Nebraska Supreme Court Online Library
www.nebraska.gov/apps-courts-epub/
11/05/2026 06:04 AM CST

HOPE NPIMNEE, APPELLANT, V. MITCHELL FREEMAN, APPELLEE.

___ N.W.3d ___

Filed September 1, 2026. No. A-25-713.

1. **Affidavits: Appeal and Error.** A district court's denial of in forma pauperis status is reviewed de novo on the record based on the transcript of the hearing or written statement of the court.
2. **Constitutional Law: Judgments.** Except in those cases where the denial of in forma pauperis status would deny a defendant his or her constitutional right to appeal in a felony case, Neb. Rev. Stat. § 25-2301.02 (Reissue 2016) allows the court, on its own motion, to deny in forma pauperis status on the basis that the legal positions asserted by the applicant are frivolous or malicious, provided that the court issue a written statement of its reasons, findings, and conclusions for denial.
3. **Actions: Words and Phrases.** A frivolous legal position is one wholly without merit, that is, without rational argument based on the law or on the evidence.
4. **Federal Acts: Prisoners: Sexual Assault.** The Prison Rape Elimination Act was not intended to establish a private cause of action for allegations of prison rape, sexual assault, or sexual abuse.
5. **Actions: Pleadings: Notice.** Nebraska is a notice pleading jurisdiction, and civil actions are controlled by a liberal pleading regime. A party is required to set forth only a short and plain statement of the claim showing the pleader's entitlement to relief and is not required to plead legal theories or cite appropriate statutes so long as the pleading gives fair notice of the claims asserted. The rationale for this liberal notice pleading standard is that when a party has a valid claim, he or she should recover on it regardless of a failure to perceive the true basis for the claim at the pleading stage.
6. **Administrative Law: Appeal and Error.** Under the doctrine of exhaustion of administrative remedies, one must generally exhaust

any available administrative remedies before one can seek judicial review.

7. **Federal Acts: Administrative Law: Prisoners.** The Prison Litigation Reform Act, 42 U.S.C. § 1997e(a) (2018), requires prisoners to exhaust administrative remedies before filing actions with respect to prison conditions under 42 U.S.C. § 1983 (2018) or any other federal law.
8. **Constitutional Law: Civil Rights: Jurisdiction: States.** The states have concurrent jurisdiction to entertain actions under 42 U.S.C. § 1983 (2018); however, as a result of the Supremacy Clause found in U.S. Const. art. VI, federal law is controlling, and state courts are required to follow federal precedent when hearing actions brought under § 1983.
9. **Federal Acts: Administrative Law: Prisoners.** The exhaustion requirement of the Prison Litigation Reform Act is an affirmative defense, and prisoners are not required to anticipate or specially plead or demonstrate exhaustion of administrative remedies in their complaints.
10. **Administrative Law: Statutes: Jurisdiction.** Where a statute does not expressly require the exhaustion of administrative remedies, exhaustion is not a jurisdictional prerequisite to instituting legal action.
11. **Administrative Law.** The exhaustion of administrative remedies doctrine presents a flexible concept which must be tailored to the circumstances of the particular case.
12. **Administrative Law: Legislature: Intent.** Legislative intent is to be used as a guidepost when applying the exhaustion of administrative remedies doctrine.
13. ____: ____: ____. In the absence of legislative direction, a court must exercise sound judicial discretion in determining whether to apply the exhaustion of administrative remedies doctrine to a case.
14. **Actions: Administrative Law: Prisoners.** Neb. Rev. Stat. § 25-3401 (Cum. Supp. 2024) prevents a prisoner from obtaining in forma pauperis status after the filing of three or more actions that relate to or involve the prisoner's conditions of confinement; it provides no direction regarding the exhaustion of administrative remedies.

Appeal from the District Court for Lincoln County: PATRICK M. HENG, Judge. Reversed and remanded with direction.

Hope Npimnee, pro se.

No appearance for appellee.

Riedmann, Chief Judge, and Bishop and Freeman, Judges.

Bishop, Judge.

INTRODUCTION

Hope Npimnee, an inmate at the Tecumseh State Correctional Institution, appeals the order of the Lincoln County District Court denying his application to proceed in forma pauperis (IFP) on his complaint filed against fellow inmate Mitchell Freeman for "physical and sexual assault." The district court denied Npimnee's IFP application as frivolous, finding it alleged a cause of action under the federal Prison Rape Elimination Act of 2003 (PREA) and failed "to establish compliance with and the exhaustion of all administrative remedies before resorting to the court system." As such, the court determined that it had "no jurisdiction" until such compliance occurred and that the action was "clearly frivolous at this time." Upon our de novo review, we conclude Npimnee was not required to exhaust administrative remedies before bringing his tort action against Freeman. We therefore reverse, and remand with direction.

BACKGROUND

On August 5, 2025, Npimnee filed a pro se complaint against Freeman, seeking $50,000 in damages for two separate assaults. The complaint alleged that in July 2023, Freeman attacked Npimnee in a prison shower and digitally penetrated Npimnee's anus. Npimnee's injuries were purportedly documented by a prison nurse. A PREA investigation was initiated immediately after the alleged shower assault, but prison officials concluded the attack was "unsubstantiated." The complaint also alleged that in August, Freeman attacked Npimnee again, this time in view of prison cameras. Prison officials reportedly "dismissed" the second assault, claiming "they were unable to review [the] cameras." Npimnee filed an affidavit and application to proceed IFP, which is not included in our record on appeal.

On August 25, 2025, the district court, on its own motion, entered an order denying Npimnee's application to proceed IFP on the basis that Npimnee's complaint was frivolous and "articulate[d] no legitimate cause of action." The court specifically found that the complaint alleged assaults on Npimnee by inmate Freeman and that Npimnee alleged a "cause of action under PREA." The court found the action to be "clearly frivolous" because Npimnee "fail[ed] to establish compliance with and the exhaustion of all administrative remedies before resorting to the court system," including "appealing from the final decision as set forth in the Department's administrative procedures for such grievances." It concluded that it had "no jurisdiction unless Npimnee has shown compliance with these administrative procedures and has appealed therefrom in a timely manner." The court also "question[ed]" why the action was brought in Lincoln County but indicated its finding of frivolousness was not based on the issue of venue. See *Castonguay v. Retelsdorf*, 291 Neb. 220, 865 N.W.2d 91 (2015) (improper venue is not permissible basis for denying IFP status).

Npimnee appeals.

ASSIGNMENT OF ERROR

Npimnee assigns that the district court erred in denying his application to proceed IFP as frivolous.

STANDARD OF REVIEW

[1] A district court's denial of IFP status is reviewed de novo on the record based on the transcript of the hearing or written statement of the court. *Jackson v. Rodriguez*, 318 Neb. 657, 18 N.W.3d 408 (2025).

ANALYSIS

[2,3] Except in those cases where the denial of IFP status would deny a defendant his or her constitutional right to appeal in a felony case, Neb. Rev. Stat. § 25-2301.02 (Reissue 2016) allows the court, on its own motion, to deny IFP status on the

basis that the legal positions asserted by the applicant are frivolous or malicious, provided that the court issue a written statement of its reasons, findings, and conclusions for denial. See *Jackson v. Rodriguez, supra*. A frivolous legal position is one wholly without merit, that is, without rational argument based on the law or on the evidence. *Id.*

In this case, the district court followed the statutory procedure and determined that the complaint alleged a "cause of action under PREA" and was frivolous because Npimnee failed to exhaust his administrative remedies before filing suit. On appeal, Npimnee asserts the court's reasoning was erroneous, arguing that an exhaustion of administrative remedies is "only required when an inmate seeks to bring a claim against the prison." Brief for appellant at 3.

[4] As a preliminary matter, we note that the PREA does not create a private cause of action for prisoners. Congress enacted the PREA in 2003 to address the problem of prison rape by creating a commission to study the issue and develop national standards for the detection, prevention, reduction, and punishment of prison rape. See 34 U.S.C. § 30301 et seq. (2018 & Supp. V 2023). Federal appellate courts have routinely found that the PREA was not intended to establish a private cause of action for allegations of prison rape, sexual assault, or sexual abuse. See, e.g., *Johnson v. Garrison*, 859 Fed. Appx. 863 (10th Cir. 2021); *Bowens v. Wetzel*, 674 Fed. Appx. 133 (3d Cir. 2017); *Krieg v. Steele*, 599 Fed. Appx. 231 (5th Cir. 2015).

[5] In its order, the district court found that Npimnee alleged a "cause of action under PREA." If that were true, then Npimnee's legal position would be wholly without merit because, as explained above, no such cause of action exists under that federal statutory scheme. However, a plain reading of the complaint demonstrates that Npimnee's claims against Freeman are grounded in Nebraska's common law of torts, not the PREA. When construing the complaint in this case, we remember that Nebraska is a notice pleading jurisdiction,

and civil actions are controlled by a liberal pleading regime. See *Schmid v. Simmons*, 311 Neb. 48, 970 N.W.2d 735 (2022). A party is required to set forth only a short and plain statement of the claim showing the pleader's entitlement to relief and is not required to plead legal theories or cite appropriate statutes so long as the pleading gives fair notice of the claims asserted. *Id.* See, also, Neb. Ct. R. Pldg. § 6-1108(a) (rev. 2025). The rationale for this liberal notice pleading standard is that when a party has a valid claim, he or she should recover on it regardless of a failure to perceive the true basis of the claim at the pleading stage. *Schmid v. Simmons, supra*. Here, the substance of the complaint centers on two separate attacks allegedly perpetrated by Freeman upon Npimnee. The facts alleged in the complaint, if proved, would constitute the state common-law tort of battery. See *Wulf v. Kunnath*, 285 Neb. 472, 827 N.W.2d 248 (2013) (civil battery defined as actual infliction of unconsented injury upon or unconsented contact with another). The complaint only cites the PREA once in the context of an "investigation" launched by prison officials shortly after the first attack. Accordingly, we cannot conclude that the complaint's alleged tort claims are frivolous for purposes of determining IFP status.

[6] However, the district court's denial of Npimnee's application for IFP status was also based on his apparent failure to "establish compliance with and the exhaustion of all administrative remedies before resorting to the court system." The court explained that it had "no jurisdiction" to entertain Npimnee's action until such remedies were exhausted and a timely appeal was taken therefrom. Although the court cited no legal authority in making this determination, the doctrine of exhaustion of remedies is a well-established principle of administrative law. The exhaustion doctrine generally requires a party to "exhaust any available administrative remedies before one can seek judicial review." *Armstrong v. Clarkson College*, 297 Neb. 595, 627, 901 N.W.2d 1, 25 (2017).

[7-9] In the context of prison litigation, the exhaustion doctrine most often arises when a prisoner files a civil action against the Nebraska Department of Correctional Services (DCS) or state prison officials, pursuant to 42 U.S.C. § 1983 (2018), for alleged deprivations of federally protected rights. Under the federal Prison Litigation Reform Act (PLRA), no prisoner can bring an action pursuant to § 1983 or other federal law regarding prison conditions until administrative remedies have been exhausted. 42 U.S.C. § 1997e(a) (2018). And while states have concurrent jurisdiction to entertain § 1983 actions, under the Supremacy Clause found in U.S. Const. art. VI, federal law is controlling, and state courts are required to follow federal precedent when hearing actions brought under § 1983. See *Kellogg v. Nebraska Dept. of Corr. Servs.*, 269 Neb. 40, 690 N.W.2d 574 (2005) (exhaustion is mandatory in cases covered by PLRA; mandatory exhaustion requirement enacted as part of PLRA's effort to curtail frivolous and abusive prisoner litigation). But even then, the exhaustion requirement of the PLRA is an affirmative defense, and as a result, prisoners are not required to anticipate or specially plead or demonstrate exhaustion of administrative remedies in their complaints. See *Jones v. Bock*, 549 U.S. 199, 127 S. Ct. 910, 166 L. Ed. 2d 798 (2007). See, also, *Cole v. Isherwood*, 264 Neb. 985, 653 N.W.2d 821 (2002) (superseded by rule on other grounds as stated in *Weeder v. Central Comm. College*, 269 Neb. 114, 691 N.W.2d 508 (2005)). Importantly, the federal PLRA applies only to actions brought with respect to prison conditions under § 1983 or other federal law. Nebraska has not adopted similar legislation, except for a "three strikes" limitation (discussed later) not applicable here.

The posture of this case is unique in that Npimnee's complaint is not directed against any state government entity or official, nor is it based upon a deprivation of federal rights. Instead, Npimnee seeks to recover monetary damages from another prisoner under this state's common law of torts. We are unaware of any precedent in Nebraska concerning

a suit by one prisoner against another for personal injuries sustained during incarceration. However, a survey of other jurisdictions shows that such cases do arise, albeit rarely. See, e.g., *Torrence v. Blue*, 552 P.3d 489 (Alaska 2024) (inmate's civil complaint against another prisoner supported tort claim for battery and should not have been dismissed by trial court); *Wilcox v. Wheatley*, 342 Mich. App. 551, 554, 995 N.W.2d 594, 596 (2022) (inmate filed action against four other prisoners for conspiring to steal property from his cell; trial court determined inmate failed to exhaust administrative remedies as required by Michigan's prisoner litigation reform act for any "'action concerning prison conditions'"; however, appellate court reversed, concluding "purely private tort lawsuit between prisoners is not a civil proceeding arising with respect to 'conditions of confinement'" and was not subject to requirement of administrative exhaustion); *Crane v. Dolihite*, 70 Cal. App. 5th 772, 783, 285 Cal. Rptr. 3d 642, 651 (2021) (pro se inmate's personal injury action against another inmate who stabbed him with a pencil was dismissed by trial court for failure to prove timely service on defendant; appellate court reversed, noting inmate's right to initiate and prosecute nonfrivolous civil action and "'"not be deprived, by his or her inmate status, of meaningful access to the civil courts if the prisoner is both indigent and a party to a bona fide civil action threatening his or her personal or property interests"'").

There are Nebraska cases where an inmate has filed a civil action directly against individuals for matters unrelated to the inmate's incarceration. See, e.g., *In re Estate of Newman*, 25 Neb. App. 771, 913 N.W.2d 744 (2018) (inmate filed petition in existing informal probate action requesting formal probate of his father's will and order returning personal property to inmate; inmate was granted IFP, but denied appointment of counsel); *Jacob v. Schlictman*, 16 Neb. App. 783, 753 N.W.2d 361 (2008) (inmate serving life sentence commenced replevin action in district court against individual to recover items inmate claimed were wrongfully executed

upon); *McGuire v. Troia*, No. A-19-793, 2020 WL 2065984 (Neb. App. Apr. 21, 2020) (selected for posting to court website) (pro se inmate filed complaint for breach of contract against his postconviction attorneys).

In the present matter, the question is whether Nebraska law permits a tort action to be filed directly in the district court by one prisoner against another prisoner for monetary damages arising from a personal injury while in custody in a state correctional facility without first exhausting any administrative remedies.

We initially observe that incarceration, by itself, does not restrict a prisoner's access to the courts. Neb. Const. art. I, § 13, declares that "[a]ll courts shall be open, and *every person*, for any injury done him or her in his or her lands, goods, person, or reputation, shall have a remedy by due course of law and justice administered without denial or delay . . . ." (Emphasis supplied.) And "district courts shall have and exercise general, original and appellate jurisdiction in all matters, both civil and criminal, except where otherwise provided." Neb. Rev. Stat. § 24-302 (Reissue 2016).

However, a prisoner's access to the courts can be limited in certain circumstances, such as requiring the exhaustion of administrative remedies before filing claims subject to the federal PLRA, as set forth above. See, also, e.g., Neb. Rev. Stat. § 25-3401 (Cum. Supp. 2024) ("prisoner who has filed three or more civil actions, commenced after July 19, 2012, that have been found to be frivolous by a court of this state or a federal court for a case originating in this state shall not be permitted to proceed in forma pauperis for any further civil actions without leave of court"); *Robinson v. Houston*, 298 Neb. 746, 750, 905 N.W.2d 636, 639 (2018) ("'three strikes'" statute patterned after "part of the federal [PLRA] of 1995" sought "'to limit frivolous civil actions filed by prisoners'"). In the present case, the district court did not deny Npimnee IFP status under § 25-3401; rather,

it concluded Npimnee had not exhausted his administrative remedies before filing suit, which we discuss next.

[10] As previously noted, in the context of prison litigation, the exhaustion doctrine most often arises when a prisoner files a civil action against the DCS or prison officials, pursuant to 42 U.S.C. § 1983, or other federal authority, for alleged deprivations of federally protected rights. And under the PLRA, before a prisoner can bring such an action, administrative remedies must first be exhausted. However, Npimnee's complaint was not filed against the DCS or prison officials, nor was it filed under any federal authority based on the deprivation of any federally protected rights. Rather, his complaint asserts common-law battery claims against another inmate from whom he seeks monetary damages. We have been unable to locate any Nebraska statute mandating that a prisoner exhaust administrative remedies before filing a tort action against another prisoner. And where a statute does not expressly require the exhaustion of administrative remedies, the Nebraska Supreme Court has held such exhaustion was not a jurisdictional prerequisite to instituting legal action. See *Goolsby v. Anderson*, 250 Neb. 306, 549 N.W.2d 153 (1996).

[11-13] It has been said that the exhaustion doctrine "presents a flexible concept which must be tailored to the circumstances of the particular case." *Vaccaro v. City of Omaha*, 254 Neb. 800, 804, 579 N.W.2d 535, 538 (1998). When examining the practical application of the exhaustion doctrine, the Nebraska Supreme Court quoted the following language from *McCarthy v. Madigan*, 503 U.S. 140, 144, 112 S. Ct. 1081, 117 L. Ed. 2d 291 (1992) (superseded by statute as stated in *Booth v. Churner*, 532 U.S. 731, 121 S. Ct. 1819, 149 L. Ed. 2d 958 (2001)), and found it instructive:

> Of "paramount importance" to any exhaustion inquiry is congressional intent. [Citation omitted.] Where Congress specifically mandates, exhaustion is required. [Citations omitted.] But where Congress has not clearly required

> exhaustion, sound judicial discretion governs. [Citations omitted.] Nevertheless, even in this field of judicial discretion, appropriate deference to Congress' power to prescribe the basic procedural scheme under which a claim may be heard in a federal court requires fashioning of exhaustion principles in a manner consistent with congressional intent and any applicable statutory scheme.

As the above quotation indicates, legislative intent is to be used as a guidepost when applying the exhaustion doctrine. In the absence of legislative direction, a court must exercise sound judicial discretion in determining whether to apply the exhaustion doctrine to a case. See *Vaccaro v. City of Omaha, supra*. See, also, 73 C.J.S. *Public Administrative Law and Procedure* § 119 at 312 (2026) ("[i]f exhaustion of administrative remedies is not legislatively mandated, sound judicial discretion generally governs").

In *McCarthy v. Madigan, supra*, the U.S. Supreme Court addressed whether a federal prisoner must resort to the internal grievance procedure promulgated by the Federal Bureau of Prisons (FBP) before initiating a suit solely for monetary damages, pursuant to the authority of *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971). The Court concluded that a federal prisoner was not required to exhaust procedures adopted by the FBP before filing suit because (1) Congress had not expressly required exhaustion; (2) the grievance procedure adopted by the FBP imposed short, successive filing deadlines that created a high risk of forfeiture of a claim for failing to comply; (3) the grievance procedure did not expressly authorize an award of monetary damages; and (4) the prisoner's claim only tangentially implicated the FBP's authority to carry out the control and management of federal prisons. However, we do note that a few years after the *McCarthy* decision, Congress enacted the PLRA, which explicitly required exhaustion in this context. See *Booth v. Churner, supra*. But as mentioned

previously, Nebraska has not adopted analogous legislation. We therefore consider whether a judicially imposed exhaustion requirement is warranted.

In the absence of state legislation, we find persuasive the Court's analysis in *McCarthy* in reaching its decision that the prisoner did not have to exhaust internal grievance procedures before filing a suit for money damages. When examining the factors considered in that case, we observe that the grievance procedure adopted by the DCS consists of rapid filing and response timetables. Neb. Rev. Stat. § 83-4,135 (Reissue 2024) provides that "[a]n inmate shall have the right to file a grievance on any subject except disciplinary actions and matters over which [DCS] has no control." Pursuant to DCS' procedure, a prisoner must first submit an "Informal Grievance Resolution Form" to designated unit staff within 3 calendar days of the date of an incident. See 68 Neb. Admin. Code, ch. 2, §§ 003.01 and 005.03 (2023). A written response must be prepared within 10 working days of the date the informal grievance is received. *Id.*, § 005.04. If a prisoner is dissatisfied with the response, he or she may then file a "Step-One Grievance Form" with the warden. *Id.*, § 003.03. A step-one grievance must be filed within 15 calendar days of the date the prisoner receives a response to their informal grievance, or if no response was received, within 20 calendar days of the incident giving rise to the grievance. *Id.*, § 006.02. Within 10 working days, the prisoner shall receive a written response from the warden, which is to include a brief statement of the reasons for the decision. *Id.*, § 006.07. A prisoner can appeal the warden's decision by submitting a "Step-Two Grievance Form" to the director within 10 calendar days of receiving the response from the warden. *Id.*, §§ 007.01 and 007.02. The director must respond to a step-two grievance within 20 days and may either modify, affirm, or reverse the warden's decision. *Id.*, § 007.05. Under the current grievance scheme, the risk of forfeiting a legitimate claim is high.

Further, Npimnee only seeks monetary damages for injuries inflicted by another prisoner during incarceration. The DCS' grievance procedure does not provide for any kind of hearing or for the granting of any particular type of relief. The administrative mechanism appears to be structurally incapable of resolving the substance of Npimnee's claim. Moreover, Npimnee's action is directed solely at another prisoner, so the DCS' institutional interest in encouraging the internal resolution of grievances is greatly diminished, as Npimnee's suit does not relate to prison policies, staff conduct, or conditions of confinement. Instead, it presents a dispute between two private individuals that only incidentally arises within the custodial environment.

Therefore, upon our de novo review, we find the factors from *McCarthy v. Madigan*, 503 U.S. 140, 112 S. Ct. 1081, 117 L. Ed. 2d 291 (1992), strongly weigh against imposing a judicially created exhaustion requirement. While we recognize the potential issues that may arise from unfettered tort litigation between prisoners, the resolution of those concerns lies with the Legislature, not the courts.

Notably, even with a state statutory scheme similar to the federal PLRA, the Michigan case cited earlier nevertheless found that a "purely private tort lawsuit between prisoners is not a civil proceeding arising with respect to 'conditions of confinement'" and was not subject to the requirement of administrative exhaustion. *Wilcox v. Wheatley*, 342 Mich. App. 551, 554, 995 N.W.2d 594, 596 (2022). When considering its state's prison litigation reform act, the Michigan court noted that the exhaustion of administrative remedies was required for any "'action concerning prison conditions,'" *id.* at 554, 995 N.W.2d at 596, that sought "'damages or equitable relief arising with respect to any conditions of confinement or the effects of an act or omission of government officials, employees, or agents in the performance of their duties,'" *id.* at 553, 995 N.W.2d at 596. The Michigan court pointed out that the plaintiff inmate in that case was not alleging any act

or omission by any government official, and it was not a civil proceeding regarding conditions of confinement. *Id*.

In reaching its conclusion, the Michigan court observed that the federal PLRA, "which—much like Michigan's version—requires prisoners to exhaust their administrative remedies before filing suit." *Wilcox v. Wheatley*, 342 Mich. App. at 559, 995 N.W.2d at 599. And because Michigan's prison litigation reform act was enacted after the federal PLRA, and because of how "closely the statutory language aligns," the Michigan court examined federal court decisions for guidance on interpreting what constitutes conditions of confinement. *Wilcox v. Wheatley*, 342 Mich. App. at 561, 995 N.W.2d at 600. See *Booth v. Churner*, 206 F.3d 289, 294 (3d Cir. 2000) (conditions of confinement include complaints "such as those regarding cell overcrowding, poor prison construction, inadequate medical facilities, and incomplete law libraries," meaning "clause relate[s] to the environment in which prisoners live, the physical conditions of that environment, and the nature of the services provided therein"); *Jenkins v. Haubert*, 179 F.3d 19, 28 (2d Cir. 1999) ("'[c]onditions of confinement' is not a term of art; it has a plain meaning," and "quite simply encompasses all conditions under which a prisoner is confined for his term of imprisonment"; this includes solitary confinement, revocation of telephone or mail privileges, deprivation of exercise, medical care, or adequate food and shelter, and "other conditions that, if improperly imposed, could violate the Constitution").

[14] Ultimately, the Michigan court concluded that the federal cases "help us discern what a conditions-of-confinement claim is not—a purely private civil suit between prisoners alleging no government action or omission." *Wilcox v. Wheatley*, 342 Mich. App. at 562-63, 995 N.W.2d at 601 (emphasis omitted). It is worth noting that Nebraska's "three strikes" statute referenced earlier defines "[c]onditions of confinement" to mean "any circumstance, situation, or event that involves a prisoner's custody, transportation, incarceration,

or supervision." § 25-3401(1)(b). While this definition could arguably cover the circumstances underlying Npimnee's complaint, the statute itself seeks only to limit the number of frivolous civil actions a prisoner can file by permitting the denial of IFP status after three such filings. It provides no direction regarding the exhaustion of administrative remedies.

CONCLUSION

For the foregoing reasons, we conclude Npimnee was not required to exhaust any administrative remedies before filing his tort action against Freeman. Accordingly, the complaint cannot be said to be frivolous on that basis, and we therefore reverse the district court's denial of Npimnee's application to proceed IFP. We remand the cause with direction to consider whether Npimnee is otherwise entitled to IFP status under § 25-2301.02 and as set forth in the Nebraska Supreme Court's recent opinion, *Npimnee v. Shiffermiller*, 321 Neb. 700, 36 N.W.3d 503 (2026).

REVERSED AND REMANDED WITH DIRECTION.