

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

ROBERT WILIAM AVERY
ADC #652373

PLAINTIFF

v.

No. 4:21-cv-468-DPM-JTK

STRINGFELLOW DENTISTRY; JESSICA
JACKSON BREEDLOVE, Dentist,
Stringfellow Dentistry; WELLPATH HEALTH
CARE; and VESTA MULLINS BLANKS, Health
Services Administrator, Wellpath Health Care

DEFENDANTS

ORDER

1. Motion to voluntarily dismiss, *Doc. 26*, granted. Avery's claims against Wellpath and Blanks are dismissed without prejudice.
2. On *de novo* review, the Court adopts Magistrate Judge Kearney's partial recommendation, *Doc. 25*, and overrules Avery's objections, *Doc. 27*. FED. R. CIV. P. 72(b)(3). Avery argues that the ADC's grievance procedure was unavailable because it "does not name contractors and sub-contractors." *Doc. 27 at 1*. But the policy covers "action of an employee(s), contractor(s), or volunteer(s) that personally affects the inmate." *Doc. 19-1 at 2*. Avery also argues that Grievance WR-21-124 was not a duplicate of WR-21-122 because it added language about "practice, policy, customs + procedures[.]" *Doc. 27 at 2* & *Doc. 19-2 at 38*. The ADC grievance policy states that a grievance will

be rejected if it is duplicative "with regard to the staff member named, the date of the incident, and the subject of the grievance[.]" *Doc. 19-1 at 16*. The two grievances at issue here fit that bill. Avery's adding general language about policy, practice, customs, and procedure was not sufficient to notify the ADC that he was attempting to grieve a separate claim.

3. Motion for partial summary judgment, *Doc. 18*, granted. Avery's claims against Breedlove raised in WHM20-00084, WHM20-00087, and WHM20-00091 go forward. All other claims and Defendants are dismissed without prejudice for failure to exhaust.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

17 November 2021