

**United States Court of Appeals**  
**For the Eighth Circuit**

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No. 16-3656

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Sylvester Barbee

*Plaintiff - Appellant*

v.

Lisbeth Anne Murphy, Doctor, Ouachita River Correction Unit; Wendy Kelley,  
Director of Health & Correctional Programs, Central Office ADC; Marie Lane,  
Corizon, Ouachita River Correctional Unit

*Defendants - Appellees*

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Appeal from United States District Court  
for the Western District of Arkansas - Hot Springs

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Submitted: May 31, 2017

Filed: June 5, 2017

[Unpublished]

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Before GRUENDER, ARNOLD, and KELLY, Circuit Judges.

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PER CURIAM.

In this pro se 42 U.S.C. § 1983 action, Arkansas prisoner Sylvester Barbee appeals after the district court<sup>1</sup> adversely granted summary judgment on his deliberate-indifference claims. Having carefully reviewed the record and the parties' arguments on appeal, we agree with the district court's reasoning and conclude that summary judgment was properly granted. See Beaulieu v. Ludeman, 690 F.3d 1017, 1024 (8th Cir. 2012) (grant of summary judgment is reviewed de novo, viewing record in light most favorable to nonmovant). However, we modify the judgment to be without prejudice as to Barbee's claim against Wendy Kelley, because that claim was dismissed for failure to exhaust administrative remedies. Cf. Calico Trailer Mfg. Co. v. Ins. Co. of N. Am., 155 F.3d 976, 978 (8th Cir. 1998) (modifying dismissal for failure to exhaust administrative remedies to be without prejudice). The judgment is affirmed as modified. See 8th Cir. R. 47B.

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<sup>1</sup>The Honorable Susan O. Hickey, United States District Judge for the Western District of Arkansas, adopting the report and recommendations of the Honorable Mark E. Ford, United States Magistrate Judge for the Western District of Arkansas.