal, and he submitted no further grievances or requests related to his hip injury.

Bessler then sued Wexford, asserting that its providers deliberately ignored his medical needs by failing to provide appropriate treatment in the five months after his hip injury. *See* 42 U.S.C § 1983. Wexford in turn moved for summary judgment on grounds that Bessler failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act. *See* 42 U.S.C. § 1997e(a).

The district court entered summary judgment against Bessler, ruling that he had not exhausted his available administrative remedies. According to the court, neither of Bessler's two grievances directly addressed the subject of his lawsuit (the medical treatment of his hip injury), and he did not complete the multi-step appeals process outlined in the Indiana Department of Correction's rules for either grievance. Further, Bessler had not shown that the grievance process was effectively unavailable to him. The court added that Bessler was informed of the grievance process, given Wexford's evidence that all new prisoners received written notice of the grievance procedures in their orientation paperwork, and Bessler produced no evidence that he did not receive such notice.

On appeal Bessler only generally contests the summary judgment ruling. We agree with the district court, however, that, based on the undisputed facts, he did not complete all necessary steps to exhaust his administrative remedies. Under the PLRA, exhaustion of "available" administrative remedies must precede a prisoner's lawsuit. *See* 42 U.S.C. § 1997e(a). To exhaust such remedies, a prisoner must follow the rules set by the prison to file a claim and must properly complete all steps of the grievance process, including appeals. *Pozo v. McCaughtry*, 286 F.3d 1022, 1024–25 (7th Cir. 2002); *see also Woodford v. Ngo*, 548 U.S. 81, 88, 93 (2006). The prison's rules require that prisoners like Bessler submit their grievances within 10 business days of the relevant incident; they may then appeal the provided response to the Warden and then make a final appeal to the Department Offender Grievance Manager, whose decision is final. *See* IDOC Manual of Policies and Procedures No. 00-02-301 at 9–10, 12–13. Bessler's July 2020 grievance¹ mentioned his need for "an operation to repair [his] pelvis" but did not directly address the subject of this lawsuit—the allegedly inadequate medical care he received in the weeks after his injury. Even if we assume that the grievance was sufficiently related to the claims in his complaint, Bessler does not dispute that he did not appeal this or any grievance to the Department Offender Grievance Manager—the third step of the grievance process.

Bessler argues relatedly that the district court improperly resolved a disputed fact at summary judgment, since the parties disputed whether he was informed how to exhaust his administrative remedies through the grievance process. But Bessler did not furnish any evidence to persuade a reasonable jury that he did not receive notice of the

¹ We assume Bessler's February 2021 grievance—requesting a cardiologist appointment—does not sufficiently address the subject of this lawsuit, nor did he file it within the required 10-day window or file any appeals.

grievance procedures in his orientation paperwork, as Wexford attested all new prisoners had. Nor did he explain why, despite managing to file other grievances regarding the door stops and a cardiologist appointment, he did not file any grievance directly addressing the subject of this lawsuit—the medical care he received following his injury.

Bessler also argues for the first time on appeal that he was unable to send papers out of his cell because of the prison's COVID-19 quarantine policies. But he waived this argument by not raising it first in the district court. *Bradley v. Village of University Park*, 59 F.4th 887, 897 (7th Cir. 2023).

AFFIRMED