

Civil Rights Update

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Seventh Circuit Clarifies “Excusable Neglect” Requirement Under Federal Rule of Civil Procedure 6(b)(1)(B) as It Applies to Second Motion for Summary Judgment

The Seventh Circuit Court of Appeals recently issued a succinct opinion clarifying the application of the “excusable neglect” requirement of Federal Rule of Civil Procedure 6(b)(1)(B) as it relates to a second motion for summary judgment filed by the defendants. *Bowman v. Korte*, 962 F.3d 995 (7th Cir. 2020). At issue was whether the District Court’s granting of the defendant’s request to file a second motion for summary judgment, which was limited to the exhaustion of administrative remedies issue, was proper in light of the defendants’ failure to file the motion within the time frame established by the Court.

Carlos Bowman brought this lawsuit under 42 U.S.C. § 1983 (“Section 1983”) to address the alleged abuse he suffered while incarcerated in the Western Illinois Correctional Center. *Bowman*, 962 F.3d at 996. The plaintiff claimed that while he was incarcerated, corrections officers subjected him to abuse in the form of physically beating him, choking him, and forcing the plaintiff, along with other inmates, to line up one in front of the other so close their hands were on or near each other’s genitals for hours. *Id.* The plaintiff reported the alleged abuse by filing a grievance within the prison on April 20, 2014, which was denied by the prison. *Id.* The State of Illinois’ Administrative Review Board affirmed the denial. Subsequently, the plaintiff brought a lawsuit under Section 1983 against multiple corrections officers and supervisors alleging the use of excessive force and failure to intervene in violation of the Eighth Amendment. *Id.* at 996-97.

In their answer, the defendants asserted that the plaintiff failed to properly exhaust his administrative remedies as an affirmative defense to his claims. *Id.* at 997. The Court issued a scheduling order which required the defendants to file any motion for summary judgment relating to the exhaustion of administrative remedies issue they desired to file, within thirty days of the scheduling order. *Id.* No motion relating to exhaustion of administrative remedies was filed within the deadline, and the case proceeded with discovery. Three months after the close of discovery, the defendants moved for summary judgment. *Id.* While the defendants made substantive arguments as to why summary judgment should be granted in their favor, the defendants did not raise the issue of exhaustion of administrative remedies. *Id.* One of the defendants’ arguments even appeared to presume exhaustion of such remedies. *Id.* Ultimately, the Court granted the motion in part and denied it in part, and set the case for trial. *Id.*

Two months before trial was set to begin, newly retained counsel for the defendants sought leave from the Court to file a second motion for summary judgment, this time limited to the issue of exhaustion of administrative remedies. *Id.* Recognizing that the motion was being proposed over two years after the Court’s deadline, the defendants cited Federal Rule of Civil Procedure 6(b)(1)(B) arguing that good cause existed to allow the second motion, and that the defendants had previously failed to timely move for summary judgment on the issue of exhaustion of administrative remedies because of excusable neglect. *Id.* Newly appointed counsel argued that she only recently discovered that Mr. Bowman

had not properly exhausted his administrative remedies. *Id.* The plaintiff opposed the motion, arguing that the second motion came approximately two years too late, and that the defendants' neglect was, in fact, not excusable. *Id.* Instead, the plaintiff claimed it was purely negligence. *Id.* The District Court granted the defendants' request to file a second motion for summary judgment, and ultimately entered summary judgment in their favor. *Id.* This appeal followed.

On appeal the plaintiff argued, among other things, that the defendants did not show excusable neglect under Rule 6(b)(1)(B). *Id.* at 997-98. The Court agreed that the operative question in this case revolved around whether the defendants put forth enough evidence to show excusable neglect, such that they were entitled to file a second motion for summary judgment. *Id.* The Court began its analysis by looking to the record for the circumstances the defendants cited in the District Court which they claim amounted to excusable neglect. The Appellate Court found that the defendants' only explanation for failing to file a motion for summary judgment on the issue of exhaustion of administrative remedies prior to the deadline imposed by the scheduling order was due to "unknown reasons". *Id.*

The Court reasoned that in order to find excusable neglect, courts should consider all relevant circumstances surrounding the party's neglect, including any prejudice to the non-moving party, the length of the delay, and the reason for the delay, citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993). *Bowman*, 962 F.3d at 998. In this circumstance, the record was unclear as to whether the District Court applied the proper standard. Rather than referring to the factors relevant to excusable neglect, the District Court relied on defense counsel's statement that the reason previous counsel failed to move on the issue of exhaustion of administrative remedies was unknown. *Id.*

The Appellate Court went on to find that the fatal flaw in the defendants' argument was the failure to explain counsel's oversight. *Id.* Plain neglect does not meet the excusable neglect requirement under Rule 6(b)(1)(B). *Id.*; see also *Nestorovic v. Metro. Water Reclamation Dist. of Greater Chi.*, 926 F.3d 427, 431-32 (7th Cir. 2019) (dismissing appeal for failure to show excusable neglect under 28 U.S.C. § 2107(a)); *Satkar Hosp., Inc. v. Fox Television Holdings*, 767 F.3d 701, 708 (7th Cir. 2014) (holding that Federal Rule of Appellate Procedure 4(a)(5) requires "excusable neglect," which is more than "plain neglect"). The Court further found that even if it was assumed that the plaintiff suffered no prejudice, a lack of explanation "will not suffice if no excuse at all is offered or if the excuse is so threadbare as to make the neglect inexplicable." *Bowman*, 962 F.3d at 998; see also *United States v. McLaughlin*, 470 F.3d 698, 700-01 (7th Cir. 2006). As a result, the Appellate Court held that the District Court abused its discretion in granting the defendants leave to file a second motion for summary judgment on the issue of exhaustion of administrative remedies. *Bowman*, 962 F.3d at 998.

While it may not be common for an attorney to find themselves in a position where they are requesting leave to file a second motion for summary judgment, the *Bowman* case is a good illustration of the excusable neglect requirement, which must be met for any motion for extension of time filed under Rule 6(b)(1)(B). It is important to keep in mind that Rule 6(b)(1)(B) applies to any circumstance where a party seeks leave to file, or take any action, after a deadline has passed. As a result, whenever the circumstance arises, it is essential to make a record of *why* a failure to meet a deadline is excusable under the rule.

About the Author

Jordan W. Emmert is an associate with *Heyl, Royster, Voelker & Allen, P.C.*, practicing out of its Rockford, Illinois office. Mr. Emmert focuses his practice on civil litigation in both federal and state courts in the areas of civil rights, commercial litigation, and workers' compensation. In the area of civil rights defense, he represents correctional



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