

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

WARD T. EVANS, :  
 :  
 Plaintiff, :  
 :  
 v. : Civil Action No. 03-076 JJF  
 :  
 JOSEPH H. BELANGER, :  
 :  
 Defendant. :

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Ward T. Evans, Smyrna, Delaware.  
Pro Se Plaintiff.

Stuart B. Drowos, Esquire, State of Delaware Department of  
Justice, Wilmington, Delaware.  
Attorney for Defendant.

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**OPINION**

August 19, 2004

Wilmington, Delaware

**Farnan, District Judge.**

Presently before the Court is the Motion For Summary Judgment filed by the State Defendant, Joseph H. Belanger. (D.I. 33.) For the reasons discussed, the Court will grant the Motion.

**BACKGROUND**

The Plaintiff, Ward T. Evans, is an inmate incarcerated at the Delaware Correctional Center (the "DCC") in Smyrna, Delaware. On January 16, 2003, Plaintiff initiated the instant 42 U.S.C. § 1983 action alleging that the denial of adhesive denture cream by Defendant violated his constitutional rights. By his Motion, Defendant requests the Court to grant him summary judgment.

**STANDARD OF REVIEW**

Rule 56(c) of the Federal Rules of Civil Procedure provides that a party is entitled to summary judgment if a court determines from its examination of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). However, a court should not make credibility determinations or weigh the evidence.

Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). Thus, to properly consider all of the evidence without making credibility determinations or weighing the evidence the "court should give credence to the evidence favoring the [non-movant] as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.'" Id. (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 254 (1986)).

To defeat a motion for summary judgment, Rule 56(c) requires the non-moving party to:

do more than simply show that there is some metaphysical doubt as to the material facts. . . . In the language of the Rule, the non-moving party must come forward with "specific facts showing that there is a genuine issue for trial." . . . Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is "no genuine issue for trial."

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986) (quoting Fed. R. Civ. P. 56). Accordingly, a mere scintilla of evidence in support of the non-moving party is insufficient for a court to deny summary judgment. Liberty Lobby, Inc., 477 U.S. at 252 (1986).

## **DISCUSSION**

### **I. Parties' Contentions**

Defendant contends that he is entitled to summary judgment because Plaintiff has failed to exhaust his administrative

remedies as required by 42 U.S.C. § 1997e(a). Defendant contends that after the denial of the initial grievance, Plaintiff did not file an appeal pursuant to Delaware inmate grievance procedures (the "IGP"). Defendant also contends that summary judgment is appropriate because Plaintiff cannot establish a violation of his constitutional rights. Further, Defendant contends that Plaintiff cannot successfully sue under 42 U.S.C. § 1983 on a theory of respondeat superior or negligence. Finally, Defendant contends that the Eleventh Amendment and the State Tort Claims Act bar Plaintiff from recovery.

Plaintiff responds that Defendant is not entitled to summary judgment based on failure to exhaust administrative remedies because he was informed through the denial of his grievance that an inmate may not demand disciplinary action against prison staff. Thus, Plaintiff contends that because the remedy he requested was not available, he was excused from appealing his grievance. In addition, Plaintiff contends that he has alleged a violation of his constitutional rights, that Defendant is not entitled to qualified immunity, and that the state has waived the defense of sovereign immunity pursuant to 10 Del. C. § 4001(1), (2), and (3).

## **II. Decision**

Pursuant to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under § 1983 of this

title . . . by a prisoner confined . . . until such administrative remedies as are available are exhausted." The Third Circuit requires a plaintiff to exhaust administrative remedies even if the grievance process would not provide him with the remedy he is seeking in his federal court action. Nyhuis v. Reno, 204 F.3d 65, 71 (3d Cir. 2000) (stating that the Prison Litigation Reform Act precludes a futility exception to the mandatory exhaustion requirement). However, in order for Section 1997e to apply, the prisoner's complaint must concern prison conditions and the department of corrections must have an administrative procedure in place to remedy prisoner complaints. The Delaware Bureau of Prisons maintains an inmate grievance review system.

18 U.S.C. § 3626(g) (2) defines prison conditions as conditions with respect to the conditions of the confinement. The Third Circuit has interpreted this language to relate "to the environment in which prisoners live, the physical conditions of that environment, and the nature of the services provided therein." Booth v. Churner, 206 F.3d 289, 294 (3d Cir. 2000). Based on this definition, Plaintiff's claim relating to the denial of denture cream is directed at prison conditions, and therefore, Plaintiff is subject to Section 1997e's exhaustion requirements.

On January 26, 2002, Plaintiff filed a grievance requesting

denture cream. This grievance was denied on January 29, 2002. Plaintiff contends that he did not pursue an appeal of this denial because prison officials informed him that the relief he requested was not available.<sup>1</sup> (D.I. 37 at 3.) This decision amounted to a failure to exhaust administrative remedies, and therefore, Section 1997e mandates that the Court grant Defendant summary judgment.

At the time Plaintiff abandoned his grievance, several procedures remained unexhausted under the IGP. To exhaust his remedies, Plaintiff was required to complete the MGC Appeal Statement section on Form #585, which would then be forwarded to the Bureau Grievance Officer (the "BGO") who would render a final decision. See State of Delaware Bureau of Prisons Procedure Manual.

With respect to Plaintiff's contention that these additional administrative remedies were not "available" because the relief he requested was not obtainable pursuant to the IGP, the Court

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<sup>1</sup> Although Plaintiff contends that the grievance was denied on the basis that the IGP does not permit an inmate to demand disciplinary action on prison staff (D.I. 37 at 3), according to the exhibit attached to Plaintiff's opposition brief, the grievance was denied on the grounds that "denture cream is not an allowable item in SHU/MHU." (D.I. 37, Ex. 5(A).) SHU is the highest security level at the DCC, and thus, while incarcerated at this level, Plaintiff was required to obtain written authorization for various items, including denture cream. (D.I. 34 at A-1.) Notwithstanding the reason for the denial of Plaintiff's grievance, as discussed below, the Court concludes that Plaintiff has failed to exhaust his administrative remedies.

notes that it is well established in this Circuit that there is no "futility" exception to the exhaustion requirements of Section 1997e. Nyhuis v. Reno, 204 F.3d at 67; Booth, 206 F.3d at 300. As set forth by the Third Circuit in Nyhuis and Booth, even if Plaintiff's requested relief was unobtainable through a grievance, he was still required to exhaust the available administrative procedures. Nyhuis, 204 F.3d at 67; Booth, 206 F.3d at 300. Plaintiff's argument concerning the lack of available remedies misinterprets the meaning of "available remedy" as provided in Section 1997e. The use of the term "remedy" in Section 1997e refers to available prison grievance procedures and not the types of relief obtainable as a result of a successful grievance.

In sum, Plaintiff has conceded that he did not exhaust all the available administrative remedies as required by 42 U.S.C. § 1997e (D.I. 37 at 3, 5), and accordingly, the Court will grant Defendant summary judgment.

An appropriate Order will be entered.

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**O R D E R**

At Wilmington, this 19th day of August, 2004, for the reasons discussed in the Opinion issued this date;

IT IS HEREBY ORDERED that the Motion For Summary Judgment filed by the State Defendant, Joseph H. Belanger (D.I. 33) is

**GRANTED**.

JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT JUDGE

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**JUDGMENT IN A CIVIL CASE**

For the reasons stated in the Court's Opinion and Order  
issued on August 19, 2004;

IT IS ORDERED AND ADJUDGED that judgment be and is hereby  
entered in favor of Defendant Joseph H. Belanger.

JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT JUDGE

Dated: August 19, 2004

Susan S. Baer  
(By) Deputy Clerk