

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

THELMA WILLIAMS, JR.,
ADC #93197

PLAINTIFF

v. No. 5:08CV00006 JLH-BD

R. JOHNSON, et al.

DEFENDANTS

ORDER

Greg Harmon filed a motion for summary judgment on two grounds. First, Harmon says that Williams did not exhaust his administrative remedies. In support of that argument, Harmon submitted an affidavit from Tiffanye Compton, inmate grievance supervisor for the Arkansas Department of Correction, stating that Williams's file has no documentation of any grievance appeals regarding complaints about Greg Harmon in either 2007 or 2008. Harmon's second argument is that as warden he is not responsible for medical treatment, which has been contracted to Correctional Medical Services, and cannot be held responsible for the action or inaction of CMS in providing medical treatment. In support of that argument, Harmon submitted an affidavit of Aundrea Weekly.

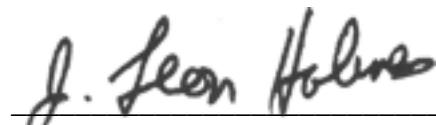
The Honorable Beth Deere, United States Magistrate Judge, submitted a partial recommended disposition recommending that summary judgment be granted in favor of Harmon because Williams failed to exhaust his administrative remedies. Judge Deere's partial recommended disposition did not address Harmon's second argument for summary judgment.

In objecting to the partial recommended disposition, Williams submitted, for the first time, an affidavit claiming that he had submitted grievances on this issue but that Harmon's office had deliberately messed up his grievances. Attached to his affidavit is what purports to be a grievance

dated January 20, 2008, regarding the subject matter of the complaint in this case. That purported grievance complains that Warden Harmon denied him assistance in obtaining necessary medical care. Williams has written in the section that is to be filled out by the staff that there was no response from the staff to his grievance. Judge Deere was not given an opportunity to determine whether Williams's affidavit and his purported grievance create a genuine issue of material fact as to whether Williams exhausted his administrative remedies with respect to Harmon, nor, if they do, whether summary judgment should be granted on Harmon's second argument. Therefore, Harmon's motion for summary judgment will be remanded to Judge Deere for further consideration in light of Williams's affidavit and purported grievance.

For the reasons stated above, the Court declines to accept the partial recommended disposition entered as Document #131 and remands Greg Harmon's motion for summary judgment to Magistrate Judge Deere for further consideration.

IT IS SO ORDERED this 26th day of September, 2008.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE