

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

KENNETH L. WALLER, JR., ADC #103829

PLAINTIFF

v.

No. 1:11CV00095 JLH/JTR

WENDY KELLEY, Deputy Director,
Arkansas Department of Correction, *et al.*

DEFENDANTS

ORDER

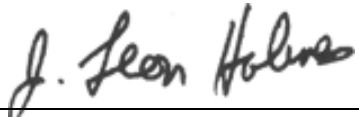
On December 4, 2012, United States Magistrate Judge J. Thomas Ray submitted proposed findings and recommended partial disposition in which he recommended that the motion for summary judgment filed by Wendy Kelley be granted on the ground that Kenneth L. Waller, Jr., failed to name her in any grievance that was exhausted prior to the time he filed his complaint in this action. On December 13, 2012, the United States Court of Appeals for the Eighth Circuit issued an unpublished, per curiam opinion holding that the exhaustion requirement under the Prison Reform Litigation Act is satisfied when the prison officials decide the inmate's grievance on the merits, even if the individuals named in the inmate's lawsuit as defendants were not specifically named in the grievance. *Bower v. Kelley*, No. 12-1678, 2012 WL 6199266 (8th Cir., Dec. 13, 2012) (per curiam).¹

Here, it appears that Waller exhausted several grievances prior to commencing this action, although none of them identified Kelley by name. *See* Document #89-1. Because *Bower v. Kelley* was decided after Magistrate Judge Ray issued his proposed findings and recommended partial disposition, he did not have the opportunity to consider the impact that that decision might have in this action. Nor did the parties have the opportunity to brief the issue.

¹ The Eighth Circuit issued its mandate in *Bower v. Kelley* on January 4, 2013, so that decision is now final.

Accordingly, the Court declines to accept the proposed findings and recommended partial disposition. Document #127. This action is again referred to Magistrate Judge Ray for disposition or recommended disposition, as appropriate, for all pretrial matters, including a reconsideration of Kelley's motion for summary judgment.

IT IS SO ORDERED this 9th day of January, 2013.


UNITED STATES DISTRICT JUDGE