

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 1567

KELSEY JOHN BENOIT

VERSUS

JAMES M. LEBLANC & MARK DELAUNE

Judgment Rendered: March 26, 2010

**Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Number 576,153**

The Honorable William Morvant, Judge Presiding

**Kelsey Benoit
Cottonport, LA**

**Plaintiff/Appellant in Proper Person,
Kelsey Benoit**

**William Kline
Baton Rouge, LA**

**Counsel for Defendant/Appellee,
Louisiana Department of Corrections**

BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

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WHIPPLE, J.

Plaintiff, Kelsey John Benoit, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (“the Department”) housed at Avoyelles Correctional Center, challenges the district court’s dismissal of his petition for judicial review and request for declaratory and mandamus relief on an exception of lack of subject matter jurisdiction raised by the district court. For the following reasons, we affirm.

PROCEDURAL HISTORY

On March 6, 2009, plaintiff filed a petition for judicial review, seeking: (1) a judgment declaring that his “complaint” involving the actions of a probation and parole agent, which he averred did not involve “a prison condition,” had been properly filed when submitted to the Internal Affairs Division of the Office of Adult Services; and (2) an order instructing the Department to respond within fifteen days.

A commissioner screened the petition prior to service on the Department, pursuant to the requirements of LSA-R.S. 15:1178 and 15:1188, and issued a recommendation noting that, although plaintiff did not make any specific allegations regarding the nature of his complaint, he contended that his complaint “does not concern a condition of confinement.” Thus, the commissioner noted plaintiff’s complaint regarding his supervision while out of the physical custody of the Department is outside the scope of the Corrections Administrative Remedy Procedure Act (“CARP”) and LSA-R.S. 15:1177, which grants the district court appellate jurisdiction to review a decision denying a request for administrative relief under CARP.¹ Specifically, the commissioner noted that the court does not have subject matter jurisdiction over an inmate complaint filed outside the

¹We recognize that pursuant to *Pope v. State*, 99-2559 (La. 6/29/01), 792 So. 2d 713, LSA-R.S. 15:1171 through 15:1179 of the Corrections Administrative Remedy Procedure have been held unconstitutional if applied to tort actions.

Administrative Remedy Procedure, directly with the Department, and thus, the district court had no authority to exercise subject matter jurisdiction over plaintiff's complaint raised in this manner. The commissioner further noted that even if plaintiff's request were considered as a request for mandamus relief directed to a State agency headquartered in the parish, plaintiff failed to show any statutory or regulatory requirement that the Department issue a response to his "complaint," much less within a specific time period. Thus, the commissioner recommended that the petition for judicial review be dismissed on an exception of lack of subject matter jurisdiction as raised by the district court.

After being served with the commissioner's screening report, plaintiff filed a traversal. Therein, plaintiff claimed that he had instituted an Administrative Remedy Procedure against his probation officer for "his abusive [sic] of discretion and authority" and that the Department of Probation and Parole had "refused to respond" to his complaints. Plaintiff did not identify an ARP number or provide documentation evidencing the commencement of an underlying administrative procedure.

On June 3, 2009, the district court rendered judgment dismissing plaintiff's request for declaratory and mandamus relief on an exception of lack of subject matter jurisdiction, without prejudice and prior to service, in accordance with the commissioner's recommendation. From this judgment, plaintiff appeals, now contending that an administrative remedy request pertaining to the actions of a probation and parole agent is within the scope of CARP and that the district court erred in finding that it lacked subject matter jurisdiction.

DISCUSSION

As the commissioner correctly noted, plaintiff does not identify or allege any administrative procedure from which his appeal to the district court was taken. Moreover, while plaintiff alleges in his petition that he presented the facts

relating to his complaint to the prisoner's grievance procedure, plaintiff also acknowledges therein that he was never assigned a number for his prisoner grievance, claiming that "[s]ince the request involved the action(s) of a probation and parole agent and not a prison condition, it was properly filed with the Office of Adult Services."

Pursuant to LSA-R.S. 15:1172(C), if an administrative remedy process is not completed at the time the petition is filed, the suit shall be dismissed without prejudice. Where an inmate fails to exhaust available administrative remedies, the district court and the appellate court lack subject matter jurisdiction to review the claim. See Lewis v. Rogers, 2005-1138 (La. App. 1st Cir. 6/9/06), 938 So. 2d 1025, 1026. Further, to the extent that plaintiff is seeking mandamus relief, we likewise find that the district court correctly determined that it lacked subject matter jurisdiction to review plaintiff's "complaint."

CONCLUSION

Accordingly, the June 3, 2009 judgment of the district court is affirmed. All costs associated with this appeal are assessed to the plaintiff/appellant, Kelsey John Benoit.²

AFFIRMED.

²Although plaintiff's suit was brought *in forma pauperis*, the costs of an unsuccessful appeal may be assessed against him. See Hull v. Stalder, 2000-2730 (La. App. 1st Cir. 2/15/02), 808 So. 2d 829, 833, n.3.