

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PRECEDENTIAL VALUE	Unpublished district court decision; persuasive rather than binding precedent.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)

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