

United States Court of Appeals
For the Eighth Circuit

No. 14-2694

Addones Spencer

Plaintiff - Appellant

v.

Tara Hall, FCI-Forrest City

Defendant - Appellee

Appeal from United States District Court
for the Eastern District of Arkansas - Helena

Submitted: November 21, 2014

Filed: November 26, 2014

[Unpublished]

Before GRUENDER, BENTON, and KELLY, Circuit Judges.

PER CURIAM.

Federal prisoner Addones Spencer appeals the district court's¹ dismissal without prejudice of his *Bivens*² action against Tara Hall, for failure to exhaust administrative remedies. Having carefully reviewed the record and the parties' briefs, we affirm.

We first conclude that the district court did not abuse its discretion in dismissing without affording Spencer additional time for discovery, because he did not explain how further discovery would have helped him show that he had exhausted available remedies, or been prevented from doing so. *Cf. Ray v. Am. Airlines, Inc.*, 609 F.3d 917, 922 (8th Cir. 2010) (abuse-of-discretion standard applies to district court's determination that claim is ripe for decision). We further conclude that dismissal was proper because Spencer did not rebut Hall's evidence that he had filed no grievance concerning the subject of his lawsuit, and he presented no evidence indicating that exhaustion was unavailable to him; on the contrary, the evidence established that he had filed thirty-three grievances unrelated to the claims in the present lawsuit. *See* 42 U.S.C. § 1997e(a) (exhaustion requirement); *Hammett v. Cofield*, 681 F.3d 945, 948-49 (8th Cir. 2012) (per curiam) (claim that exhaustion is unavailable requires sufficient showing in record; evidence of prisoner's previous use of grievance procedures is relevant); *see also King v. Iowa Dep't of Corr.*, 598 F.3d 1051, 1052 (8th Cir. 2010) (dismissal for failure to exhaust administrative remedies is reviewed de novo).

Accordingly, we affirm. *See* 8th Cir. R. 47B.

¹The Honorable Kristine G. Baker, United States District Judge for the Eastern District of Arkansas, adopting the report and recommendations of the Honorable Beth Deere, United States Magistrate Judge for the Eastern District of Arkansas.

²*Bivens v. Six Unknown Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).