

BRADFORD, Judge

In this pro se appeal, Appellant-Plaintiff Aaron Israel challenges the trial court's grant of summary judgment in his civil rights action against Appellees-Defendants Evelyn Ridley-Turner, Craig Hanks, Cecil Davis, and Dawn Buss. We affirm.

FACTS AND PROCEDURAL HISTORY¹

Israel has been an inmate within the Indiana Department of Correction since 1990. On October 12, 1990, Israel was assigned to the Disciplinary Segregation unit at the Pendleton Correctional Facility. On that day Israel stabbed two correctional officers and killed a K-9. Israel was subsequently convicted of two counts of attempted murder and sentenced to an additional forty years in prison. Since the October 12, 1990 event, Israel has accumulated an extensive history of disciplinary actions within the Department of Correction.² In approximately February of 2003, for the stated purpose of renovations, Israel was transferred from the Disciplinary Segregation Unit at the Indiana

¹ Our review of the instant case is significantly impeded by Israel's failure to include relevant page numbers from the record in his Statement of Facts. Israel's record citations in this Statement merely reference the unsubstantiated facts alleged in his complaint. Indiana Appellate Rule 46(A)(6)(a) requires that the Statement of Facts be supported by page references to the Record on Appeal or Appendix. In addition, many of the pages in Israel's Appendix contain multiple page numbers, further confusing our review of those record citations which are supplied.

² Israel is a frequent litigant. In *Israel v. Indiana Department of Correction*, 868 N.E.2d 1123, 1124 (Ind. 2007), the Supreme Court dismissed, on subject matter jurisdiction grounds, Israel's challenge to a DOC disciplinary decision requiring him to pay restitution. In doing so, the *Israel* court concluded that agency actions relating to offenders within the DOC were not subject to judicial review. *Id.* Justice Boehm, joined by Justice Dickson, dissented on the grounds that precedent could not support eliminating the court's jurisdiction over any claim tangentially related to prisoner discipline. *Id.* at 1125. In *Smith v. Indiana Department of Correction*, 871 N.E.2d 975, 983-84 (Ind. Ct. App. 2007), this court opined that the *Israel* decision did not operate to bar claims of ill or unjust treatment, which in the *Smith* court's view were always available. Here, Israel's six-page, single-spaced complaint alleges a great number of violations, many arguably attributable to prisoner discipline. In light of the *Smith* interpretation of *Israel*, however, we will address the merits of summary judgment rather than conclude that Israel's claims were outside the jurisdiction of this court.

State Prison to the Pendleton Correctional Facility. One of the officers Israel had stabbed in 1990 was stationed at Pendleton Correctional Facility, where he was required to inspect Israel's unit. Based upon stated security considerations given Israel's history with this officer, in approximately February of 2003, Israel was transferred to the Wabash Valley Correctional Facility ("WVCF") where he was placed in long-term administrative segregation in the secured housing unit ("SHU").

On November 20, 2003, Israel filed the instant civil rights action in Marion Superior Court in which he asserted claims, relating largely to what he alleged were retaliatory actions and placement within the DOC, under the United States Constitution, the Indiana Constitution, and Title 11 of the Indiana Code. On March 3, 2004, the action was removed to the United States District Court, Southern District. On October 18, 2004, the District Court granted the Defendants' motion for partial summary judgment on Israel's federal claims on the ground that he had failed to exhaust his administrative remedies. The Court also granted the Defendants' motion for partial judgment on the pleadings on Israel's Indiana Constitutional claims on the ground that there was no cause of action for damages under the Indiana Constitution. Accordingly, on January 25, 2006, the District Court issued a final judgment dismissing Israel's federal claims without prejudice, dismissing his Indiana Constitutional claims with prejudice, and remanding to the Marion Superior Court for consideration of his Title 11 claims.

On March 19, 2008, the action, which had been stayed pending disposition by the District Court, appeared on remand before the Marion Superior Court. On September 4, 2008, the Defendants filed a motion for summary judgment. On November 17, 2008,

the trial court granted the Defendants' motion. On November 25, 2008, Israel filed his notice of appeal.

DISCUSSION AND DECISION

The party appealing from a summary judgment decision has the burden of persuading the court that the grant or denial of summary judgment was erroneous. *Severson v. Bd. of Trs. of Purdue Univ.*, 777 N.E.2d 1181, 1188 (Ind. Ct. App. 2002), *trans. denied*. Summary judgment is appropriate only if the pleadings and evidence sanctioned by the trial court show that “there is no genuine issue as to any material fact and that the moving party is entitled to [a] judgment as a matter of law.” *Id.* (quoting Ind. Trial Rule 56(C)). The review of a summary judgment motion is limited to those materials designated to the trial court. *Id.* On a motion for summary judgment, all doubts as to the existence of material issues of fact must be resolved against the moving party. *Id.*

I. Federal and Indiana Constitutional Claims

Israel first challenges the trial court's summary judgment on the grounds that it did not address the merits of his constitutional claims. Yet these claims, which were removed to the District Court and dismissed, were not before the trial court. Prior to remand on the Indiana statutory claims, the District Court addressed Israel's federal and Indiana Constitutional claims and dismissed them on the grounds that, with respect to Israel's federal constitutional claims, he had failed to exhaust his administrative remedies, and with respect to the Indiana Constitutional claims, they did not authorize a

private right of action. Israel apparently attempted to challenge the District Court's judgment, but his appeal was unsuccessful.

While in disputing the Defendants' motion for summary judgment following remand to the trial court, Israel may have re-raised his federal claims, he failed to demonstrate that he had since exhausted his administrative remedies. Before a prisoner may bring a 42 U.S.C. § 1983 action in an Indiana state court, he must exhaust all administrative remedies. *See Higgason v. Stogsdill*, 818 N.E.2d 486, 490 (Ind. Ct. App. 2004), *trans. denied*. Accordingly, we reject Israel's claim of error with respect to the trial court's only considering the single challenge remanded for its consideration by the District Court.

II. Title 11 Claims

Israel also challenges the trial court's grant of summary judgment on the grounds that Indiana Code Title 11 creates no private right of action. In making this challenge, Israel mentions "Title 11, and its corresponding statutes," but specifically references only Indiana Code section 11-11-5-4. Appellant's Br. p. 34.³ Because Israel fails to argue that certain statutes under Title 11 should receive different treatment than section 11-11-5-4, we will confine our review to this statute and deem waived any claim by Israel that alternative statutes require a different analysis. *See Ind. Appellate R. 46(A)(8)(a)*.

In *Blanck v. Indiana Department of Correction*, 829 N.E.2d 505, 508-10 (Ind. 2005), the Indiana Supreme Court specifically found that section 11-11-5-4, as well as

³ Page numbers in the appellant's brief which are referenced in this opinion correspond to the numbers appearing in the upper right-hand corner of the page.

Indiana Code sections 11-10-1-7, 11-11-5-5, 11-11-5-6, and 11-11-5-7, did not create a private right of action for inmates seeking to enforce them. Although Israel also argues that a private right of action under Title 11 is somehow resurrected when placed in conjunction with § 1983, he fails to provide relevant authority on this point. In any event, the District Court dismissed the § 1983 claim, and Israel made no showing that he had exhausted his administrative remedies such that this claim was properly before the trial court. In addition, to the extent Israel also claims that Title 11 creates substantive rights which are enforceable as a matter of constitutional due process under § 1983, we have already concluded that his failure to exhaust administrative remedies precludes any § 1983 claims. Israel's challenge to summary judgment on Title 11 grounds fails.

III. Hearing

Israel further challenges the trial court's grant of summary judgment by claiming that the trial court committed error in issuing judgment without conducting a hearing. Trial Rule 56(C), which was amended effective January 1, 2006, provides that a trial court may conduct a summary judgment hearing, but that it is not required to do so unless one of the parties requests it. *See Logan v. Royer*, 848 N.E.2d 1157, 1159 n.6 (Ind. Ct. App. 2006). There is no indication from the record that Israel made a timely request for a hearing. We find no error on this ground.

IV. Admissibility of Evidence

Israel also challenges the admissibility of certain documentary evidence presented by the Defendants in the summary judgment proceedings. Israel apparently moved to strike all of the exhibits introduced by the Defendants. The trial court apparently did not

rule on Israel's motion, which the State concedes was error but also an implicit denial of Israel's motion. *See Palmer v. State*, 173 Ind. App. 208, 213, 363 N.E.2d 1245, 1248 (Ind. Ct. App. 1977) (finding failure to rule on motion to strike was error but that error was harmless and that grant of summary judgment was implicit denial of motion).

Israel's challenge to the State's exhibits 1-4, none of which he included in his appendix, is on the ground that they are "self-serving statements." Appellant's Br. p. 36. In *Bracey v. Herringa*, 466 F.2d 702, 705 (7th Cir. 1972), the Seventh Circuit found it was error for a trial court to consider prison records including self-serving statements made by the defendant prison guards for purposes of a summary judgment dismissal of a prisoner's civil rights complaint. Unlike in *Bracey*, State's Exhibits 1-4 were not statements by the defendants.⁴ Further, Exhibits 3 and 4 were Israel's conduct summary and classification history obtained from the DOC Offender Information System. Israel fails to establish that any of the State's exhibits presented the great risk of unreliability that was apparent in *Bracey*. Without more specific objections to specific portions of this evidence, we cannot say that the trial court abused its discretion in admitting these exhibits or that its failure to rule on Israel's motion to strike was anything but harmless.

V. *Res Judicata*

Israel alleges that *res judicata* does not apply to prevent this court's consideration of the merits of his federal and state constitutional claims because the District Court did not consider these claims on their merits. Even if *res judicata* does not apply, Israel fails to demonstrate that either his federal or state constitutional claims are reviewable on the

⁴ The State supplemented the record with these exhibits in its Appellee's Appendix.

merits. Indiana state courts require exhaustion of administrative remedies before inmates may file § 1983 claims related to prison conditions. *Abdul-Wadood v. Batchelor*, 865 N.E.2d 621, 624 (Ind. Ct. App. 2007), *trans. denied*. Israel points to no designated evidence demonstrating that he exhausted his administrative remedies since his federal claims were dismissed on this ground. With respect to Israel's Indiana Constitutional claim, there is no express or implied right of action for monetary damages under the Indiana Constitution. *Smith v. Ind. Dep't of Corr.*, 871 N.E.2d 975, 985-86 (Ind. Ct. App. 2007), *trans. denied*. To the extent Israel seeks additional relief from his Indiana Constitutional challenge, he made no argument to this effect in the summary judgment proceedings after this claim was dismissed, with prejudice, by the District Court. Israel's challenge on this ground fails.

The judgment of the trial court is affirmed.

CRONE, J, and BROWN, J, concur.