No. 22-1485

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JAQUETTA ANN COOPWOOD,

Plaintiff-Appellant,

v.

WAYNE COUNTY, MI; SERGEANT JONITH WATT,

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of Michigan, No. 2:20-cv-12092
The Honorable Arthur J. Tarnow, District Court Judge

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STATEMENT CONCERNING ORAL ARGUMENT

Appellant respectfully requests that oral argument be granted because this case raises important issues regarding the interpretation of "available" remedies under the PLRA. Cases under the PLRA are often litigated *pro se*—both in the district courts and this Court—and so this counseled case provides a good vehicle for this Court to articulate and clarify the applicable law.

INTRODUCTION

Jaquetta Coopwood was six months pregnant and had been in Wayne County Jail (the "Jail") for just one day when Deputy Jonith Watt kicked her in the stomach simply because she asked for help making a call to her sister. Complaint, RE 1, PageID #3; Order Granting Defs' Mot. to Dismiss, RE 22, PageID #342. After months of on-and-off pain and hospitalizations following the assault, Ms. Coopwood lost her child, Dayton, to stillbirth. Complaint, RE 1, PageID #3–4. Throughout this time, Ms. Coopwood, who has bi-polar disorder and schizophrenia, experienced worsening symptoms of her mental illness, including psychosis, hallucinations, delusions, depression, and impaired cognitive functions. Coopwood Affidavit, RE 16-2, PageID #114–15. As a result, she was unable to understand or remember the events around her and make informed decisions about her wellbeing.

To seek redress through the Jail's grievance system, Ms. Coopwood had only ten days to file a formal grievance following the assault. Inmate Handbook, RE 5-4, PageID #57. The grievance procedure provided no possibility for an extension or late filing. *Id.* To make matters worse, Ms. Coopwood did not receive the Jail's Handbook—which included the grievance forms—upon intake, and was denied help when she asked to speak to "whoever was in charge" about the assault. Coopwood Affidavit, RE 16-2, PageID #115. Nevertheless, despite her mental illness, physical pain, and the Jail's unwillingness to help her, she persisted and eventually filled out

a form which she was told was a grievance form and handed it to a guard. *Id*. Defendants, however, failed to file the form or notify Ms. Coopwood about whether it was rejected and on what grounds.

Unable to navigate the Jail's grievance process, Ms. Coopwood filed an action in federal court. Complaint, RE 1, PageID #1–10. But the district court ruled against her on the ground that she did not exhaust administrative remedies under the Prison Litigation Reform Act ("PLRA"). 42 U.S.C. § 1997e(a); Order Granting Defs' Mot. to Dismiss, RE 22, PageID #354.

The plain text of the PLRA, however, requires exhaustion only of "such administrative remedies as are available." 42 U.S.C. § 1997e(a). A remedy is not available unless it is "accessible" and "capable of use for the accomplishment of a purpose." *See Ross v. Blake*, 578 U.S. 632, 635, 642 (2016). Here, Ms. Coopwood was incapable of using the Jail's grievance procedures because her mental health impaired her cognitive functions and prevented her from exhausting administrative remedies. Moreover, administrative remedies were unavailable because Defendants thwarted Ms. Coopwood from using them by not providing her with information about the process and a grievance form, without which she could not file a grievance under jail policy. The district court erred in finding that remedies were available to Ms. Coopwood. This Court should reverse.

JURISDICTIONAL STATEMENT

Jaquetta Coopwood filed this action pursuant to 42 U.S.C. § 1983 in the United States District Court for the Eastern District of Michigan. Complaint, RE 1, PageID #1–10. The district court had jurisdiction over her claims under 28 U.S.C. §§ 1331 and 1343 because she brought claims under the Eighth and Fourteenth Amendments. The district court dismissed her action on March 28, 2022. Order Granting Defs' Mot. to Dismiss, RE 22, PageID #341–54. After the district court denied Ms. Coopwood's motion for reconsideration, she timely noticed her appeal on March 31, 2022. Notice of Appeal, RE 27, PageID #381; Fed. R. App. P. 4(a)(1)(A). This Court has jurisdiction to review the district court's final order under 28 U.S.C. § 1291.

ISSUE PRESENTED

Did the district court err in concluding that administrative remedies were available to Ms. Coopwood, even though:

(1) a documented mental illness prevented her from exhausting administrative remedies; and

(2) she could not properly file a grievance because the Jail refuses to accept grievances unless they are written on a particular form that Defendants did not give to Ms. Coopwood?

STATEMENT OF THE CASE

A. Legal Background

The PLRA requires that an incarcerated person exhaust "such administrative remedies as are available" in their facility before bringing an action in federal court involving prison conditions. 42 U.S.C. § 1997e(a). By the terms of the PLRA, a prisoner must exhaust only those administrative remedies that are "available." *Id*. A prison's grievance system is not "available" where it is not "capable of use" to obtain "some relief for the action complained of." *Ross*, 578 U.S. at 643–45.

Prison officials asserting an exhaustion defense bear the burden to prove both that remedies were available to the plaintiff and that she failed to exhaust such remedies. *Jones v. Bock*, 549 U.S. 199, 212 (2007); *Does 8-10 v. Snyder*, 945 F.3d 951, 961 (6th Cir. 2019). This Court has emphasized that the party moving for summary judgment "must show that the record contains evidence satisfying the burden of persuasion and that the evidence is so powerful that no reasonable jury would be free to disbelieve it." *Cockrel v. Shelby Cnty. Sch. Dist*., 270 F.3d 1036, 1056 (6th Cir. 2001). Accordingly, Defendants must show that there is no genuine dispute of material fact as to a plaintiff's failure to exhaust. Fed. R. Civ. P. 56(c); *Does 8-10*, 945 F.3d at 961.

B. Factual Background[1]

1. Defendant Watt Assaults Ms. Coopwood.

On August 17, 2017, the day after Ms. Coopwood was brought into custody, she asked Deputy Jonith Watt for help to call her sister.[2] Complaint, RE 1, PageID #3. Ms. Coopwood, who was six months pregnant at the time and suffers from schizophrenia, wanted to let her sister know that she was okay. *Id.* Deputy Watt, however, became annoyed and "grabbed [Ms. Coopwood's] right hand, bent it back, and dragged her back to her cell by both the fingers and hair." *Id*. Then, Deputy Watt forced Ms. Coopwood back into her cell and kicked her in the stomach with "her heavy black boot." *Id*. Another officer and nurse heard Ms. Coopwood scream in pain. *Id*. Though Ms. Coopwood felt pain in her abdomen for the rest of the day, she was not seen by a physician. *Id*.[3]

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[1] The facts are drawn from Ms. Coopwood's verified complaint and pleadings below, and are recounted in the light most favorable to her. *See Troche v. Crabtree*, 814 F.3d 795, 798 (6th Cir. 2016). Ms. Coopwood swore to the contents of the complaint in an affidavit, *see* Coopwood Affidavit, RE 16-2, PageID #113–16, thereby verifying the complaint. A verified complaint is equivalent to an affidavit for summary judgment purposes. *See* Fed. R. Civ. P. 56(e); *Weberg v. Franks*, 229 F.3d 514, 526, n.13 (6th Cir. 2000).

[2] In her complaint, Ms. Coopwood mistakenly thought that Deputy Watt was a Sergeant. We use Watt's correct title here.

[3] Wellpath is a for-profit healthcare provider for the Jail. Wellpath was previously known as Correct Care Solutions and the record contains medical records naming both providers.

A few days later, on August 23rd, Ms. Coopwood was admitted to the hospital due to both abdominal pain and vaginal discharge, which had started on August 20th or as early as August 17th. *See* Medical Records, RE 18-2, PageID #163; Complaint, RE 1, PageID #3. Ms. Coopwood was discharged and given Tylenol and hot/ice packs for her abdominal pain. Medical Records, RE 18-2, PageID #164–166.[4] However, her abdominal pain continued, and, on August 30th, Ms. Coopwood was re-admitted to the emergency room. *Id.* at PageID #166. In the subsequent months, Ms. Coopwood was re-admitted to the hospital three more times because of severe abdominal pain: on September 27th, October 19th, and October 22nd. *See* Medical Records, RE 18-2, PageID #166–69, #174–75; Medical Records, RE 18-3, Page ID #229–63. After those visits, physicians determined that her baby would be stillborn. Medical Records, RE 18-3, PageID #264–74. On November 8, 2017, Ms. Coopwood was induced into labor to deliver her stillborn son. *Id.*

2. Ms. Coopwood's Mental Health History.

Before and after the kick, Ms. Coopwood was struggling with various mental health issues which interfered with her ability to submit a grievance within ten days—the deadline mandated by Jail policy. Inmate Handbook, RE 5-4, PageID

[4] When she returned to the Jail, she was seen by a nurse at 11:52 PM. The records state that Ms. Coopwood was "alert and oriented," that she understood her discharge instructions, and was given hot/ice packs to help with her pain. There is a note stating "alternation in wellness" and an appointment was scheduled with medical. *See* Medical Records, RE 18-2, PageID #165.

#56–58; Coopwood Affidavit, RE 16-2, PageID #113–14; *see* Medical Records, RE 18-3, PageID #229–34.

Physicians diagnosed Ms. Coopwood with these conditions multiple times well before her incarceration. Coopwood Affidavit, RE 16-2, PageID #113–14. Beginning in 2008, for example, while she was a student and experiencing lack of sleep for more than three consecutive days, Ms. Coopwood was first diagnosed with depression. *Id.* at PageID #113; *see also* MDOC Presentence Investigation, RE 16-4, PageID #129 (presentence report by the Michigan Department of Corrections detailing Ms. Coopwood's mental health history, beginning in 2008, with a schizophrenia diagnosis). Later that year, after she continued to have consecutive sleepless nights and psychosis, Ms. Coopwood was diagnosed with bi-polar disorder and schizophrenia and was prescribed medications. Coopwood Affidavit, RE 16-2, PageID #113–14.[5] In 2010, Ms. Coopwood was admitted to a psychiatric facility,

[5] Schizophrenia is a brain disorder characterized by positive (an excess of normal functions) and negative symptoms (loss of normal functions) that are triggered by stressors and which impair cognitive, physical, emotional, and executive functions. Symptoms may include, for example, hallucinations, delusions, difficulty or inability to speak, flat or blunted affect, difficulty or inability to meet basic tasks and short-term goals, low energy, disorganized thinking, slow thinking, difficulty understanding, poor concentration, poor memory, and difficulty expressing thoughts. *See* U.S. Department of Health and Human Services, National Institute of Mental Health, *Schizophrenia*, (last reviewed May 2022), https://www.nimh.nih.gov/health/topics/schizophrenia; American Psychiatric Association, *What is Schizophrenia?* (physician review on May 2022), https://psychiatry.org/patients-families/schizophrenia/what-is-schizophrenia

where she was prescribed an anti-psychotic medication, because she was experiencing lapses in time where she could not remember what happened and felt a sensation that things were crawling on her. *Id.* at PageID #114. From 2012–2015, Ms. Coopwood was hospitalized multiple times because she struggled with insomnia, depression, and psychosis. *Id*. She received medications and monthly therapy sessions and was monitored to see how she regressed when she was taken off those medications. *Id*. In 2016, Ms. Coopwood was again diagnosed with bi-polar disorder and schizophrenia and she remained hospitalized for 30 days for in-patient treatment. *Id*.

Still, in early 2017, Ms. Coopwood continued to struggle with the symptoms of her mental illness and was admitted to the hospital for ten days for lack of sleep. *Id*. Then, again in May of 2017, Ms. Coopwood was sent to a psychiatric hospital for eight days because her schizophrenia was causing psychosis and lack of sleep. *See* Medical Records, RE 18-3, PageID #229–34 (treatment note by Dr. Luay L. Haddad on Ms. Coopwood's psychiatric record). Then, on August 13, 2017, Ms.

(describing the symptoms of schizophrenia). Bipolar disorder is a mental illness characterized with chronic manic and/or depressive episodes that vary in duration, frequency, and intensity and the symptoms are similar to those of schizophrenia. U.S. Department of Health and Human Services, National Institute of Mental Health, *Bipolar Disorder*, (revised 2022), https://www.nimh.nih.gov/health/publications/bipolar-disorder.

Coopwood was taken off her anti-psychotic medication—three days prior to being taken into custody at the Jail. Coopwood Affidavit, RE 16-2, PageID #114.

Eventually, Ms. Coopwood would be found "guilty but mentally ill." Judgment of Sentence, RE 20-2, PageID #329. Under Michigan law, this means that Ms. Coopwood "prov[ed] by a preponderance of the evidence that [she] was mentally ill at the time of the commission of [her] offense," Mich. Comp. Laws § 768.36. Ms. Coopwood committed her offense on August 13, 2017, the day she was taken off her medications. Coopwood Affidavit, RE 16-2, Page ID # 114; Booking Card, RE 5-6, PageID #77; Defs' Mot. to Dismiss, RE 20, PageID #310–11 (noting Ms. Coopwood committed her offense on August 13th).

Though the Jail's evaluators saw Ms. Coopwood's extensive mental health records, they failed to properly screen and treat her. Medical Records, RE 18-2, PageID #157 (Wellpath evaluators noting that they could access Ms. Coopwood's records through Wayne County's integrated health network). After Ms. Coopwood denied a history of mental health treatment and hospitalization at her initial screening on August 17th, the Wellpath evaluator noted that her medical records, which dated back to 2012, "state[d] otherwise." *Id.* The evaluator further noted that Ms. Coopwood was six months pregnant and that her mood was "depressed." *Id.* Despite that knowledge, the Jail never had Ms. Coopwood evaluated by a licensed

psychiatrist. *Id.* (Wellpath's records do not state that she was seen by a licensed psychiatrist at any time at the Jail).

Ms. Coopwood received a follow-up mental health evaluation on August 18th. She reported being diagnosed with "insomnia and like depression" but claimed that she "kinda got over that" and also reported that she had not been sleeping well, and was previously prescribed Ambien. Mental Health Records, RE 20-1, PageID #320. She also reported being six months pregnant and also denied a history of mental health hospitalizations and medications. *Id*. Again, however, the evaluator discerned that her medical record showed that she had a history of mental health issues, including various hospitalizations from 2012 to May 2017. *See id.* at PageID #325 (evaluator noting "[Patient] has a [history] in [Detroit Wayne Integrated Health Network] dating back to 2012"). Nevertheless, the evaluator noted that "[n]o interventions needed at this time" and Defendants placed Ms. Coopwood in the psychiatric unit in the Jail, and prescribed her an anti-depressant, Remeron. *Id.* at PageID #322–23, 325. Defendants, however, did not refer Ms. Coopwood to a licensed psychiatrist and she was not re-prescribed the anti-psychotic medication she had been on prior to her incarceration. *Id.*; *see also* Complaint, RE 1, PageID #2.

As time went on without her anti-psychotic medications, Ms. Coopwood's symptoms predictably worsened. Coopwood Affidavit, RE 16-2, PageID #114–15. On October 19th, for example, Ms. Coopwood was sent to the hospital again because

she complained of "continued vaginal pain" and said that her water broke. *See* Medical Records, RE 18-3, PageID #227–29. At the hospital, Ms. Coopwood was finally evaluated by a licensed psychiatrist, Dr. Haddad, who noted that her medical records showed that in May 2017 she was sent to a psychiatric hospital for eight days because she presented in a "bizarre way." *Id.* at PageID #229–34. During Dr. Haddad's examination, Ms. Coopwood denied any mental health issues and reported that she was hospitalized in May 2017 to "catch [up] on some sleep and get rest." *Id.* at PageID #229. Dr. Haddad noted, however, that Ms. Coopwood had been "psychotic for [an] unknown period of time." *Id.* at PageID #230. Dr. Haddad evaluated Ms. Coopwood and noted that her "thinking is seriously derailed and internally inconsistent, resulting in irrelevancies and disruption of thought processes, which occur frequently." *Id.* at PageID #232. Moreover, Dr. Haddad commented that Ms. Coopwood was presently experiencing hallucinations during the examination and that she "has a delusional interpretation of [internal cues] and responds to them emotionally and, on occasion, verbally as well." *Id.*

Dr. Haddad described her judgment as "poor" and diagnosed her with "psychosis [not otherwise specified], possible schizophrenia"; "personality disorders and mental retardation." *Id.* at PageID #233. Dr. Haddad prescribed her Haloperidol, an anti-psychotic, and Benadryl to treat her schizophrenic symptoms. *Id.* At this time, she was deemed incompetent to make any medical decisions about

her pregnancy. *See id.* at PageID #251 ("[T]he patient is not competent and appears to continue being psychotic from her known paranoid and aggressive behavior.").

On the evening of October 22nd, Ms. Coopwood was readmitted to the hospital because she complained of more "abdominal cramping." *Id.* at PageID #247. During this visit, Dr. Carol Rodriguez, an obstetrician and gynecologist, tried to inform Ms. Coopwood that they were trying to induce delivery to save the unborn child but she denied help, said that the fetus was fine, could not comprehend what was going on, and asked to be discharged. *Id.* at PageID #249–51. Dr. Rodriguez contacted Dr. Haddad regarding Ms. Coopwood's "aggressive behavior" and "ability to make medical decision regarding [the] pregnancy." *Id*. at PageID #251. Dr. Rodriguez learned that Ms. Coopwood's mental state rendered her unable to make medical decisions *unless* she took her anti-psychotic medication. *Id.; see also id.* at PageID #266–68 (Dr. Rodriguez noting that per Dr. Haddad's recommendation, Ms. Coopwood can consent to medical care if she takes her anti-psychotic and is "able to verbalize risks/benefits"). Ultimately, after Ms. Coopwood was physically restrained and given Haldol and Benadryl, she calmed down and became aware of what was going on. *Id.* at PageID #251. Later, on November 8th, Dr. Rodriguez reported that Ms. Coopwood "agree[d] to take [her] anti-psychotic" medications and was in a position to consent to inducing labor. *Id*. at Page ID #266–

68. Her baby, whom she had affectionately named Dayton, was stillborn. *Id.*; Complaint, RE 1, PageID #4.

C. Ms. Coopwood's Attempts to Exhaust Administrative Remedies.

During the time that Ms. Coopwood experienced waves of psychiatric symptoms, did not receive appropriate mental health treatment, and was deemed unfit to make medical decisions, *see supra*, at 6–13, she was expected to follow the Jail's grievance procedures.

Those procedures involve a two-step process: a grievance and an appeal. To initiate a grievance, a detainee must fill out the required information on the Grievance Form "within ten [] days from the date the alleged incident or violation occurred." Inmate Handbook, RE 5-4, PageID #56–58. A prisoner "may submit a [] grievance to any staff member." *Id.* In turn, the Jail "will provide a written answer to [the] grievance within fifteen [] business days of receiving [the] grievance [or] may inform [the prisoner] that it is extending the deadline to respond." *Id.* The detainee may then appeal within ten days from receiving the grievance response and appeals are answered within fifteen business days. *Id.* The Jail does not provide any other recourse to grieve after the ten-day period and does not provide extensions or allow late filings.[6]

[6] The district court incorrectly assumed that Ms. Coopwood could have filed a grievance after the ten-day period. Order Granting Defs' Mot. to Dismiss, RE 22, at

Jail officials made it impossible for Ms. Coopwood to comply with these strict requirements. The Jail's grievance policy requires Jail employees to provide prisoners with a "blank Grievance Form . . . with the Inmate Rules and Regulations." Inmate Handbook, RE 5-4, PageID #56. Ms. Coopwood did not receive any form, let alone guidance, or the handbook informing her how to file a grievance. Coopwood Affidavit, RE 16-2, PageID #115. Still, after she was assaulted, Ms. Coopwood asked to speak to someone in charge to report the incident and about her need for medical care. *Id*. Her requests, however, were denied. *Id*. Despite these obstacles, she persisted: Ms. Coopwood eventually filled out a form, which she was told was a grievance form, and handed it to a "Sgt. on the 5th floor with the Psychiatric Unit." *Id*. She never heard back and believed that nothing "came of [her] grievance at the jail." *Id.*

D. Procedural Background

On August 4, 2020, Ms. Coopwood filed an action in the Eastern District of Michigan against Deputy Watt and Wayne County, Michigan. Complaint, RE 1, Page ID #1–10. Ms. Coopwood alleged that Defendants used excessive force and were deliberately indifferent to her medical needs, both of which caused the death

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PageID #353. The Jail's policy, however, only provides prisoners with a narrow ten-day window to grieve and there is nothing in the policy allowing for an extension or late grievance. The prison is bound by its own policy. *Jones*, 549 U.S. at 218 ("[I]t is the prison's requirements, and not the PLRA, that define the boundaries of proper exhaustion").

of her unborn son. *Id*. After Defendants filed a motion to dismiss, the district court ordered supplemental briefing on exhaustion. Order Requesting Supplemental Briefing, RE 19, PageID #300–06. After briefing, the district court construed the Defendants' motion to dismiss as one for summary judgment and found that Ms. Coopwood failed to exhaust the Jail's administrative remedies. Order Granting Defs' Mot. to Dismiss, RE 22, PageID #341–54. The district court did not address any of Ms. Coopwood's claims on the merits. *Id.*

SUMMARY OF THE ARGUMENT

The district court correctly recognized that "there are certain impairments that would render a prisoner incapable of understanding a prison grievance process," and that in such cases administrative remedies would be unavailable. Order Granting Defs' Mot. to Dismiss, RE 22, PageID #352. But the Court then erred in holding—on summary judgment and as a matter of law—that Ms. Coopwood could have navigated the system to file a proper grievance within ten days of the assault even while battling severe schizophrenia, exacerbated by the absence of her antipsychotic medication. *Id*. at PageID #346–53. This Court should reverse because remedies were not available to her.

I. A prisoner need only exhaust "available" administrative remedies, and none were "available" to Ms. Coopwood. **A.** The Supreme Court makes clear that the availability analysis includes consideration of the real-world barriers that prevent a

prisoner from exhausting remedies. And considering a litigant's particular obstacles in seeking to exhaust is consistent with precedent from the Sixth Circuit and other circuits. **B.** Here, those real-world barriers show that administrative remedies were unavailable to Ms. Coopwood, whose well-documented mental illness—bi-polar disorder and schizophrenia—causes symptoms which severely inhibit her cognitive functions without proper treatment. During the grievance period, Ms. Coopwood experienced severe symptoms. As a result, Ms. Coopwood was incapable of exhausting her remedies. **II.** Prison officials thwarted Ms. Coopwood by denying her the forms and information necessary to submit a grievance under jail policy. The law is clear that this conduct made the grievance system unavailable.

STANDARD OF REVIEW

This Court reviews a district court's exhaustion determination on summary judgment *de novo*. *Does 8-10*, 945 F.3d at 961. Accordingly, since "Defendants bear the burden of proof on exhaustion, they bear an 'initial summary judgment burden [that] is higher'" and must "establish[] that there is no genuine dispute of material fact that the plaintiff failed to exhaust." *Id*. Defendants must show that, when drawing all inferences in the light most favorable to Ms. Coopwood, they are entitled to summary judgment as a matter of law because "'the record contains evidence satisfying [their] burden of persuasion' and 'that no reasonable jury would be free

to disbelieve it.'" *Id*. (alterations in original) (quoting *Surles v. Andison*, 678 F.3d 452, 455–56 (6th Cir. 2012)).

ARGUMENT

I. Administrative Remedies Were Not "Available" to Ms. Coopwood.

The administrative exhaustion provision of the PLRA requires only exhaustion of "such administrative remedies as are *available*" before a prisoner brings an action in federal court. 42 U.S.C. § 1997e(a) (emphasis added); *Ross*, 578 U.S. at 635–36. Here, Ms. Coopwood had no "available" administrative remedies, and so the district court erred by dismissing her claims for failure to exhaust.

A. The Availability Analysis Includes Consideration of a Litigant's Real-World Barriers in Exhausting Remedies.

The district court explained that "there are certain impairments that would render a prisoner incapable of understanding a prison grievance process." Order Granting Defs' Mot. to Dismiss, RE 22, PageID #352. The district court was quite right on that point. But then it went on to find that remedies would be available unless no ordinary prisoner would understand the process. This was incorrect. The district court's conclusion that a person's mental capacity does not matter leaves incarcerated people with no recourse when mental illness prevents them from exhausting remedies under the PLRA. Moreover, the district court's analysis contradicts the plain text of the PLRA, the Supreme Court's decision in *Ross*, and this Circuit's precedent, and the weight of authority from other circuits.

1. The Supreme Court Makes Clear that the Availability Analysis Includes Consideration of a Litigant's Real-World Barriers.

Ross v. Blake underscores the importance of the PLRA's built-in limitation to the exhaustion requirement: Incarcerated people need only exhaust *available* remedies. 578 U.S. at 635–36. The Court emphasized that this exception has "real content," requiring courts to consider whether the administrative remedies were "'accessible or [obtainable].'" *Id.* at 642 (quoting *Booth v. Churner*, 532 U.S. 731, 737–38 (2001)). According to the Court, procedures are "available" if they are "capable of use for the accomplishment of a purpose," or "'capable of use' to obtain 'some relief for the action complained of.'" *Id.* (citing Webster's Third New Int'l Dictionary 150 (1993); Random House Dictionary of the English Language 142 (2d ed. 1987); 1 Oxford English Dictionary 812 (2d ed. 1989); Black's Law Dictionary 135 (6th ed. 1990); *Booth*, 532 U.S. at 738).

Contrary to the district court's analysis, the *Ross* Court made clear that the availability analysis is not an abstract exercise but rather turns on a consideration of particular facts that make exhaustion possible or impossible for an individual prisoner. In remanding the case, the Court instructed that the availability inquiry must account for "the *real-world* workings of prison grievance systems[,]" *id.* at 643 (emphasis added), and how a prisoner, "in [the litigant's] situation," *id.* at 648, might use or "discern or navigate it," *id.* at 644. *See also Ramirez v. Collier*, 142 S. Ct. 1264, 1284 (2022) (Sotomayor, J., concurring) ("Availability is a practical

determination that requires considering both whether the administrative system is accessible as designed and whether prison [officials] ensure meaningful access to it in practice." (citing *Ross*, 578 U.S. at 643–44)).

2. *This Court and Every Other Circuit to Reach the Issue Hold that Mental Illness and Other Obstacles Can Render Remedies Unavailable.*

For over a decade, this Court has recognized that the real-world barriers that prevent a prisoner from exhausting remedies are relevant to the availability analysis. This Court, in *Braswell v. Corrections Corporation of America*, accounted for a prisoner's particular obstacles when it considered whether a plaintiff was "actually *capable* of filing . . . a grievance" under the PLRA. 419 F. App'x 622, 625 (6th Cir. 2011) (emphasis in original). In *Braswell*, a prisoner, Frank Horton, who would eventually be diagnosed with schizophrenia, brought an excessive force claim but prison officials alleged that he failed to exhaust his remedies. This Court noted that, though defendants ignored his mental health symptoms for months, Horton exhibited debilitating symptoms throughout his incarceration which included disheveled appearance, incoherent speech, self-isolation, impaired cognitive functions, and lack of understanding events around him. *Id.* at 623–24. Accordingly, this Court determined that Horton's mental health made it impossible for him to file a grievance. *Id.* at 624–26. This Court also considered how Horton lacked access to the forms required to file a grievance. As a result of both considerations, this Court found that remedies were unavailable. *Id.*

In *Does 8-10 v. Snyder*, this Court reaffirmed that courts must consider the particular obstacles confronting a prisoner seeking to exhaust remedies when conducting an availability analysis. There, after considering the individual experiences of John Does 8, 9, and 10 in navigating the grievance system, this Court held that the MDOC's grievance process was unavailable because the prison gave Does 8 and 10 contradictory messages about their grievances being pending and closed at the same time. 945 F.3d at 963–64. This Court highlighted how, based on the plaintiffs' experiences, they could not navigate MDOC's process because "prison officials effectively prevented the use of the [] grievance process, even if that process could be an 'otherwise proper procedure[.]'" *Id.* at 966 (quoting *Ross*, 578 U.S. at 644).

Just this year, this Court again considered a plaintiff's real-world barriers to determine whether his alleged mental, intellectual, and physical capacities prevented him from filing a grievance. *Doss v. Corizon Med. Corp.*, No. 21-1423, 2022 WL 1422805, at *2 (6th Cir. Mar. 15, 2022). In *Doss*, this Court held that administrative remedies were available because the plaintiff did not have any documented mental incapacities, there was no evidence to support that he was illiterate, and, though he had "documented vision issues, those did not prevent him from filling out" the forms. *Id. Doss* demonstrates that this Court considers the particular obstacles an

individual faced to determine whether remedies are available, so long as the record supports this finding.

Other circuits are in accord. The Ninth Circuit recently explained that to determine whether a remedy is unavailable, the "critical question [] is whether 'there is something in [plaintiff's] particular case that made the existing and generally available administrative remedies effectively unavailable to [plaintiff].'" *Eaton v. Blewett*, 50 F.4th 1240, 1245 (9th Cir. 2022) (quoting *Albino v. Baca*, 747 F.3d 1162, 1172 (9th Cir. 2014) (*en banc*)). This "pragmatic analysis" considers the real-world barriers that prevent a prisoner from exhausting remedies. *Muñoz v. United States*, 28 F.4th 973, 975 (9th Cir. 2022).

The Seventh Circuit similarly holds that the availability "analysis must also account for individual capabilities." *Ramirez v. Young*, 906 F.3d 530, 535 (7th Cir. 2018) (holding that remedies were unavailable to a Spanish speaking prisoner where the process was only explained in English). And, in a case similar to Ms. Coopwood's situation, the Seventh Circuit reversed a grant of summary judgment on exhaustion grounds where a prisoner alleged that he was "grappling with a serious mental illness" which left him unable to "obtain or complete the forms required to invoke [administrative remedies]." *Weiss v. Barribeau*, 853 F.3d 873, 875 (7th Cir. 2017); *see also Lynch v. Corizon, Inc.*, 764 F. App'x 552, 554 (7th Cir. 2019) (holding that plaintiff's claim that "defendants altered his medication, [and] left him

too confused to complete the grievance process," raised factual issues precluding summary judgment on exhaustion); *Lanaghan v. Koch*, 902 F.3d 683, 689 (7th Cir. 2018) (holding that a remedy is not "available" to a prisoner who, through no fault of his own, is physically unable to pursue the grievance procedures).

The Second, Third, and Fifth Circuits have also held that an individual's physical and mental health conditions can render administrative remedies unavailable. *See Rucker v. Griffen,* 997 F. 3d 88, 94 (2d Cir. 2021) (holding that remedies are "unavailable" when the prisoner's medical condition presents a "substantial obstacle" to exhaustion and the prison "does not accommodate the condition by allowing a reasonable opportunity to file for administrative relief"); *Beaton v. Tennis*, 460 F. App'x 111, 113–14 (3d Cir. 2010) (citing evidence that staff took advantage of plaintiff's confused mental state resulting from a skull fracture and post-concussion syndrome as grounds for denying summary judgment on exhaustion); *Days v. Johnson*, 322 F.3d 863, 867 (5th Cir. 2003) (holding that plaintiff's broken right hand rendered remedies unavailable), *overruled on other grounds by Jones*, 549 U.S. at 212.[7]

[7] Several district courts also agree that real-world barriers can render exhaustion "unavailable" under the PLRA. *See*, *e.g.*, *Adams v. Wexford Health Sources, Inc.*, No. 15-cv-604-NJR-DGW, 2018 WL 4680728, at *7 (S.D. Ill. Sept. 28, 2018) (concluding that plaintiff suffering from bipolar and schizoaffective disorders, and who was switched from medications, "was not mentally or physically capable of filing a grievance" and "therefore administrative remedies were not available to

B. The District Court Erred in Concluding, on Summary Judgment and as a Matter of Law, that Ms. Coopwood Could Have Exhausted the Jail's Remedy Scheme Despite Her Serious Mental Illness.

The Jail's administrative remedies were not "available" to Ms. Coopwood. She has a long and documented history of mental illness which impaired her cognitive functions and prevented her from using the Jail's grievance process. From 2008–2017, Ms. Coopwood was hospitalized multiple times because her mental illness caused her to experience debilitating symptoms such as psychosis, delusions, and hallucinations, all of which impacted her cognitive functions. *See supra* at 6–12; Coopwood Affidavit, RE 16-2, PageID #113–14. Throughout this time, Ms. Coopwood was diagnosed with bi-polar disorder and schizophrenia by numerous medical providers who prescribed her various treatments and medications, including anti-psychotic medications. *Id.* However, on August 13, 2017, Ms. Coopwood was off her anti-psychotic medications. *Id*. Thus, when she arrived to the Jail, on August 16th, she was likely to re-experience some of the debilitating symptoms that impair her cognitive functions. And she did.

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him"); *Warner v. Cate*, No. 1:12-cv-01146-LJO-MJS, 2015 WL 9480625, at *4–5 (E.D. Cal. Dec. 29, 2015) (denying summary judgment for non-exhaustion based on claim that plaintiff lacked the mental capacity to file a timely grievance), *report and recommendation adopted*, 2016 WL 696422 (E.D. Cal. Feb. 22, 2016); *Ollison v. Vargo*, No. 6:11-cv-01193-SI, 2012 WL 5387354, at *2–3 (D. Or. Nov. 1, 2012) (holding remedy appeared "effectively unavailable" to prisoner who was mentally and physically incapable of filing a grievance during the prescribed period).

From August 17th to October 22nd, a period that included the full ten-day exhaustion window, Ms. Coopwood was not taking any of her anti-psychotic medications, and she was in considerable pain as a result of the kick. Mental Health Records, RE 20-1, PageID #320, 322–23, 325 (Jail records showing awareness of Ms. Coopwood's mental health history but no intervention or treatment by Jail); RE 18-2, PageID #174–75; RE 18-3, PageID #229–63 (repeated hospital visits complaining of abdominal pain and discharge). And throughout this time, Ms. Coopwood exhibited key symptoms of schizophrenia, such as depression, cognitive impairments, and psychosis, as she was without her anti-psychotic medications. Medical Records, RE 18-3, PageID #229–34; 249–51; *see supra* at 6–12. As a result, her impaired cognitive functions made it impossible for her to understand or remember events around her, complete basic tasks, and process information. *See* Coopwood Affidavit, RE 16-2, PageID #114–15 (stating that when Ms. Coopwood is off her medications, she has "great difficulty understanding events" and her "mental illness impairs [her] judgment and ability to understand or process information").

Notably, on October 19th, Dr. Haddad observed that Ms. Coopwood had been "psychotic for [an] unknown period of time" and described Ms. Coopwood's thought process as "seriously derailed," appearance as "disheveled," speech as "vague," and judgment as "poor." Medical Records, RE 18-3, PageID #229–32. A reasonable

juror could conclude that she had been experiencing such symptoms from the time she was booked into the jail—especially because her reporting of her own mental illness was so off. Mental Health Records, RE 20-1, PageID #320, 325 (Jail assessment records stating Ms. Coopwood denied mental health diagnosis despite Jail access to documented mental health history dating back to 2012); Medical Records, RE 18-3, PageID #229–34; 249–51 (Dr. Haddad noting Ms. Coopwood believed her time in a psychiatric hospital was "just to catch [up] on some sleep").

Dr. Haddad also observed that Ms. Coopwood was experiencing vivid hallucinations and he diagnosed her with "psychosis [not otherwise specified], possible schizophrenia;" "personality disorders and mental retardation" and prescribed her an anti-psychotic. *Id.* at PageID #233. At this time, she was deemed incompetent to make medical decisions. *See id.* at PageID #251. In a subsequent visit with Dr. Rodriguez, on November 8th, Ms. Coopwood was provided an anti-psychotic medication and was able to consent to inducing labor. *Id.* at PageID #268. By this time, however, it was too late for her to file a grievance because Jail policy does not allow grievances to be filed more than ten days after an incident. *See* Inmate Handbook, RE 5-4, PageID #56–58.

The Jail's own records also show that Ms. Coopwood was exhibiting symptoms of her mental illness from the moment she was booked into the facility. For example, the Jail's initial evaluator noted that Ms. Coopwood's mood was

"depressed" and her affect was "blunted," *see* Medical Records, RE 18-2, PageID #157, which are two key symptoms of schizophrenia. And although Ms. Coopwood denied a history of mental illness, medication, or hospitalization, the evaluator also noted that "inmate currently denies [mental health] [treatment] but [history] in [Detroit Wayne Integrated Health Network] states otherwise." *See id.*

During her follow-up evaluation on August 18th, Ms. Coopwood reported that she had been "diagnosed with 'insomnia and like depression but I kinda got over that.'" Mental Health Records, RE 20-1, PageID #320. The evaluator, however, knew that Ms. Coopwood was not fully reporting her mental health history because the evaluator had access to her medical records. *Id.* at PageID #325. Indeed, the Jail was aware that Ms. Coopwood was struggling with mental health because they housed her in the psychiatric unit and gave her an anti-depressant. *See id.* at PageID #322; Coopwood Affidavit, RE 16-2, PageID #114–15. But, this is the only mental health treatment the Jail provided. From this evidence, a reasonable juror could find that given Ms. Coopwood consistent mental illness history from 2008–2017 and Dr. Haddad's evaluation in October, it is reasonable that she was also experiencing debilitating symptoms that impaired her ability to exhaust during the ten-day period.

This is the kind of evidence that this Court called for in *Doss.* Unlike the plaintiff in *Doss*, who did not have any documented mental incapacities and no evidence in the record to support that he was illiterate, *see Doss*, 2022 WL 1422805,

at *2, Ms. Coopwood has nine years of records confirming her diagnosis and explaining how her mental illness impaired her cognitive abilities. Indeed, her situation is more like that of the plaintiff in *Braswell*, where this Court found that administrative remedies were unavailable because the record established that the plaintiff, who would eventually be diagnosed with schizophrenia and exhibited clear symptoms, was incapable of filing a grievance. 419 F. App'x at 624–26. Here, Ms. Coopwood had already been diagnosed with bi-polar disorder and schizophrenia multiple times, had extensive records of her symptoms and hospitalizations, and exhibited increasing cognitive impairments during her ten-day grievance window and for months after. That is, the evidence shows that Ms. Coopwood was not "actually *capable* of filing . . . a grievance" under the PLRA. *Braswell*, 419 F. App'x at 625 (emphasis in original).

Both this Court's and other circuit's reasoning support the conclusion that Ms. Coopwood's mental illness is enough on its own to find that remedies were unavailable. For example, in *Weiss*, 853 F.3d at 875, the Seventh Circuit held that a grant of summary judgment for failure to exhaust was inappropriate because the prisoner had alleged a mental health issue that, if true, might have made it impossible for him to comply with the grievance process. *Id*. at 874–75; *see also Lanaghan*, 902 F.3d at 688–89 (reversing dismissal for nonexhaustion where the "undisputed facts establish[ed] that [the prisoner] faced severe physical limitations" and could not

complete the grievance form). Here, Ms. Coopwood has evidence showing that her mental health was so severe that she was incapable of making sound decisions about her medical wellbeing unless she took her anti-psychotic medications. A jury could reasonably infer that she was also unlikely able to make sound decisions about her grievance and incapable of using administrative remedies until she received her medications. Thus, remedies were unavailable.

Contrary to the district court's conclusion, Ms. Coopwood is not asking this Court to carve out "an overarching mental capacity exception [which] would permit a prisoner with the slightest impairment to bypass the grievance process in its entirety." Order Granting Defs' Mot. to Dismiss, RE 22, PageID #352. Rather, she is asking this Court to follow Supreme Court and its own precedent, which requires courts to consider whether her real-world barriers made exhaustion unavailable.

Unable to deny this proposition, the district court recognized that "there are certain impairments that would render a prisoner incapable of understanding a prison grievance process." *Id*. Here, the record is replete with evidence that Ms. Coopwood was unable to understand the proceedings around her because she was delusional, experienced hallucinations, and was incapable of making decisions because of her schizophrenia. *See supra*, at 6–12. Still, to find that administrative remedies were available, the district court relied on an unpublished opinion for the proposition that the PLRA does not include a mental capacity exception. *See* Order Granting Defs'

Mot. to Dismiss, RE 22, PageID #352. However, *Williams v. White*, 724 F. App'x 380 (6th Cir. 2018), is neither relevant nor instructive to Ms. Coopwood's case. In *Williams*, this Court summarily dismissed, in a single sentence, the plaintiff's argument that "he personally lacked the mental capacity to make sense of that process" because "there is no mental-capacity exception to the PLRA." *Williams*, 724 F. App'x at 383. Unlike *Williams*, Ms. Coopwood is not asking for a blanket mental-capacity exception. Rather, Ms. Coopwood asked the district court to follow *Ross*'s and this Court's directive to consider whether her particular obstacles prevented her from properly navigating the Jail's grievance system.

II. Prison Officials Thwarted Ms. Coopwood's Attempts to Submit a Grievance, Making the Remedy Process Unavailable.

In addition to Ms. Coopwood's mental health illnesses rendering remedies unavailable to her, the Jail thwarted her ability to exhaust remedies when it denied her information about the grievance process and the necessary forms to do so. These obstructions would make remedies unavailable to someone *without* a serious mental illness. In Ms. Coopwood's case, they rendered the grievance system even more impassable.

Under *Ross*, administrative remedies are not available when "prison administrators thwart inmates" from using the grievance process. 578 U.S. at 644. Such thwarting by prison officials need not be malicious or nefarious to render administrative remedies unavailable. *See, e.g., Hill v. Haynes*, 380 Fed. App'x 268,

273–74 (4th Cir. 2010) (remanding where a genuine issue of material fact existed regarding whether "action or inaction" of prison officials rendered remedies unavailable, without regard to specific intent); *see also Lanaghan*, 902 F.3d at 688 ("[A] grievance procedure can be unavailable even in the absence of affirmative misconduct. The term 'available' is given its ordinary meaning, and it does not include any requirement of culpability on the part of the defendant.").

As an initial matter, the district court inexplicably posited that it was "undisputed that Coopwood was provided with the details of the grievance procedure during intake." Order Granting Defs' Mot. to Dismiss, RE 22, PageID #346. That was error. In fact, Ms. Coopwood swore in an affidavit that she "certainly do[es] not recall receiving any forms related to time constraints or other requirements relative to filing an internal grievance with the jail." Coopwood Affidavit, RE 16-2 PageID #115. Defendants did not submit evidence showing otherwise and, so, they failed to meet their burden. *Surles*, 678 F.3d at 457 n.10 ("[I]f the plaintiff contends that [she] was prevented from exhausting [her] remedies," the defendant must "present evidence showing that the plaintiff's ability to exhaust was not hindered."). Thus, construing the evidence in Ms. Coopwood's favor, she was never informed of the grievance process, which is enough on its own to render remedies unavailable to her. *Hernandez v. Dart*, 814 F.3d 836, 842 (7th Cir. 2016) ("It is not incumbent on the prisoner to divine the availability of grievance

procedures. Rather, prison officials must inform the prisoner about the grievance process." (citation omitted)); *White v. Bukowski*, 800 F.3d 392, 397 (7th Cir. 2015) (remedies unavailable where prisoner was "[u]ninformed about any deadline for filing a grievance").

Second, even if failing to inform her of the process was not enough to make the grievance process unavailable, Defendants thwarted her ability to file a grievance when they denied her the correct forms.

Ms. Coopwood argued that she could not exhaust remedies because she lacked "access to the necessary forms" to complete the grievance process. Plf's Supp. Br. in Opp. To Defs' Mot. to Dismiss, RE 21, PageID #337. This Court recently "agree[d] with [its] sister circuits that administrative remedies are not 'available' if prison employees refuse to provide inmates with necessary grievance forms when requested." *Lamb v. Kendrick*, No. 21-3390, 2022 WL 14713620, at *7 (6th Cir. Oct. 26, 2022). In *Lamb*, this Court reasoned that if the plaintiff's assertions in a sworn affidavit "are true, they would at least create a dispute of fact regarding whether prison officials [] failed to follow their own procedures and thwarted his affirmative efforts …." *Id*. Defendants did not meet their burden, this Court concluded, because they did "not present[] any evidence, let alone any irrefutable evidence, demonstrating that [defendants] did in fact provide [the plaintiff] with grievance forms when he requested them." *Id.* at *8. This Court also did not credit defendants'

"competing declarations" which did "not demonstrate the absence of a factual dispute" on whether proper grievance forms were available. *Id.*

This is exactly what occurred here. Defendants' sole piece of evidence was a declaration from Director Crawford stating that its "compliance department made a diligent search of the Division 1 grievance records" which yielded "no record of Plaintiff filing a grievance." Crawford Decl., RE 5-2, PageID #30.[8] Crawford's declaration, however, does not prove that Ms. Coopwood received the proper grievance forms. And the district court was not at liberty to disregard Ms. Coopwood's affidavit. *See Harris v. J.B. Robinson Jewelers*, 627 F.3d 235, 239 (6th Cir. 2010). This is "sufficient to create a genuine dispute of material fact." *Lamb*, 2022 WL 14713620, at *7; *see also Brock v. Kenton Cnty.*, 93 F. App'x 793, 798 (6th Cir. 2004) (holding that where the prisoner took "some affirmative efforts to comply with the administrative procedure[,] [t]he procedure becomes 'unavailable' because prison officials have somehow thwarted the inmates' attempts"); *Neale v. Hogan*, No. 21-7287, 2022 WL 12325186, at *2 (4th Cir. Oct. 21, 2022) (reversing

[8] Crawford's declaration also attached language from Wayne County Jail's Operations Manual which was issued/revised on November 27, 2007. However, this does not match language in the Inmate Handbook which was in effect on February 2017. *Compare* Crawford Decl., RE 5-2, PageID #31–35 (requiring, for example, informal resolution with staff prior to filing and grievance and allowing a prisoner to file a grievance on any "writing paper") *with* Inmate Handbook, RE 5-4, PageID #56–58 (no mention of an informal resolution requirement and stating that grievances will only be accepted if they are on the proper grievance form).

the district court's dismissal for failure to exhaust because plaintiff's contention that officers failed to provide grievance forms was not rebutted by defendants' evidence, which at most "created an issue of fact" that should have been resolved in plaintiff's favor).

Accordingly, "exhaustion is not required when the prison officials responsible for providing grievance forms refuse to give a prisoner the forms necessary to file an administrative grievance." *Hill v. Snyder*, 817 F.3d 1037, 1041 (7th Cir. 2016). Indeed, "[e]vidence of the appropriate official's refusal to give a prisoner an available form 'is sufficient to permit a finding' that the administrative remedies were not available." *Gooch v. Young*, 24 F.4th 624, 627 (7th Cir. 2022) (quoting *Hill*, 817 F.3d at 1041); *see also, e.g.*, *Kaba v. Stepp*, 458 F.3d 680, 686 (7th Cir. 2006) (remedies are unavailable when prison staff denied prisoner grievance forms, threatened him, and solicited other prisoners to attack him for filing grievances); *Dale v. Lappin*, 376 F.3d 652, 656 (7th Cir. 2004) (remedies unavailable when prison staff prevented access to grievance forms); *Mitchell v. Horn*, 318 F.3d 523, 529 (3rd Cir. 2003) (holding that administrative remedies were unavailable because prison officials refused to provide plaintiff with the necessary grievance forms); *Miller v. Norris*, 247 F.3d 736, 738–40 (8th Cir. 2001) (prison officials' failure to respond to plaintiff's requests for grievance forms raised a genuine issue of fact as to the availability of administrative remedies).

That Jail officials did not give Ms. Coopwood the correct form made exhaustion impossible because the Jail's own policy plainly says it "will not accept grievances that are not on the form." Inmate Handbook, RE 5-4, PageID #56. Moreover, Ms. Coopwood swore under oath that after Watt assaulted her, "I asked to speak to someone about the altercation, and my desperate need for medical attention. I asked to speak to whoever was in charge, and they wouldn't let me." Coopwood Affidavit, RE 16-2, PageID #115. Without access to the proper form, Ms. Coopwood did her best to submit a complaint: "Eventually, after additional complaints, I did fill out some type of paper, which I believe they told me was a grievance form. I do not remember the name of the officer or guard who took my complaint, but it was to a Sgt. on the 5th floor with the Psychiatric Unit." *Id.* at PageID #115.[9] Whatever form Ms. Coopwood submitted, Defendants claim not to have a record of it. Crawford Decl., RE 5-2, PageID #30. This is perhaps predictable, since the Jail by policy does not accept grievances that are not on the proper grievance form. Inmate Handbook, RE 5-4, PageID #56.

[9] The district court erroneously described the grievance policies as requiring "informal contact with staff" prior to submitting an "Inmate Grievance Form. Order Granting Defs' Mot. to Dismiss, RE 22, PageID #346. The Handbook, which was in effect February 2017, does not require a prisoner to informally resolve the grievance prior to filing a formal handwritten grievance. Rather, the Handbook's first, and only, step for initiating a grievance is to fill out a Grievance Form and hand it to any member of the staff, or mail it in, within ten days of the alleged incident. *See* Inmate Handbook, RE 5-4, PageID #56–58.

At this stage, all disputed facts must be resolved in favor of Ms. Coopwood. Where there is a factual question as to whether a litigant's particular obstacles rendered them unable to exhaust, entry of summary judgment on exhaustion grounds is inappropriate.

* * *

In all, Ms. Coopwood's impaired mental capacity rendered her unable to use the Jail's grievance process. The Defendants added an additional obstacle when they refused to provide the correct form and instructions necessary for Ms. Coopwood to file a grievance that the Jail would accept. Either of these situations standing alone would render administrative remedies unavailable to Ms. Coopwood; together, they erected an impenetrable barrier.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's grant of summary judgment on exhaustion grounds and remand the case for consideration of the merits of Ms. Coopwood's claims.

Dated: November 10, 2022

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE WITH
FRAP RULE 32(A)(7), FRAP RULE 32(G) AND CIR. R. 32(C)

1. This Brief complies with type-volume limitation of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure and Circuit Rule 32(b) because, according to the word count function of Microsoft Word 2019, the Brief contains 8,400 words excluding the parts of the brief exempted by Rule 32(f) of the Federal Rules of Appellate Procedure.

2. This Brief complies with the typeface and type style requirements of Rule 32(a)(5) and (6) of the Federal Rules of Appellate Procedure and Circuit Rule 32(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2019 in 14-point Times New Roman font for the main text and 14-point Times New Roman font for footnotes.

Dated: November 10, 2022

/s/ Felipe De Jesús Hernández
Felipe De Jesús Hernández

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2022, I electronically filed the foregoing document through the court's electronic filing system, and that it has been served on all counsel of record through the court's electronic filing system.

Dated: November 10, 2022

/s/ Felipe De Jesús Hernández
Felipe De Jesús Hernández

DESIGNATON OF RELEVANT DISTRICT COURT DOCUMENTS

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