

NOT DESIGNATED FOR PUBLICATION

ANGELA JONES * **NO. 2009-CA-0972**
VERSUS *
THE STATE OF LOUISIANA * **COURT OF APPEAL**
THROUGH THE * **FOURTH CIRCUIT**
DEPARTMENT OF * **STATE OF LOUISIANA**
CORRECTIONS AND
DEACON JOSEPH MAMOU * * * * *

APPEAL FROM
18TH JUDICIAL DISTRICT COURT PARISH OF IBERVILLE
NO. 63,662, "C"
Honorable Alvin Batiste, Judge
* * * * *

Judge Dennis R. Bagneris, Sr.
* * * * *

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Roland L. Belsome, and Judge Paul A. Bonin)

BELSOME, J., CONCURS WITH REASONS

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DECEMBER 23, 2009

REVERSED AND REMANDED

Appellant, Angela Jones, appeals the judgment of the of the 18th Judicial District Court granting an Exception of No Cause of Action in favor of the State of Louisiana through the Department of Corrections, Warden Johnny Jones, and Deacon Joseph Mamou¹. The judgement dismisses Ms. Jones' case based on her "failure to exhaust administrative remedies". For the following reasons, we reverse and remand.

On March 4, 2004, Ms. Jones filed a Petition for Damages against the State of Louisiana through the Department of Corrections in the 19th Judicial District alleging that she was forced into having a sexual relationship with Deacon Mamou while incarcerated at the Louisiana Correctional Institute for Women (LCIW) at St. Gabriel, Louisiana. The State filed an Exception of Improper Venue and the case was transferred to the 18th Judicial District wherein Ms. Jones amended her pleading to add Johnny Jones, a Warden at the correctional facility. The LCIW and Warden Jones filed exceptions for Lack of Subject Matter Jurisdiction, Lis

¹ This case is before the Fourth Circuit Court of Appeal due to the recusal of the June 16th, 2009, recusal of the First Circuit Court of Appeal.

Pendens, Res Judicata, Prescription and No Cause of Action for failure to exhaust administrative remedies. On December 11, 2007, the 18th Judicial District entered judgment in favor of the Appellees and dismissed Ms. Jones' case with prejudice. It is from this judgment that Ms. Jones takes the instant appeal.

Ms. Jones argues on appeal that the district court erred in granting the defendant's exception of No Cause of Action causing her case to be dismissed with prejudice.

La. R.S. 15:1184. *Suits by Prisoners*, reads, in pertinent part, as follows:

A. (1) For purposes of this Section, the following words have the following meanings:

(a) "Administrative remedies" means written policies adopted by governmental entities responsible for the operation of prisons which establish an internal procedure for receiving, addressing, and resolving claims by prisoners with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison. Such "administrative remedies" need not be adopted or published in compliance with R.S. 15:1171.

(b) "Available" means all administrative remedies adopted by governmental entities, which address claims of the kind asserted by the prisoner even if the administrative remedies do not allow the prisoner the particular kind of relief sought.

(2) No prisoner suit shall assert a claim under state law until such administrative remedies as are available are exhausted. If a prisoner suit is filed in contravention of this Paragraph, the court shall dismiss the suit without prejudice.

(3) A court shall take judicial notice of administrative remedies adopted by a governmental entity that have been filed with the clerk of the district court in the parish where the governmental entity is domiciled.

B. The court, on its own motion or on the motion of a party, shall dismiss any prisoner suit if the court is satisfied that the action is frivolous, is malicious, fails to state a cause of action, seeks monetary relief from a defendant who is immune from such relief, or fails to state a claim upon which relief can be granted. If the court makes a determination to dismiss the suit based on the content, or lack thereof, of the petition, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies. The court, on its own motion, may raise an exception of improper venue and transfer the suit to a court of proper venue or dismiss the suit.

F. The exclusive venue for delictual actions for injury or damages shall be the parish where the prison is situated to which the prisoner was assigned when the cause of action arose. Upon consent of all parties, the court may transfer the suit to a parish in which venue would otherwise be proper.

Ms. Jones argues that failure to exhaust administrative remedies is a dilatory exception and is to be raised by an exception of prematurity, which the Appellees failed to do. She further argues that she was not required to exhaust all of her administrative remedies since her action arose *after Pope v. State*, 99-2559 (La. 6/29/01), 792 So.2d 713, but *prior* to the amendments of the Correction Administrative Remedy Procedure, La. R.S. 15:1171-1179, and the Prison Litigation Reform Act, La. R.S. 15:1184, *discussed above*, which provide an administrative procedure for filing and disposing of tort claims.

Ms. Jones claims that by 2003, Deacon Mamou had coerced her into having sexual relations with him. She filed her initial suit on September 27, 2004; this Court agrees with the Reasons for Judgment in the initial suit out of the 18th Judicial District - that the matter is “prescribed on its face”.

Further, this case is a procedural nightmare. Although Ms. Jones does not brief a detailed account of the filings, the record reveals that this matter existed in

Federal Court in the United States District Court for the Middle District and was also dismissed for failure to file and exhaust all of the administrative remedies.

According to the judgment in question, the Appellees filed exceptions of Lack of Subject Matter Jurisdiction, Lis Pendens, Res Judicata, Prescription and No Cause of Action. While the record reveals that Ms. Jones failed to exhaust her administrative remedies, we are of the opinion that dismissing her case under the theory of No Cause of Action for this reason was in error. The judgment is silent as to the other exceptions filed by the Appellees, so in the interest of judicial economy, we remand this matter to the district court to consider and rule on the other exceptions in accordance with this opinion.

Decree

For the reasons stated herein, we reverse the finding of the district court granting the exception of No Cause of Action in favor of the Appellees, and we remand this matter for consideration of the pending exceptions filed by the Appellees that the district court failed to rule on.

REVERSED AND REMANDED