

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Keair Boyd v. Tanisha Henry, et al.

Boyd · No. 2:23-cv-01022-CDS-MDC · Decided January 26, 2026

OPINION

Boyd

PER CURIAM.

1

2 UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

3 4 Keair Boyd, Case No. 2:23-cv-01022-CDS-MDC 5 Plaintiff Order Granting the Defendants’
Unopposed Motion for Summary Judgment 6 v. 7 Tanisha Henry, et al., [ECF No. 36] 8
Defendants 9 10 This is a 42 U.S.C. § 1983 civil rights action brought by incarcerated pro se
plaintiff Keair 11 Boyd alleging that the defendants were deliberately indifferent to his medical
needs while he 12 was housed at High Desert State Prison (HDSP). See Compl., ECF No. 14. On
October 27, 2025, 13 defendants Tanisha Henry and James Scally moved for summary judgment.
See Mot. for summ. j., 14 ECF No. 36. Any opposition to the motion was due by November 18,
2025.¹ See ECF No. 40; 15 Local Rule 7-2(b) (“The deadline to file and serve any points and
authorities in response to a 16 motion for summary judgment is 21 days after service of that
motion.”). As of the date of this 17 order, no opposition is filed. Because I find that Boyd failed to
exhaust his administrative 18 remedies as required by the Prison Litigation Reform Act (PLRA),
the defendants’ motion is 19 granted. 20 I. Background 21 A. Boyd’s allegations 22 Boyd alleges
that around September 20, 2023, through the present,² while at HDSP, he 23 was prescribed
medication without being seen by a doctor and this medication was improper 24 25 1 On
November 24, 2025, Boyd filed a notice of change of address. See Notice, ECF No. 42. In that
same notice, Boyd improperly requested a 22-day extension of time, without filing a separate
motion seeking 26 an extension. 2 I note that while Boyd alleges the date of this violation was
September 20, 2023, the record reflects that the incident concerning his medication occurred in
2022. 1 because it made him ill.³ ECF No. 14 at 3, 6. Boyd further alleges that he told Henry
about the 2 adverse side effects of the medication, but Henry ignored his requests for help. Id. at 3,
¶ 4. He 3 also told Henry and medical staff about the denial and “oppressive delay” regarding his
medical 4 and dental concerns. Id. Boyd alleges that HDSP has a “wait and see” policy that turns
into 5 delaying and denying relief, and this is “deliberate indifference” in violation of the Eighth 6
Amendment. Id. 7 Boyd further alleges that after he spoke with Henry, he filed a grievance about
his 8 medical condition and illness, but the Associate Warden and other staff ignored and/or
rejected 9 these concerns. Id. at 4, ¶ 4. Boyd also alleges that Henry told Doe Nursing Director

about his 10 medical condition, and the nursing staff about his kites and grievances. Id. at 5, ¶ 4. But Boyd 11 asserts that the problem is that there are “no qualified staff to see patients or even to prescribe 12 [them medication].” Id. 13 B. Medical and grievance history 14 On July 4, 2022, while Boyd was at Ely State Prison (ESP), he was seen for “discomfort” 15 in his ear, “loss of hearing” and “itching on [right] ear.” Boyd’s medical file, Defs.’ Ex. B, ECF No. 16 38-1 at 48 (sealed); Bed assignment, Defs.’ Ex. A, ECF No. 36-1 at 2. Upon Nursing Assistant 17 Leprettre’s assessment, there was a risk of infection in his right ear. Defs.’ Ex. B, ECF No. 38-1 at 18 48 (sealed). On the doctor’s progress notes, dated July 12, 2022, it was noted that Boyd had no 19 infection. See id. at 49. On September 17, 2022, Boyd was seen for “an intermittent aching piercing 20 pain (7/10) that radiate[d] down his neck in a shooting pain.” Id. at 45. After the examination, 21 Nurse Caldwell determined that Boyd’s left ear was slightly red, and that the tympanic 22 membrane was intact. Id. That same day, Dr. Halki prescribed Bactrim (a brand of 23 24 25 26 3 In his request for relief, Boyd specifically alleges he was wrongfully prescribed “sulfa-imp DS 80G – 160 tab.” ECF No. 14 at 6. 1 sulfamethoxazole and trimethoprim). Id. at 34; Description from Mayo clinic, Defs.’ Ex. C, ECF

2 No. 36-2.4

3 On September 20, 2022, Boyd was transferred to HDSP. See Defs.’ Ex. A, ECF No. 36-1 at 4 2. On September 23, 2022, Boyd submitted a medical kite, stating that he was prescribed 5 Bactrim, which is for his ear, and was ordered that medication at ESP. Defs.’ Ex. B, ECF No. 38-1 6 at 154 (sealed). Boyd requested that the medication be issued “as soon as possible.” The 7 pharmacy received the Bactrim medication on October 4, 2022. Id. at 19. And on that same day, 8 the medication was dispensed. Id. at 154. 9 On December 20, 2022, Boyd filed a grievance (2006-31-46865). See Grievance history, 10 Defs.’ Ex. D, ECF No. 36-3 at 9.5 In that grievance, Boyd asserted that he had submitted medical 11 kites several times to be seen by a doctor for several bites that he got when he arrived at HDSP. 12 See id.; ECF No. 14 at 25.6 He further asserted that after seeking medical treatment, the HDSP 13 medical prescriber placed him on “Sulfa-tmp ds 800-160 tab antibiotics” (modified), without 14 seeing him in person to properly diagnose him. Id.; ECF No. 14 at 27. He also asserts that as a 15 result of being prescribed this medication, he became nauseous, vomited, and had diarrhea. ECF

16 No. 14 at 27.

17 Grievance 2006-63-46865 was rejected several times. See Defs.’ Ex. D, ECF No. 36-3 at 9.

18 On December 27, 2022, Associate Warden Scally issued a first rejection (informal level), 19 notifying Boyd that his informal grievance was being rejected because he failed to demonstrate 20 4 Mayo Clinic page. See <https://www.mayoclinic.org/drugs-supplements/sulfamethoxazole-and-trimethoprim-oral-route/description/drg-20071899> (last visited Jan. 20, 2026); I take judicial notice of the information included in the Mayo Clinic’s page that explains commonly understood meanings of the 22 medical terms and medication, which is included as defendants’ exhibit. See Fed. R. Evid. 201 (courts may take judicial notice of facts that are not subject to reasonable

dispute because they are generally known²³ or are capable of accurate and ready determination); *Reddick v. Chater*, 157 F.3d 715, 726 (9th Cir. 1998) (taking judicial notice of a medical journal's definition of chronic); *DePetro v. Minev*, 2024 U.S. Dist. LEXIS 24 16008, at *14 n.10 (D. Nev. Jan. 26, 2024) (taking judicial notice of a Mayo Clinic page included in the plaintiff's exhibit). 25

5 Grievance 2006-31-46865 was the only grievance filed related to Boyd's medical indifference claim. 6 The record does not contain medical notes expressing that his medication (allegedly prescribed because 26 of spider or bug bites) caused him to experience pain or some kind of allergic reaction. See Medical records, Defs.' Ex. B, ECF No. 38-1 at 91–166 (sealed). 1 that he attempted to resolve this matter prior to submitting a DOC 3091 informal grievance. 2 ECF No. 14 at 24. Moreover, he was also notified that he did not provide any information or 3 documentation that any such efforts were made. Id. 4 On March 14, 2023, Scally issued a second rejection (informal level). ECF No. 14 at 19. 5 Boyd was informed his informal grievance was again being rejected because he failed to correct 6 deficiencies, and he failed to show that he attempted to resolve this matter prior to submitting a 7 DOC 3091 informal grievance. Id. 8 On April 16, 2023, Boyd filed a first level grievance stating that the response he received 9 to his claims are inaccurate and an "oppressive delay." Id. at 16. Boyd explained that he spoke to 10 Henry and Henry directed Boyd to note the doctor, but he had not received a response. Id. at 18. 11 On April 21, 2023, Scally issued a third and final rejection (level one). Id. at 14. Scally 12 explained that Boyd could not proceed to a first level if his informal grievance was not accepted. 13 Id. Boyd was again informed that he failed to demonstrate that he "attempted to resolve this 14 matter prior to submitting a DOC 3091 Informal Grievance. A grievance will not be used as a 15 note." (modified). Id. The rejection informed Boyd that his grievance had been reviewed and 16 rejected multiple times for 3098s and so it could no longer be responded to. Id. 17 C. Boyd's initiated action 18 Boyd initiated this action on June 30, 2023. See ECF No. 3. In Boyd's complaint, he sued 19 multiple defendants for events that took place while he was incarcerated at HDSP. See ECF No. 20 14. After screening Boyd's complaint, the court ordered that Boyd's Eighth Amendment 21 deliberate indifference to a serious medical need claim would proceed against defendants Henry, 22 Scally, and Doe Nursing Director (once he learned his or her identity). See Order, ECF No. 13 at 23 9.7 The defendants then filed this pending summary judgment motion. 24 25 26 7 The court dismissed Boyd's Eighth Amendment conditions of confinement claim based on a lack of recreation. See ECF No. 13 at 9. No amended complaint was filed thereafter. 1 II. Legal standard 2 A. Summary judgment 3 Summary judgment is appropriate when the evidence, viewed in the light most favorable 4 to the nonmovant, indicates "no genuine dispute as to any material fact" and that "the movant is 5 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is material if it "might affect 6 the outcome of the suit" based on the governing law, and a dispute is genuine "if the evidence is 7 such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty 8 Lobby, Inc.*, 477 U.S. 242, 248 (1986). A "mere disagreement or the bald assertion that a genuine 9 issue of material fact

exists” is not enough to defeat summary judgment. *Harper v. Wallingford*, 877 F.2d 728, 731 (9th Cir. 1989). 11 Because the plaintiffs bear the burden of proof at trial, a moving defendant need only 12 point to an absence of evidence on an element of the plaintiffs’ case. *Musick v. Burke*, 913 F.2d 1390, 13 1394 (9th Cir. 1990). Once the moving party satisfies Rule 56 by demonstrating the absence of 14 any genuine issue of material fact, the burden shifts to the party resisting summary judgment to 15 “set forth specific facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 250– 16 51. “To defeat summary judgment, the nonmoving party must produce evidence of a genuine 17 dispute of material fact that could satisfy its burden at trial.” *Sonner v. Schwabe N. Am., Inc.*, 911 F.3d 18 989, 992 (9th Cir. 2018); *Galen v. County of Los Angeles*, 477 F.3d 652, 658 (9th Cir. 2007). The 19 nonmoving party “may not rely on denials in the pleadings but must produce specific evidence, 20 through affidavits or admissible discovery material, to show that the dispute exists.” *Bhan v. NME 21 Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991). 22 B. Administrative exhaustion 23 The Prison Litigation Reform Act (PLRA) requires prisoners to exhaust all available 24 administrative remedies before filing a civil-rights action to redress alleged constitutional 25 violations by prison staff. 42 U.S.C. § 1997e(a). The Supreme Court has interpreted the PLRA as 26 “requir[ing] proper exhaustion,” which “demands compliance with an agency’s deadlines and 1 other critical procedural rules.” *Woodford v. Ngo*, 548 U.S. 81, 91 (2006). Of course, “[a]n inmate 2 need exhaust only such administrative remedies as are ‘available,’” which requires that the 3 procedures “are ‘capable of use’ to obtain ‘some relief for the action complained of.’” *Ross v. Blake*, 4 578 U.S. 632, 642 (2016). In *Ross v. Blake*, the United States Supreme Court provided a non- 5 exhaustive list of “circumstances in which an administrative remedy, although officially on the 6 books, is not capable of use to obtain relief.” *Id.* at 643. An administrative remedy may be 7 considered unavailable when “it operates as a simple dead end—with officers unable or 8 consistently unwilling to provide any relief to aggrieved inmates”; when the 9 administrative scheme is “so opaque that it becomes, practically speaking, incapable of use”; or 10 when “prison administrators thwart inmates from taking advantage of the grievance process 11 through machination, misrepresentation, or intimidation.” *Id.* at 643–44. 12 To succeed on a PLRA-exhaustion defense at summary judgment, the defendant must 13 “prove that there was an available administrative remedy” that the prisoner did not exhaust; the 14 burden then shifts to the plaintiff to provide evidence that the remedy was unavailable to him. 15 *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014) (quoting *Jones v. Bock*, 549 U.S. 199, 204 (2007) 16 (cleaned up). But “the ultimate burden of proof remains with the defendant.” *Id.* The trial court 17 should grant summary judgment based on a lack of exhaustion only “[i]f undisputed evidence 18 viewed in the light most favorable to the prisoner shows a failure to exhaust.” *Id.* 19 III. Discussion 20 Henry and Scally argue that summary judgment should be granted for the following 21 reasons: (1) the PLRA bars Boyd’s claims; (2) they are entitled to qualified immunity; and (3) 22 they had no personal participation in the alleged actions. See ECF No. 36. Whether Boyd 23 exhausted his administrative remedies is a

threshold issue. See *United States v. Morfin-Rios*, 2023 24 U.S. Dist. LEXIS 116878, at *3 (S.D. Cal. July 5, 2023). So I address it first, and because I agree 25 26 1 that Boyd failed to exhaust his administrative remedies, in violation of the PLRA, the 2 defendants' motion is granted.8 3 To exhaust administrative remedies within the NDOC, inmates must follow the 4 procedures outlined in AR 740.9 and they must complete three levels of grievance: informal, first, 5 and second. See AR 740.08–740.10.10 Generally, inmates must first file an informal grievance 6 within six months of the action giving rise to a medical claim. AR 740.08(4)(A); *Jackson v. Russell*, 7 2025 U.S. Dist. LEXIS 5058, at *5 (D. Nev. Jan. 8, 2025); Defs.' Ex. E, ECF No. 36-4 at 11. The 8 prison has 45 days to respond to that informal grievance. AR 740.08(12). If the prison denies the 9 informal grievance, the inmate has five days after the receipt of the denial to proceed to the next 10 grievance level. AR 740.08(12)(A). The inmate can then file a first-level grievance, which the 11 prison has 45 days to respond to. AR 740.09(5). If the inmate receives another denial, he has five 12 days to file an appeal to proceed to his second-level grievance. AR 740.09(5)(A). In short, after 13 each denial, the inmate must file an appeal to proceed to his next-level grievance within five 14 days to exhaust the facility's administrative procedures. *Jackson*, 2025 U.S. Dist. LEXIS 5058, at 15 *5. 16 Here, the defendants in essence argue that Boyd's medical deliberate indifference claim is 17 barred by the PLRA because there is no evidence that Boyd completed the administrative 18 procedure. ECF No. 36 at 5, 6. They further assert that Boyd's only grievance (2006-31-46865) 19 related to medical complications was rejected three times for failing to provide documentation 20 that he attempted to resolve this through informal means required under AR 740 before 21 submitting a grievance. See ECF No. 36 at 6 (referencing ECF No. 14 at 15, 19–20, 24); Defs.' Ex. 22 D, ECF No. 36-3 at 9–11. 23 24 8 Because I find that Boyd's claims are barred by the PLRA, I do not address the defendants' remaining arguments on the merits. 25 9 An NDOC AR is publicly available, and I may take judicial notice of it. See *Brown v. Valoff*, 422 F.3d 926, 931 n.7, n.9 (9th Cir. 2005) (taking judicial notice of prison's Department Operations manual and 26 California Department of Correction Administrative Bulletin); see also Fed. R. Evid. 201(b)(2). 10 See also AR 740, Defs.' Ex. E, ECF No. 36-4. 1 Because Boyd failed to respond to this motion, there are no explanations or contrary 2 arguments before the court at this time addressing this issue. Moreover, based on an 3 independent assessment of the record, there is no readily apparent evidence that suggests that 4 the administrative remedies were exhausted. 5 The record demonstrates that Boyd attempted to initiate his grievance process, but his 6 grievances were rejected three times. The record is devoid of Boyd's attempt to fix the issues 7 highlighted by Scally in each rejection. See ECF No. 14 at 14, 19, 24. The record also supports the 8 decision, and the reasoning included in the informal grievance rejections—that is—there were 9 no supporting kites or documents filed with the informal grievances and attempted first level 10 grievance. See Defs.' Ex. B, ECF No. 38-1 at 91–166 (sealed). Based on the evidence before the 11 court, Boyd did not kite regarding incorrect medication being prescribed for an alleged bug bite. 12 Id. Rather, once he was transferred to HDSP, he kited to request medication that he was 13

previously prescribed for his ears. Id. at 154. The record also reveals that Boyd was familiar with the process of submitting a medical kite, but choose not to do so here. See id. at 155 (Boyd submitting a medical kite on September 4, 2022, for a medical issue with his ear). Although the court may waive the PLRA mandatory exhaustion requirement when there is a “genuine dispute that the grievance procedure was effectively unavailable,” Boyd has not shown such unavailability. See *Rodriguez v. Cain*, 2022 U.S. Dist. LEXIS 89323, at *16 (D. Or. May 19 2022) (citation omitted). Boyd asserted in his complaint that HDSP’s policies delayed the process of grieving and asserted that the prison’s failure to respond renders an administrative remedy unavailable. ECF No. 14 at 2, ¶ C (citing *Fordley v. Lizarraga*, Case No. 2:16-cv-01985).¹¹ But his argument is not supported by the record. Scally advised Boyd what he needed to do to cure the deficiencies in his grievances, but he failed to complete or even attempt to complete those actions. So this was not a situation where the opportunity to file a grievance operated as a “simple dead end.” *Ross*, 578 U.S. at 643–44. Boyd’s informal grievances were reviewed, rejected, 11 The case name associated with the case number cited by Boyd could not be located. 1] and denied properly. Consequently, the defendants are entitled to summary judgment on Boyd’s 2|| medical indifference claim based on the failure to exhaust PLRA administrative remedies. Conclusion 4 IT IS HEREBY ORDERED that the defendants’ motion for summary judgment [ECF No. 5|| 36] is GRANTED. 6 The Clerk of Court is kindly directed to enter judgment in favor of the defendants and 7|| close this case. / 8 Dated: January 26, 2026 Le 9 Cri hg 10 U We States District Judge ll IL 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26