APPENDIX A

MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Timothy Marcus Mayberry,
Appellant-Petitioner

v.

Stacy Hall,
Appellee-Respondent

June 5, 2025

Court of Appeals Case No.
24A-CT-1340

Appeal from the Miami Circuit Court

The Honorable J. David Grund, Special Judge

Trial Court Cause No.
52C01-2206-CT-464

Memorandum Decision by Judge DeBoer
Judges Bailey and Vaidik concur.

DeBoer, Judge.

Case Summary

[1] Timothy Mayberry, an inmate in the Indiana Department of Correction (DOC), sued Stacy Hall, the facility's librarian, asserting constitutional and state law claims. After Hall moved for summary judgment, the trial court determined that Mayberry's lawsuit was barred because he failed to exhaust all administrative remedies available to him by DOC policy. The trial court also found that Mayberry's tort claim was barred because he failed to comply with the requirements of the Indiana Tort Claims Act (ITCA).[1] Finding that Hall was not entitled to summary judgment in her favor, we reverse and remand.

Facts and Procedural History

1. Grievance Policy

[2] Mayberry was an inmate at the Miami Correctional Facility and, at all relevant times, the DOC's Offender Grievance Process policy was in effect. In June 2022, Mayberry filed a lawsuit against the facility's librarian. The trial court later found that his claims were barred due to his failure to exhaust administrative remedies outlined in the grievance policy. Because it is central to this case, we begin by discussing the grievance policy.

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[1] Ind. Code ch. 34-13-3.

[3] The grievance policy outlines a mechanism for inmates to express complaints about prison conditions and resolve their legitimate concerns. To exhaust their internal administrative remedies, the policy broadly requires inmates to complete a formal grievance process as well as two appeals.

[4] Specifically, the grievance policy requires an inmate to initiate a grievance by "submit[ting] a completed State Form 45471, 'Offender Grievance,' no later than ten (10) business days from the date of the incident giving rise to the complaint or concern to the Offender Grievance Specialist."[2] Appellant's Appendix Vol. 2 at 59. If after the Offender Grievance Specialist (OGS) screens the grievance he finds it "unacceptable[,]" the OGS rejects the grievance by returning it to the inmate with a "Return of Grievance" form. *Id.* at 59-60. The inmate can submit a revised grievance form within five business days of when the rejected grievance was returned.

[5] If the grievance is accepted, the OGS must provide the inmate with a receipt of acceptance within ten business days of receiving the grievance. Accepted grievances are logged into a database showing the inmate's history of grievances. The OGS has fifteen business days from the date a grievance is recorded to investigate and respond to the inmate. If the inmate does not

[2] While uncontested here, written grievances must meet certain standards, including that the form is fully completed, contains legible writing, avoids legal terminology, relates to only one issue, describes how the situation affects the offender, suggests appropriate relief, and is signed, dated, and submitted by the inmate.

receive a response within twenty business days of the OGS's receipt of the grievance, the inmate may appeal as though the grievance was denied.

[6] If the inmate receives a response to his grievance but disagrees with it, the inmate has the right to appeal. To initiate a first-level appeal, the inmate must fill out a "Grievance Appeal" form, and within five business days of the grievance response, "submit[]" it to the OGS. *Id.* at 62. The appeal is logged when it is received by the OGS and then forwarded to the Warden's office. The Warden or his designee must respond to the appeal within ten business days of its receipt.

[7] After completing the first-level appeal, the inmate may further appeal by checking the "Disagree" box on the response form and submitting the completed Offender Grievance Appeal form to the OGS "within five (5) business days of the Warden's/designee's appeal response." *Id.* at 63. The OGS is to log this form into the grievance database within five business days of receipt for the Department Offender Grievance Manager's review. The Grievance Manager must complete an investigation and submit a response to the appeal within ten business days from the date of receipt. The Department Offender Grievance Manager's decision is final.

2. Mayberry's Grievances

Grievance #139904

[8] On April 4, 2022, the OGS received a formal grievance from Mayberry that was logged as Grievance #139904. In this grievance, Mayberry complained that

Hall had refused to provide him with the envelopes he had requested. This grievance was denied on May 12. The next day, Mayberry marked his disagreement with the decision, which indicated he wanted to initiate a first-level appeal. The OGS at Miami Correctional Facility, Mike Gapski, attested that "[a] grievance appeal form was sent" to Mayberry on May 17, "which would require him to complete the form and return it to the grievance specialist on or before May 24[.]" *Id.* at 48. Gapski averred that the completed form was not received until May 31, so "the appeal form was late" and it was returned to Mayberry as untimely. *Id.* But Mayberry attested that he did not receive the appeal form until May 24, and that he completed and submitted the form through intradepartmental mail that same day. Mayberry's counselor corroborated his claim and the grievance appeal form itself showed it was signed on May 24.

Grievance #140387

[9] On April 21, 2022, the OGS received another formal grievance from Mayberry that was logged as Grievance #140387. In this grievance, Mayberry complained that in retaliation for him filing grievances and claims against her, Hall would not place him on the schedule to use the law library. The OGS's response denying the grievance was "provided" to Mayberry on May 23, and he received the form and acknowledged his disagreement with the denial on May 25. *Id.* at 48. The appeal form was "provided" to Mayberry on May 31, and Mayberry timely completed his first-level appeal, which the OGS received on June 3. *Id.* That same day, a receipt of Mayberry's first-level appeal was

generated, and the Warden or his designee "sent" Mayberry a response denying this appeal. *Id.* at 49. Although Gapski attested that Mayberry "never returned the Warden/designee's response with the 'Disagree with facility appeal response' box checked[,]" Mayberry claimed he received the response, checked the disagree box, and submitted the form to DOC staff on June 8. *Id.*

Returned Grievances

[10] Also at issue in this appeal are two grievances filed by Mayberry that were returned to him as "untimely" in relation to the dates of the alleged incidents. On March 18, 2022, Mayberry submitted a formal grievance to DOC staff for Gapski's review, claiming that Hall had failed to provide him with "four (4) state complaint ([42 U.S.C. § 1983]) forms" during the preceding two weeks. *Id.* at 92. Gapski received the grievance on April 7, more than ten business days after March 18, and returned it to Mayberry as untimely. Similarly, Mayberry submitted a separate formal grievance that he dated March 21, alleging Hall retaliated against him that day by refusing to schedule him for access to the law library because he had filed grievances and notices of tort claims against her. Gapski also received this grievance on April 7, more than ten business days after March 21, so it too was returned to Mayberry as untimely.[3]

[3] In response to Hall's motion for summary judgment, Mayberry also attached copies of multiple additional grievances related to his complaint and argued that these grievances were never responded to. On appeal,

3. Case Background

[11] In June 2022, Mayberry filed a complaint against Hall, asserting claims under 42 U.S.C. § 1983 and state law and seeking damages and other relief.[4] Specifically, Mayberry alleged that on or about March 2, 2022, in retaliation for him filing grievances against her, Hall violated Mayberry's First Amendment rights by refusing to provide him with legal materials he requested to correspond with the courts and his legal representatives. He also alleged that Hall treated him differently than other inmates by only making him pay for legal materials, which violated his right to equal protection under the Fourteenth Amendment. Finally, Mayberry purported to bring a negligence claim against Hall subject to the ITCA.

[12] In February 2023, Hall moved for summary judgment arguing that Mayberry's lawsuit was barred because he had failed to exhaust the administrative remedies pursuant to DOC policy and as required by the Prisoner Litigation Reform Act (PLRA).[5] She also argued that Mayberry's tort claim was barred under the

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Hall simply does not acknowledge these grievances. Because we reverse, we do not individually address these additional grievances.

Further, at summary judgment, Hall argued that Mayberry's grievances did not relate to the substance of his complaint. Hall does not make this argument on appeal. While Mayberry's grievances and complaint contain minor inconsistencies, his grievances adequately put the State on notice of the nature of his claims.

[4] Mayberry named other DOC employees as defendants in his complaint but the trial court screened the complaint and permitted only the claims against Hall to proceed, finding the claims against the other proposed defendants lacked sufficient specificity to show that they could be held liable and were not supported by an arguable basis in law or fact.

[5] 42 U.S.C. § 1997e.

ITCA because Mayberry did not comply with the statute's notice requirements. Mayberry response to Hall's motion disputed the procedural defects she raised.

[13] The trial court heard arguments on Hall's motion for summary judgment in December 2023 and granted the motion in April 2024. It concluded that Mayberry "did not comply with the offender grievance policy in place at the time" he filed suit; therefore, he "failed to exhaust his administrative remedies and this action [was] barred pursuant to the PLRA." *Id.* at 25. The court also held that Mayberry's tort claim was barred because he "did not comport with the requirements of the Indiana Tort Claims Act[.]" *Id.* Mayberry initiated this appeal.

Discussion and Decision

[14] We review the grant or denial of summary judgment de novo and employ the same standard used by the trial court. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). Summary judgment is appropriate when the designated evidentiary material shows there are no disputed issues of material fact, and the moving party is entitled to judgment as a matter of law. *Cosme v. Clark*, 232 N.E.3d 1141, 1150 (Ind. 2024); Ind. Trial Rule 56(C). In making this determination, we draw all reasonable inferences in the non-moving party's favor. *Arrendale v. Am. Imaging & MRI, LLC*, 183 N.E.3d 1064, 1068 (Ind. 2022).

1. Exhaustion of Administrative Remedies

[15] The PLRA states that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a); *see also Jackson v. Wrigley*, 921 N.E.2d 508, 510 (Ind. Ct. App. 2010) (acknowledging and applying the PLRA's exhaustion requirement to a § 1983 civil rights lawsuit brought by a DOC inmate in Indiana state court). This language is mandatory, meaning an inmate may not bring any action absent exhaustion of available administrative remedies. *Ross v. Blake*, 575 U.S. 632, 638, 136 S.Ct. 1850, 195 L.Ed.2d 117 (2016). However, as the statute's text prescribes, the "exhaustion requirement hinges on the 'availab[ility]' of administrative remedies: An inmate, that is, must exhaust available remedies, but need not exhaust unavailable ones." *Id.* at 642. When a defendant asserts the affirmative defense of failure to exhaust administrative remedies, it is the defendant's burden to prove such. *Williams v. Rajoli*, 44 F.4th 1041, 1045 (7th Cir. 2022); *Spencer v. State*, 153 N.E.3d 289, 295 n.8 (Ind. Ct. App. 2020), *reh'g denied.*

[16] Mayberry argues that he exhausted all the administrative remedies that were available to him. At their core, the disputed grievances fall into two buckets: (1) grievances or necessary filings that the grievance office *received* outside the policy's deadline, but that Mayberry attests he timely *submitted*; and (2) a necessary grievance response to the first-level appeal denial of Grievance

#140387 that the grievance office claims it never received, but Mayberry attests he timely submitted. Taking instructive guidance from our federal colleagues who wrangled with and decided other cases pertaining to the same grievance policy Mayberry had to follow, we conclude that Hall did not meet her burden in proving that Mayberry failed to exhaust his administrative remedies.

[17] There are no disputes about the material facts. With respect to the first bucket—Grievance #139904 and the returned grievances—Hall does not directly dispute Mayberry's contention that he took action to submit these documents within the grievance policy's articulated timeframes. To be sure, when first filing a grievance and later when initiating a first-level appeal, the grievance policy puts the onus on the inmate to "submit" the appropriate form within the applicable timeframe. Appellant's App. Vol. 2 at 59, 62. Hall argues that Mayberry simply misunderstands what "submit" means, and that the DOC considered the date of *receipt* by the grievance office as the relevant date for purposes of determining whether a submission was untimely.[6]

[18] In August 2023, this precise argument was rejected by the Northern District of Indiana in a case involving *these* parties and *this* grievance policy. *See Mayberry v. Hall*, No. 3:22-CV-45-DRL-MGG, 2023 WL 5320037, at *2 (N.D. Ind. Aug.

[6] Notably, the grievance policy contains a definitions section but does not define "submit." The language of the policy also does not dictate *how* forms ought to be submitted or *when* forms are deemed submitted.

17, 2023). Judge Damon Leichty articulated the parties' arguments and his conclusion as follows:

> Specifically, Mr. Mayberry attests he submitted his Level I appeal form to the grievance office on February 3, one day after the grievance office issued its response denying Grievance 137790. Ms. Hall provides no evidence disputing this attestation. Instead, she provides evidence the grievance office rejected Mr. Mayberry's Level I appeal form as untimely because it was not "received" by the grievance office until February 14. But the Offender Grievance Process provides only that a completed Level I appeal form must be "*submitted* to the Offender Grievance Specialist within five (5) business days after the date of the grievance response." Because it is undisputed Mr. Mayberry *submitted* his Level I appeal form to the grievance office on February 3, the fact that the appeal form was not *received* by the grievance office until February 14 was not a valid reason for rejecting the grievance.

Id. (emphasis in original) (internal record citations omitted).[7]

[7] While we cite this district court order for its persuasive effect, we note that Judge Leichty subsequently granted summary judgment in favor of Hall on her failure to exhaust theory. *See Mayberry v. Hall*, No. 3:22-CV-45-DRL-MGG, 2023 WL 6442132, at *2 (N.D. Ind. Oct. 2, 2023). This decision was affirmed by the Seventh Circuit in *Mayberry v. Hall*, No. 23-3293, 2024 WL 1814052, at *2 (7th Cir. Apr. 26, 2024). Hall cites the Seventh Circuit case to support her argument that Mayberry's "misunderstanding of the rules" did not render the grievance process unavailable. Appellee's Brief at 21. However, the facts and applicable policy provisions that led to dismissal of Mayberry's federal claims do not apply to this case. There, due to an unexplained delay, Mayberry's grievance was not received by the grievance office until over a month and a half after he submitted his grievance. *See Mayberry*, 2024 WL 1814052, at *1. In the meantime, he filed suit, but the grievance office appropriately responded to his grievance within ten business days of receiving it. *Id.* The Seventh Circuit affirmed the grant of summary judgment for Hall because the grievance office complied with its obligation to provide Mayberry a response within ten business days of **receiving** his grievance, and Mayberry failed to exhaust his available administrative remedies because he filed suit before the grievance process could play out. *See id.* at *2 (finding that Mayberry was mistaken under the circumstances to "assum[e] submission, not receipt, mattered"). By contrast, this issue turns on Mayberry's obligation under the grievance policy to timely **submit** documentation.

[19] Additionally, in a comprehensive opinion, Northern District Judge Robert Miller addressed the issue of submission versus receipt as well as other gaps in this grievance policy. *See generally Bennett v. Hyatte*, No. 3:21-CV-550 RLM-MGG, 2023 WL 5223192 (N.D. Ind. Aug 15, 2023). Judge Miller noted that the policy does not define when a grievance is "submitted," and specifically stated:

> It's unclear if a grievance is submitted when the grievance is received, which the prisoner would have no way of knowing, or when the prisoner signed the grievance, hands it to a prison official, or puts it in an outbox, which the policy doesn't address.

Id. at *7.

[20] We agree with our Northern District colleagues. Simply because the grievance office did not *receive* Mayberry's filings until after the time for his *submission* lapsed was not a valid reason for denying Mayberry's filings as untimely.[8]

[21] Regarding the second bucket—Grievance #140387—Grievance Specialist Gapski averred that Mayberry "never returned the Warden/designee's response with the 'Disagree with facility appeal response' box checked[,]" which would have prompted the Department Grievance Manager to provide Mayberry with an appeal form so he could pursue a second-level appeal. Appellant's App. Vol.

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[8] We do not know the reasons for the frequent gaps between an inmate's submission of a form and the grievance office's receipt of the form. Regardless, whether it's the DOC's system, submission procedure, or conduct causing these lags, the usability of this grievance policy has been problematic.

2 at 49. Hall argues that Mayberry's failure to submit this required form meant he did not exhaust his administrative remedies under the grievance policy. However, Mayberry attested that he did submit this form on time.

[22] On this issue, we take persuasive guidance from this Court's recent unpublished memorandum decision in *Mayberry v. Aramark & Ind. Dep't of Corr.*, No. 24A-SC-1341, 2025 WL 799505 (Ind. Ct. App. Mar. 13, 2025). In that case, we determined that Judge Miller's reasoning in *Bennett* applied to circumstances where Gapski said the facility had no record of grievance documents Mayberry claimed he submitted. *Id.* at *2. In *Bennett*, Judge Miller explained that because grievances are only logged when they are received, "lack of institutional records" only shows that a grievance "didn't get logged," meaning it could have been "lost or discarded" after being submitted. *Bennett*, 2023 WL 5223192 at *10, 11. Judge Miller noted that the facility's lack of records was "entirely consistent" with Bennett's evidence that he submitted the grievance given the "policy of logging grievances only once they're received." *Id.* at *11. In support of this conclusion, Judge Miller noted the following observation by Judge Sarah Evans Barker of the Southern District of Indiana in a similar case:

> Although there is no record of any of these grievances in the prison database, that record is obviously only accurate as to the grievances that are actually inputted into the system by prison officials. In other words, even if a prisoner properly submits a grievance to an appropriate prison official, if the prison grievance specialist does not receive it, either because it is lost or forgotten, or if the grievance specialist fails for some other reason to input the grievance into the system, there would be no record of its having been filed.

Knighten v. Mitcheff, No. 1:09-cv-333-SEB-TAB, 2011 WL 96663, at *2 (S.D. Ind. Jan. 10, 2011).

[23] Hall's argument that Mayberry failed to seek further review with respect to Grievance #140387 is consistent with Mayberry's attestation that despite making the appropriate submission, he never received a second-level appeal form. And this argument differs little from the argument Judge Miller rejected in *Bennett*. Accordingly, we reach a similar conclusion as our colleagues: Hall did not carry her burden to show that Mayberry failed to exhaust the administrative remedies available to him.[9] We reverse the trial court's grant of summary judgment in favor of Hall on failure-to-exhaust grounds.

2. Indiana Tort Claims Act Notice

[24] Mayberry also argues that the trial court erred by concluding that he failed to comply with the ITCA notice requirements. Generally, the ITCA provides that "a claim against the state is barred unless notice is filed with the attorney general or the state agency involved within two hundred seventy (270) days after the loss occurs." I.C. 34-13-3-6(a). The notice "must be in writing and

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[9] Mayberry argues that Hall's attorneys moved for summary judgment in bad faith and willfully violated Indiana Trial Rule 11 and various Rules of Professional Conduct because they "ignored competent evidence and previous federal rulings that administrative remedies were unavailable; and tricked the trial court into committing legal error." Appellant's Br. at 36. "It has long been the general rule in Indiana that an argument or issue presented for the first time on appeal is waived for purposes of appellate review." *Ind. Bureau of Motor Vehicles v. Gurtner*, 27 N.E.3d 306, 311 (Ind. Ct. App. 2015) (citing *Plank v. Cmty. Hosps. of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013)). This issue is not properly before this Court because Mayberry raises the issue for the first time on appeal. *See Plank*, 981 N.E.2d at 53 ("[A]ppellate review presupposes that a litigant's arguments have been raised and considered in the trial court.").

must be delivered in person or by registered or certified mail." I.C. 34-13-3-12. The substance of the notice must "describe in a short and plain statement the facts on which the claim is based[,]" and provide certain details related to the loss. I.C. 34-13-3-10.

[25] "Compliance with the notice provisions of ITCA is a procedural precedent the plaintiff must prove and the trial court must determine prior to trial." *Stone v. Wright*, 133 N.E.3d 210, 217 (Ind. Ct. App. 2019). When the defendant raises noncompliance with the ITCA's notice provision as a defense, it is the plaintiff's burden to prove compliance. *Id.* The plaintiff's failure to provide notice as required by the ITCA entitles the State to dismissal. *Id.*

[26] Here, in response to Hall's motion for summary judgment, Mayberry designated multiple documents entitled "Notice of Tort Claim," all of which asserted similar theories—that Hall breached a duty she owed to him as the law library supervisor by refusing to provide him envelopes he requested to access the courts and his attorney, and that he suffered damages caused by Hall's actions. Each notice alleged separate instances of similar misconduct. The notice form unequivocally states, "[t]his form shall serve as notice to the [DOC] as to your claim[.]" Appellant's App. Vol. 2 at 128. It instructs the form to be "submitted to the Facility Head of the Facility where the loss occurred, with a copy to" the DOC Tort Claims Administrator (postal address provided). *Id.* In opposition to Hall's motion, Mayberry attested that he "timely-submitted [sic]" his notices, "which were provided to [him] by the Defendant, and, that the relevant government agencies failed to respond[.]" *Id.* at 236. He also argued

that he delivered the notices "in the only fashion available to him[.]" Appellant's App. Vol. 3 at 8. At the summary judgment hearing, he clarified that the notices were "sent [by] regular mail." Transcript at 11.

[27] Hall does not dispute the substance of Mayberry's notices but maintains that he did not properly deliver notice in person or by registered or certified mail as required. Yet, because the purpose of the notice statute is to advise the relevant body of the alleged tort so it may "promptly investigate the surrounding circumstances," the statute is not meant to be a "trap for the unwary[.]" *Galbreath v. City of Indianapolis*, 255 N.E.2d 225, 229 (Ind. 1970). Accordingly, "'[s]ubstantial compliance with the statutory notice requirements is sufficient when the purpose of the notice requirement is satisfied.'" *Schoettmer v. Wright*, 992 N.E.2d 702, 707 (Ind. 2013) (quoting *Ind. State Highway Comm'n v. Morris*, 528 N.E.2d 468, 471 (Ind. 1988)). What constitutes substantial compliance is a question of law but necessarily entails a fact-sensitive determination. *Id.*

[28] Mayberry's "failure to comply with the statutory method of mailing does not in itself render the notice deficient." *Wind Dance Farm, Inc. v. Hughes Supply, Inc.*, 792 N.E.2d 79, 83 (Ind. Ct. App. 2003). When notice is received, thus fulfilling the purpose of the mode of delivery requirement—the assurance of receipt—it would be "'contrary to logic'" and "'def[y] common sense'" to find the notice defective. *Id.* (quoting *Burggrabe v. Bd. of Pub. Works of City of Evansville*, 469 N.E.2d 1233, 1236 (Ind. Ct. App. 1984), *reh'g denied*, *trans. denied*). Additionally, an inmate's "'control over the processing of his notice necessarily ceases as soon as he hands it over to the only public officials to whom he has

access—the prison authorities[.]'" *McGill v. Ind. Dep't of Corr.*, 636 N.E.2d 199, 203 (Ind. Ct. App. 1994) (quoting *Houston v. Lack*, 487 U.S. 266, 271, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988)), *reh'g denied*. Along these lines, Mayberry argued on summary judgment that he complied with the ITCA notice requirements "to the greatest extent allowed by prison officials." Appellant's App. Vol. 3 at 8.

[29] We conclude that, under the circumstances, Mayberry substantially complied with the ITCA's notice and delivery requirements. We express no opinion on the merits of Mayberry's claims.

Conclusion

[30] For the foregoing reasons, Hall was not entitled to summary judgment on Mayberry's claims, and we reverse and remand for further proceedings consistent with this opinion.

[31] Reversed and remanded.

Bailey, J., and Vaidik, J., concur.

APPELLANT PRO SE

Timothy Marcus Mayberry
Michigan City, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

APPENDIX B

STATE OF INDIANA	)	IN THE MIAMI CIRCUIT COURT
	) SS:	
COUNTY OF MIAMI	)	CAUSE NO. 52C01-2206-CT-000464
TIMOTHY M. MAYBERRY,	)	
	)	
Plaintiff,	)	
	) v.	
	)	
	)	
STACY HALL,	)	
	)	
Defendant.	)	

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The Court, having reviewed Defendant's Motion for Summary Judgment, Plaintiff's Response to same, and being duly advised, now GRANTS Defendant's Motion for Summary Judgment, and finds as follows:

1. Plaintiff initiated this action on June 21, 2022.
2. On February 17, 2023, Defendant filed a Motion for Summary Judgment, and Plaintiff responded in opposition on March 29, 2023.
3. At all times relevant to the circumstances at issue in this case, the Indiana Department of Corrections had one recognized grievance program and policy in place.
4. The offender grievance process was always available to all offenders, including Plaintiff.
5. The grievance process consists of three parts: a formal attempt to solve a problem or concern, a written appeal to the Warden/designee, and a written appeal to the Department Grievance Manager.

6. An offender must fully and timely exhaust all steps of the offender grievance process prior to bringing a lawsuit.

7. Failure to exhaust is an affirmative defense and acts as procedural bar pursuant to the Prisoner Litigation Reform Act ("PLRA"). *Smith v. Butts*, 66 N.E.3d 967, 970 (Ind. Ct. App. 2016) (citing *Alkhalidi v. Ind. Dep't of Corr.*, 42 N.E.3d 562, 566 (Ind. Ct. App. 2015)).

8. Here, Plaintiff did not comply with the offender grievance policy in place at the time of the initiation of this action.

9. Accordingly, he failed to exhaust his administrative remedies and this action is barred pursuant to the PLRA.

10. Plaintiff further did not comport with the requirements of the Indiana Tort Claims Act pursuant to Indiana Code § 34-13-3, *et. seq.*

11. Because Plaintiff has not sufficiently completed the requisite procedural matters prior to bringing this suit, it is barred as a matter of law.

12. The Court grants Summary Judgment in favor of the Defendant. The Court denies all other pending motions and petitions for sanctions, to compel, to enjoin and for protective order filed herein upon the entry of Summary Judgment.

It is therefore adjudged and decreed that judgement is entered IN FAVOR OF DEFENDANT AND AGAINST PLAINTIFF.

SO ORDERED.

4-25-24
Date

J David Grund
Special Judge, Miami Circuit Court

CLERK OF THE CIRCUIT AND SUPERIOR COURTS SEAL Miami PERU, INDIANA

APPENDIX C

In the
Indiana Supreme Court

Timothy Marcus Mayberry,
Appellant(s),

v.

Stacy Hall,
Appellee(s).

Court of Appeals Case No.
24A-CT-01340

Trial Court Case No.
52C01-2206-CT-464

Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 8/19/2025.

Loretta H. Rush
Chief Justice of Indiana

All Justices concur.