APPENDIX A

MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Timothy Marcus Mayberry,
Appellant-Plaintiff

v.

Aramark and Indiana Department of Correction,
Appellees-Defendants

March 13, 2025

Court of Appeals Case No.
24A-SC-1341

Appeal from the Miami Superior Court

The Honorable J. David Grund, Judge

Trial Court Cause No.
52D01-2203-SC-119

Memorandum Decision by Judge Vaidik
Chief Judge Altice and Judge Scheele concur.

Vaidik, Judge.

Case Summary

[1] Timothy Marcus Mayberry, an inmate of the Indiana Department of Correction (DOC), brought a small-claims action alleging negligence by the DOC and its food-service provider, Aramark. The small-claims court entered judgment for the DOC and Aramark, and Mayberry appeals. We affirm as to the DOC but reverse as to Aramark.

Facts and Procedural History

[2] At all relevant times, Mayberry was an inmate at the DOC's Miami Correctional Facility. In March 2022, Mayberry sued the DOC for negligence in small-claims court, alleging: (1) throughout October and November of 2021, his lunch and dinner food was brought to him at around 10:00 a.m.; (2) he had to choose between eating all his food early in the day or saving some of it for dinnertime, by which point it had spoiled; and (3) he suffered pain and other physical ailments, both from going long periods between meals and from eating spoiled food. Because Mayberry was incarcerated, the court ordered a trial-by-affidavit as follows: Mayberry would file his affidavit and exhibits; the DOC would have twenty days to respond; Mayberry would have ten days to file any rebuttal; and the DOC would have ten days to file any surrebuttal.

[3] After Mayberry submitted his affidavit and exhibits, the DOC offered three responses: (1) the DOC is entitled to governmental immunity, in part because "Aramark is the entity responsible for providing food services to [Miami

Correctional Facility]" and under the Indiana Tort Claims Act a governmental entity can't be held liable for "[t]he act or omission of anyone other than the governmental entity or the governmental entity's employee," *see* Ind. Code § 34-13-3-3(a)(10); (2) even if the DOC isn't immune, Mayberry failed to prove negligence; and (3) Mayberry failed to prove damages. DOC's App. Vol. II pp. 20-23. Eight days after the DOC's submission—two days before Mayberry's rebuttal was due—the small-claims court entered judgment for the DOC, finding that Mayberry "failed to meet his burden of proof by a preponderance of the evidence." *Id.* at 26. Mayberry filed a motion to correct error based on the court ruling before the deadline for his rebuttal. The court granted the motion, vacated the judgment for the DOC, and gave Mayberry additional time to file his rebuttal. In his rebuttal, filed in December 2022, Mayberry responded to all three of the DOC's arguments.

[4] Around the same time, Mayberry moved for and was granted permission to amend his notice of claim to include Aramark as a defendant. The small-claims court then set new dates for the trial-by-affidavit to account for the addition of Aramark. Before those dates arrived, Aramark moved to dismiss the claim against it, arguing that Mayberry had failed to exhaust his administrative remedies before filing suit. Aramark based its motion on a declaration by Michael Gapski, the grievance specialist at Miami Correctional Facility. According to Gapski, while Mayberry "wrote a grievance regarding his meals" on October 22, 2021—Mayberry attached a copy to his original notice of claim—he never submitted the grievance for consideration. Appellant's App.

Vol. II p. 41. Mayberry opposed Aramark's motion, arguing that he submitted the grievance form in October 2021 but never received a response and then requested an appeal form but never received a response.

[5] The small-claims court set a hearing for December 14, 2023, to address Aramark's motion to dismiss and several discovery motions. The court then "order[ed] the trial dates and deadlines stayed pending the December 14, 2023 hearing." *Id.* at 129. After the December 14 hearing, however, the court entered final judgment for the DOC and Aramark. The court found that the DOC is entitled to governmental immunity under the Indiana Tort Claims Act and that, even if it weren't, Mayberry failed to prove his negligence claim against the DOC. And the court granted Aramark's motion to dismiss, finding that Mayberry failed to exhaust his administrative remedies.

[6] Mayberry now appeals.

Discussion and Decision

I. Mayberry hasn't shown any error in the judgment for the DOC

[7] Mayberry contends the small-claims court erred by entering final judgment for the DOC. He doesn't say anything about the substance of the court's decision. That is, he doesn't address the court's conclusions that the DOC is entitled to governmental immunity and, alternatively, that he failed to prove his negligence claim against the DOC. His argument is purely procedural. He asserts that the court shouldn't have entered final judgment after the December

14 hearing because the court had previously stayed "the trial dates and deadlines" pending the outcome of that hearing. He argues that the court "abused its discretion by prematurely conducting trial, especially without [his] or IDOC's participation," and that he wasn't "give[n] an opportunity to present evidence in support of [his] case." Appellant's Br. p. 18.

[8] Mayberry is simply incorrect. His case against the DOC was fully submitted and ready for a ruling by the court more than a year before the December 14 hearing. It's true that the court's ruling was delayed because Mayberry added Aramark as a defendant right around the time he filed his rebuttal to the DOC. But before that, Mayberry was most certainly given an opportunity to—and in fact did—present evidence and argument in support of his claim against the DOC. Mayberry has not shown any error in the judgment for the DOC.

II. Mayberry exhausted the administrative remedies that were available to him, so we reverse the dismissal of his claim against Aramark

[9] Mayberry also appeals the dismissal of his claim against Aramark, arguing that he exhausted the administrative remedies that were available to him before filing suit. He relies heavily on *Bennett v. Hyatte*, No. 3:21-CV-550 RLM-MGG, 2023 WL 5223192 (N.D. Ind. Aug. 15, 2023), a recent federal decision by Judge Robert L. Miller, Jr., of the Northern District of Indiana. That decision wasn't issued until a month after Mayberry filed his opposition to Aramark's motion to dismiss, but it addressed problems with the grievance process at Miami Correctional Facility in 2021—the year Mayberry says he filed his

grievance. Based on *Bennett* and Aramark's failure to meaningfully distinguish it, we conclude that Mayberry's claim against Aramark can proceed.

[10] In the federal case, Nalakeio Bennett sued the warden and deputy warden of Miami Correctional Facility for allegedly unconstitutional conditions at the prison. The defendants moved for summary judgment, claiming that Bennett failed to exhaust his administrative remedies before suing. Bennett claimed he submitted grievances in February and March of 2021. As Aramark does here, the defendants relied on a declaration by Gapski, the grievance specialist at the prison. Gapski said that the facility had no record of the grievance documents Bennett claimed to have submitted.

[11] In a lengthy opinion, Judge Miller roundly rejected the defendants' argument. He first addressed several gaps in the DOC's grievance policy generally and Miami Correctional Facility's grievance process specifically. For example, as Gapski himself testified, "No grievance is logged until a grievance specialist receives the grievance, and grievance specialists have no way of knowing whether or when a correctional officer accepted a prisoner's grievance, which correctional officer accepted a grievance, or what happened to a grievance that was sent but never received." *Id.* at *4. Judge Miller then explained that these gaps mean the facility's lack of a record of a particular grievance being submitted isn't proof that the grievance wasn't, in fact, submitted. Rather, given the fundamental flaws in the grievance process, the lack of a record proves only that a grievance "didn't get logged," meaning it could have been submitted but then "lost or discarded." *Id.* at *10-*11. In support of this conclusion, Judge

Miller cited the following observation by Judge Sarah Evans Barker 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 *2 (S.D. Ind. Jan. 10, 2011).

[12] Aramark's attempts to distinguish *Bennett* are unconvincing. As an initial matter, Aramark cites no evidence that Miami Correctional Facility's grievance process improved between February and March of 2021 (when Bennett claimed he filed grievances) and October 2021 (when Mayberry claims he filed his grievance). Rather, it notes that *Bennett* was a federal case decided under federal law. But Indiana law, like the federal law at issue in *Bennett*, makes clear that "failure to exhaust administrative remedies is an affirmative defense that the defendant bears the burden of establishing." *Spencer v. State*, 153 N.E.3d 289, 295 n.8 (Ind. Ct. App. 2020), *reh'g denied*. Aramark also notes that *Bennett* was a summary-judgment case decided under Federal Rule of Civil Procedure 56, whereas this case is subject to the Indiana Small Claims Rules, which allow for more informal proceedings. Even in small-claims cases, though, the rules of

substantive law control. *See* Ind. Small Claims Rule 8(A). This includes the rule that a defendant claiming failure to exhaust administrative remedies has the burden of proving that defense. Because Aramark makes an exhaustion argument that was rejected by Judge Miller in his well-reasoned decision in *Bennett*, we conclude that it didn't carry its burden. Therefore, we reverse the dismissal of Mayberry's claim against Aramark and remand for further proceedings. We express no opinion on the merits of Mayberry's claim.[1]

[13] Affirmed in part, reversed in part, and remanded.

Altice, C.J., and Scheele, J., concur.

APPELLANT PRO SE

Timothy Marcus Mayberry
Michigan City, Indiana

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[1] In his reply brief, Mayberry asks us to strike the DOC's and Aramark's briefs. Their briefs were originally due on September 30, 2024. They both missed that deadline, and on October 23 they filed a joint motion for permission to file belated briefs in which they explained their reasons for missing the deadline. Mayberry mailed his opposition on October 28, but we didn't receive it until two weeks later. In the meantime, our motions panel granted the DOC and Aramark's motion. After we received Mayberry's opposition, our motions panel treated it as a motion to reconsider and denied reconsideration. Mayberry wants us to overrule our motions panel's decision, disregard the DOC's and Aramark's briefs, and review the trial court's judgments for prima facie error. Having reviewed the relevant materials, we decline to do so. But even if we had disregarded the DOC's and Aramark's briefs, our resolution of the appeal would have been no different. Mayberry won a reversal as to Aramark but hasn't shown any error—not even prima facie error—in the judgment for the DOC.

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APPENDIX B

IN THE

COURT OF APPEALS OF INDIANA

Timothy Mayberry,

Appellant,

v.

Aramark, et al.,

Appellees.

Court of Appeals Cause No.
24A-SC-1341

Order

[1] Appellant has filed a Petition for Rehearing.

[2] Having reviewed the matter, the Court finds and orders as follows:

[3] Appellant's Petition for Rehearing is denied.

Ordered: 4/9/2025

Altice, C.J., Vaidik, Scheele, JJ., concur.

For the Court,

Chief Judge

APPENDIX C

STATE OF INDIANA)
) SS:
COUNTY OF MIAMI)

IN THE MIAMI SUPERIOR COURT 1

CAUSE NO.: 52D01-2203-SC-000119

TIMOTHY MAYBERRY,)
Plaintiff,)

Vs.

INDIANA DEPARTMENT OF)
CORRECTIONS, ARAMARK,)
Defendants,)

Order Granting Motion to Dismiss

Comes now the Court upon the Defendant Aramark's motion to dismiss the Plaintiff's current case. The Defendant filed its motion, the Plaintiff filed a response, and the Court heard oral argument on the matter with all parties appearing in person. Having considered the motion, the Court now GRANTS the motion. As stated by the Court of Appeals, prior to filing a lawsuit, "an offender litigant is generally required to exhaust his administrative remedies before bringing suit." Wheeler v State, 180 N.E. 3d 305, 310 (Ind.Ct.App. 2021). This is true on claims brought pursuant to state and federal law. Id. The Court has considered the Affidavit filed by Mr. Gapski in this case and Mr. Mayberry's arguments. The Court Orders this cause dismissed without prejudice. The Court denies all other pending motions and petitions including those for sanctions, along with motions to compel, upon this order of dismissal.

This case is dismissed without prejudice.

IT IS SO ORDERED this April 25, of 2024.

J David Grund
Judge, Miami Superior Court I

APPENDIX D

In the
Indiana Supreme Court

Timothy Mayberry, Appellant(s), v. Aramark; Indiana Department Of Correction, Appellee(s).	Court of Appeals Case No. 24A-SC-01341 Trial Court Case No. 52D01-2203-SC-119

FILED
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CLERK
Indiana Supreme Court
Court of Appeals
and Tax Court

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 7/15/2025.

Loretta H. Rush
Chief Justice of Indiana

All Justices concur.