

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
WISCONSIN

Breione Walker v. Mark Wellens

Walker · No. 25-CV-1070 · Decided March 20, 2026

SUMMARY

The United States District Court for the Eastern District of Wisconsin grants Defendant Mark Wellens’s motion for summary judgment on the ground that Plaintiff Breione Walker failed to exhaust available administrative remedies before filing an Eighth Amendment action. The case is dismissed without prejudice, and the order explains the deadlines and procedures for appealing or seeking post-judgment relief.

CASE DETAILS

COURT	United States District Court for the Eastern District of Wisconsin
WRITING FOR THE COURT	Byron B. Conway
JURISDICTION	United States District Court for the Eastern District of Wisconsin
DECIDED	March 20, 2026
DOCKET	25-CV-1070
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendant moved for summary judgment on the ground that Plaintiff failed to exhaust available administrative remedies under the Prison Litigation Reform Act. Plaintiff did not respond, and the court granted the motion and dismissed the action without prejudice.
STANDARD OF REVIEW	Summary judgment is appropriate when the undisputed facts show that the movant is entitled to judgment as a matter of law. Under Federal Rule of Civil Procedure 56(e), when a party fails to properly address another party's assertion of fact, the court may consider the fact undisputed and grant summary judgment if the motion and supporting materials show entitlement to judgment.
PRECEDENTIAL VALUE	Unpublished district court decision; persuasive rather than binding precedent.
PARTIES	Breione Walker v. Mark Wellens

TOPICS

summary judgment

prisoners rights

civil rights

appellate procedure

civil procedure

PRACTICE AREAS

civil procedure

prisoner civil rights

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether Defendant was entitled to summary judgment because Plaintiff failed to exhaust available administrative remedies before filing the action.
2. Whether Plaintiff's failure to respond permitted the court to deem Defendant's proposed findings of fact undisputed under Federal Rule of Civil Procedure 56(e).

HOLDINGS

1. Because the undisputed facts established that Plaintiff did not exhaust the available administrative remedies before initiating the action, Defendant was entitled to summary judgment under 42 U.S.C. § 1997e(a).
2. The court could accept Defendant's properly supported factual assertions as undisputed and grant summary judgment when Plaintiff failed to respond, consistent with Federal Rule of Civil Procedure 56(e)(2) and (e)(3).

KEY QUOTATIONS

"This circuit has taken a strict compliance approach to exhaustion."

FACTUAL BACKGROUND

Breione Walker, incarcerated at Stanley Correctional Institution, asserted an Eighth Amendment claim alleging that Mark Wellens grabbed Walker's breasts. Wellens moved for summary judgment, arguing that Walker failed to exhaust available administrative remedies before filing suit. Walker did not respond to the motion or explain his failure to do so, and the court deemed Wellens's proposed facts undisputed and found that administrative remedies had not been exhausted.

PROCEDURAL HISTORY

Plaintiff brought an Eighth Amendment claim alleging unwanted sexual touching by Defendant. Defendant moved for summary judgment based on failure to exhaust administrative remedies. After the court warned Plaintiff that failure to respond would result in Defendant's facts being treated as undisputed, Plaintiff failed to respond, and the court deemed Defendant's proposed facts true, granted summary judgment, and dismissed the case without prejudice.

DISPOSITION

dismissed

CASES CITED

- Dole v. Chandler, 438 F.3d 804, 809 (7th Cir. 2006)

OPINION

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF WISCONSIN BREIONE WALKER, Plaintiff, v. Case No. 25-CV-1070 MARK WELLENS, Defendant. DECISION AND ORDER GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT ON EXHAUSTION GROUNDS Plaintiff Breione Walker, who is incarcerated at Stanley Correctional Institution, is proceeding on an Eighth Amendment claim based on allegations that Defendant Mark Wellens engaged in unwanted sexual touching by grabbing Plaintiff’s breasts.

On February 4, 2026, Defendant filed a motion for summary judgment on the ground that Plaintiff did not exhaust the available administrative remedies before he initiated this action. Dkt. No. 15. In a notice and order, the Court reminded Plaintiff that, under Civil L.R. 56(b)(2), his response materials were due March 6, 2026.

The Court warned Plaintiff that, if he failed to respond to the motion by the deadline, the Court would accept all facts asserted by Defendant as undisputed, which would likely result in summary judgment being granted in Defendant’s favor and the case being dismissed.

The deadline has passed, and Plaintiff did not respond to Defendant’s motion or explain why he was unable to do so. The Court has reviewed Defendant’s motion, brief in support, and the undisputed facts, see Fed. R. Civ. P. 56(e)(2), and concludes that Defendant is entitled to summary judgment, see Fed. R. Civ. P. 56(e)(3). Based on the proposed findings of fact submitted by Defendant and deemed true as a result of Plaintiff’s failure to respond, the Court finds that Plaintiff did not exhaust the available administrative remedies before he filed this case.

Defendant is therefore entitled to summary judgment. See 42 U.S.C. § 1997e(a); Dole v. Chandler, 438 F.3d 804, 809 (7th Cir. 2006) (“This circuit has taken a strict compliance approach to exhaustion.”). IT IS THEREFORE ORDERED that Defendant’s motion for summary judgment (Dkt. No. 15) is GRANTED and this case is DISMISSED without prejudice.

The Clerk is directed to enter judgment accordingly. Dated at Green Bay, Wisconsin on March 20, 2026. s/ Byron B. Conway BYRON B. CONWAY United States District Judge This order and the judgment to follow are final. Plaintiff may appeal this Court’s decision to the Court of Appeals for the Seventh Circuit by filing in this Court a notice of appeal within 30 days of the entry of judgment.

See Fed. R. App. P. 3, 4. This Court may extend this deadline if a party timely requests an extension and shows good cause or excusable neglect for not being able to meet the 30-day deadline. See Fed. R. App. P. 4(a)(5)(A). If Plaintiff appeals, he will be liable for the \$605.00

appellate filing fee regardless of the appeal's outcome. If Plaintiff seeks leave to proceed in forma pauperis on appeal, he must file a motion for leave to proceed in forma pauperis with this Court.

See Fed. R. App. P. 24(a)(1). Plaintiff may be assessed another "strike" by the Court of Appeals if his appeal is found to be non-meritorious. See 28 U.S.C. §1915(g). If Plaintiff accumulates three strikes, he will not be able to file an action in federal court (except as a petition for habeas corpus relief) without prepaying the filing fee unless he demonstrates that he is in imminent danger of serious physical injury.

Id. Under certain circumstances, a party may ask this Court to alter or amend its judgment under Federal Rule of Civil Procedure 59(e) or ask for relief from judgment under Federal Rule of Civil Procedure 60(b). Any motion under Federal Rule of Civil Procedure 59(e) must be filed within 28 days of the entry of judgment. Any motion under Federal Rule of Civil Procedure 60(b) must be filed within a reasonable time, generally no more than one year after the entry of judgment.

The Court cannot extend these deadlines. See Fed. R. Civ. P. 6(b)(2). A party is expected to closely review all applicable rules and determine, what, if any, further action is appropriate in a case.