IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT SHREVE, et al.,

Plaintiffs,

v.

FRANKLIN COUNTY, OHIO, et al.,

Defendants.

Case No. 2:10-cv-644
Judge Sargus
Magistrate Judge Abel

MOTION FOR PARTIAL SUMMARY JUDGMENT OF THE COUNTY DEFENDANTS

Defendants County of Franklin and Franklin County Sheriff James Karnes, through the undersigned counsel and pursuant to Civ. R. 56 of the Federal Rules of Civil Procedure, move this Court for summary judgment on the claims set forth in Plaintiffs' First Amended Complaint by Plaintiffs Shreve and Worley in this action. Summary judgment is warranted because there are no genuine issues of material fact and defendants are entitled to judgment as a matter of law. A Memorandum in Support is attached and hereby incorporated by reference.

Respectfully submitted,

RON O'BRIEN
PROSECUTING ATTORNEY
FRANKLIN COUNTY, OHIO

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MEMORANDUM IN SUPPORT

I. PLAINTIFFS HAVE FAILED TO EXHAUST THEIR ADMINISTRATIVE REMEDIES

As detainees at the Franklin County Corrections Center both Plaintiff Shreve and Plaintiff Worley were obligated under the Prison Litigation Reform Act ("PLRA") to exhaust their administrative remedies. 42 U.S.C. § 1997e(a) mandates that a prisoner exhaust all available administrative remedies prior to filing a § 1983 claim. Failure to do so will result in dismissal for failure to state a claim. The PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong. ***Porter v. Nussle***, 534 U.S. 516 (2002), syllabus. All of Plaintiffs' federal civil rights claims thus fall under the requirements of the PLRA.

In ***Nussle,*** the plaintiff alleged as part of his complaint that while incarcerated, several officers ordered him to leave his cell and struck him in an unprovoked and unjustified manner. ***Id.*** at 520-521. A grievance mechanism was available to the plaintiff, but he failed to file a grievance. ***Id.*** at 521. The court dismissed his suit, finding that he failed to comply with the mandates of the PLRA. As in ***Nussle***, Plaintiffs had at their disposal an administrative process by which they could assert their grievances. Franklin County Sheriff Regulation Number AR850 provides for an inmate grievance process. (Affidavit Herrell, Ex. D.) In short, this process allows an inmate a

method for presenting complaints regarding conditions of confinement, problems with staffing or other matters relating to a stay at the jail. AR850 provides that inmates should try to resolve their grievances informally. Next, the inmate should submit a call card to the appropriate staff indicating his problem. A general call card is a means of communicating inmate requests or concerns with staff. Copies of call cards and staff action are maintained in an inmate file. If the complaint is not resolved, an inmate can file a formal grievance. The inmate may appeal his/her grievance resolution to the Chief Deputy of Corrections.

If an administrative or grievance mechanism is available to a plaintiff, he must name the individual subjects of the grievances and their acts of misconduct so that officials can address the claims before a suit is brought in federal court. ***Curry v. Scott***, 249 F.3d 493, 505 (6th Cir. 2001). Plaintiffs must show exhaustion as to each defendant and every complaint. ***Rinard* v. *Luoma,*** 440 F.3d 361 (6th Cir. 2006). The burden is on the plaintiff to demonstrate that he exhausted his administrative remedies. ***Brown v. Toombs***, 139 F.3d 1102, 1104 (6th Cir. 1998). The exhaustion requirement entails filing a grievance concerning each claim stated in the complaint See ***Northington v. Deforest***, 215 F.3d. 1327 (6th Cir. May 11, 2000) (table decision). A prisoner must appeal the denial of a grievance to the highest possible administrative level. ***Wright v. Morris ,*** 111 F.3d 414, 417, n.3(6th Cir. 1997). The plaintiff must proceed through the process available in order to fully exhaust administrative remedies. ***Burton v. Jones,*** 321 F.3d 569, 575 (2003). Vague and ambiguous allegations that he complained to various deputies are insufficient. Furthermore, a plaintiff cannot claim exhaustion when he abandons this process before completion. ***Becker v. Montgomery,*** 43 Fed. Appx. 914,

916 (6th Cir. 2002), 2002 U.S. App. LEXIS 16551, citing ***Hartsfield v. Vidor***, 199 F.3d 305, 309 (6th Cir. 1999). A belief by a plaintiff that pursuing the grievance process would have been futile also does not excuse the exhaustion requirement. ***Hartsfield v. Vidor,*** 199 F. 3d 305, 309 (6th Cir. 1999).

The Complaint in this matter was filed on July 16, 2010, naming Plaintiff Shreve as lead plaintiff in the suit and proposed class representative. (Doc. 1.) A First Amended Complaint was filed on August 27, 2010, adding Plaintiff Worley individually and as a proposed class representative. (Doc. 15.) A review of the Franklin County Sheriff's Office records indicates that Plaintiff Shreve was confined from May 20, 2010, to July 23, 2010. (Affidavit Herrell, ¶8 and Exhibit A2.) Plaintiff's Complaint at paragraph 11 specifically states that "Plaintiff Shreve is incarcerated at the Franklin County Corrections Center II (FCCCII) at the time of filing of this complaint." (Doc. 1.) During Plaintiff Shreve's period of confinement, he filed an inmate call card (Affidavit Herrell, ¶ 10, and Exhibit B1) requesting to be a runner in the jail. He also filled out two grievance forms. (Affidavit Herrell, ¶ 9, and Exhibit B2.) The form dated June 2, 2010, contains a very brief statement stating that he had been tased on January 2, 2010, to the back of his legs. This is the extent of Plaintiff Shreve's attempt to comply with the FCSO grievance procedure. (See Affidavit Herrell, ¶¶ 7, 12, and Exhibit D.)

Plaintiff Worley was confined in FCCC from June 11, 2010, to September 15, 2010. (Affidavit Herrell, ¶ 8, and Exhibit A1.) Plaintiff's First Amended Complaint at paragraph 11 specifically states that "Plaintiff Worley was incarcerated at FCCC II at the time of filing the original complaint on July 16, 2010, and remains incarcerated at the time of filing this First Amended Complaint." (Doc. 15.) Plaintiff Worley filed no

grievance form or attempted to proceed in any way through the stated procedure. (Affidavit Herrell, ¶¶ 7, 12.)

Both Plaintiffs have failed to comply with the requirements of the PLRA. Both Plaintiffs were confined in the Franklin County Corrections Center at the time of the filing of the Complaint (Shreve) and Amended Complaint (Worley). Although Plaintiff Shreve filled out a grievance form, it is impermissibly vague and unclear for purposes of exhaustion.

For the foregoing reasons, Defendants request this Court grant judgment in their favor and dismiss the claims of Plaintiff Shreve and Plaintiff Worley in their entireties.

Respectfully submitted,

RON O'BRIEN
PROSECUTING ATTORNEY
FRANKLIN COUNTY, OHIO

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was presented to the Clerk of the Court for filing and uploading to the CM/ECF system on October 26, 1010, which will send notification of such filing to Kerstin Sjoberg-Witt, Kristen Henry, and Jane Perry, Attorneys for Plaintiffs.

/s/ Mary Jane Martin
Mary Jane Martin 0065983
Assistant Prosecuting Attorney