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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0696**

Alex D. Cassidy,
Appellant,

vs.

Joan Fabian, et al.,
Respondents,

Aaron Hayes,
Defendant.

**Filed April 15, 2008
Affirmed
Hudson, Judge**

Washington County District Court
File No. CX-05-7086

Alex D. Cassidy, OID #100629, MCF-Lino Lakes, 7525 Fourth Avenue, Lino Lakes,
Minnesota 55014 (pro se appellant)

Lori Swanson, Attorney General, Mark B. Levinger, Assistant Attorney General, 1100
Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2128 (for respondents)

Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Collins,
Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HUDSON, Judge

Appellant Alex Cassidy, a prison inmate, brought this action against respondents, all staff members of the Department of Corrections (DOC), alleging that they failed to protect him from assault and challenging their treatment of him.¹ Because appellant violated Minn. Stat. § 563.02, subd. 2(a) (2006), by bringing the action in forma pauperis before exhausting the administrative remedy available to him through the prison's grievance process, we affirm the summary judgment granted to respondents.

FACTS

In September 2003, appellant was assaulted and injured in the prison yard by another prisoner to whom appellant had made sexual advances. In October 2004, respondents placed appellant in administrative segregation because other inmates alleged that he had engaged in several forms of improper sexual behavior. In December 2004, after an investigation showed that there was insufficient evidence to support those allegations, appellant was removed from administrative segregation but placed on a special management plan that prohibited him from being in a cell with another inmate and from going to other tiers of the prison. In December 2005, the DOC staff members reviewed the special management plan and decided to keep appellant on it indefinitely.

¹ Appellant also brought this action against the inmate who assaulted him. That inmate did not move for summary judgment, but the district court nevertheless concluded that it lacked jurisdiction over him because he was not properly served. Appellant does not challenge that conclusion, so the issue is waived on appeal. *See Melina v. Chaplin*, 327 N.W. 2d 19, 20 (Minn. 1982) (issues not briefed on appeal are waived).

Appellant brought this action against the DOC staff members, challenging their failure to protect him from assault, his placement in administrative segregation, his placement on the special management plan, his removal from or failure to receive various prison jobs, and his lack of access to the prison library and to photocopying services. The DOC staff members moved for summary judgment on the ground that appellant had not exhausted his administrative remedies and that Minn. Stat. § 563.02, subd. 2(a)(1) (2006), deprived the court of jurisdiction. The district court granted their motion and dismissed appellant’s claims without prejudice. Appellant challenges the summary judgment.

D E C I S I O N²

The relevant facts in this matter are undisputed. When the district court grants summary judgment based on the application of a statute to undisputed facts, the result is a legal conclusion, reviewed de novo by the appellate court. *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W. 2d 855, 856 (Minn. 1998).

Minn. Stat. § 563.02, subd. 2(a) (2006), provides that “[a]n inmate who wishes to commence a civil action by proceeding in forma pauperis must . . . (1) exhaust the inmate complaint procedure developed under the commissioner of corrections policy and procedure before commencing a civil action against the department” Appellant began this action by proceeding in forma pauperis, and he does not allege that he exhausted the inmate complaint procedure before doing so. Instead, he argues that some

² Appellant argues that the district court improperly resolved factual disputes, but since the district court acknowledged that it did not reach appellant’s substantive issues, this argument fails.

of his claims were civil-rights claims and that he is not required to exhaust administrative remedies before instituting a civil-rights action.

There is no Minnesota case law construing Minn. Stat. § 563.02, subd. 2(a), but there is applicable federal law. Under the Prison Litigation Reform Act of 1995, the requirement of exhausting administrative remedies “applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong.” *Porter v. Nussle*, 534 U.S. 516, 532, 122 S. Ct. 983, 992 (2002). Appellant’s complaint pertained exclusively to his life in prison, so the requirement of exhausting administrative remedies applies.

Porter supersedes the case on which appellant relies: *Patsy v. Bd. of Regents*, 457 U.S. 496, 500, 102 S. Ct. 2557, 2560 (1982) (citing *Barry v. Barchi*, 443 U.S. 55, 63, n.10, 99 S. Ct. 2642, 2648 n.10 (1979), *Gibson v. Berryhill*, 411 U.S. 564, 574, 93 S. Ct. 1689, 1695 (1973), and *Carter v. Stanton*, 405 U.S. 669, 671, 92 S. Ct. 1232, 1234 (1972) to indicate the Supreme Court’s rejection of “the argument that a § 1983 action should be dismissed where the plaintiff has not exhausted state administrative remedies”).

Because appellant did not comply with Minn. Stat. § 563.02, subd. 2(a), the summary judgment dismissing his claims without prejudice must be affirmed.

Affirmed.