

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Jackie N. Robinson,	:	
Relator,	:	
v.	:	No. 18AP-901
Stephen A. Young, Legal Counsel for	:	(REGULAR CALENDAR)
Ohio Department of Rehabilitation and	:	
Correction,	:	
Respondent.	:	

D E C I S I O N

Rendered on March 26, 2019

On brief: *Jackie N. Robinson, pro se.*

IN MANDAMUS
ON OBJECTION TO THE MAGISTRATE'S DECISION

DORRIAN, J.

{¶ 1} Relator, Jackie N. Robinson, has filed this original action requesting this court issue a writ of mandamus ordering respondent, Stephen A. Young, Legal Counsel for the Ohio Department of Rehabilitation and Correction, to provide him with certain public records.

{¶ 2} Pursuant to Civ.R. 53 and Loc.R. 13(M) of the Tenth District Court of Appeals, this matter was referred to a magistrate who issued a decision, including findings of fact and conclusions of law, which is appended hereto. The magistrate recommended this court sua sponte dismiss the request for a writ of mandamus because relator failed to comply with the requirements of R.C. 2969.25(C).

{¶ 3} R.C. 2969.25 provides in relevant part as follows:

(C) If an inmate who files a civil action or appeal against a government entity or employee seeks a waiver of the

prepayment of the full filing fees assessed by the court in which the action or appeal is filed, the inmate shall file with the complaint or notice of appeal an affidavit that the inmate is seeking a waiver of the prepayment of the court's full filing fees and an affidavit of indigency. The affidavit of waiver and the affidavit of indigency shall contain all of the following:

(1) A statement that sets forth the balance in the inmate account of the inmate for each of the preceding six months, as certified by the institutional cashier;

(2) A statement that sets forth all other cash and things of value owned by the inmate at that time.

{¶ 4} The magistrate made the following relevant factual finding:

At the time he filed his complaint, relator filed a motion to proceed in forma pauperis. Relator failed to attach thereto a statement of the amount in his inmate account for each of the preceding six months, as certified by the institutional cashier.

(Appended Magistrate's Decision at ¶ 19.)

{¶ 5} Relator has filed an objection to the magistrate's decision and submits that his complaint and statement of account were simultaneously filed with the clerk of court on November 27, 2018 at 3:32 p.m. The record does in fact reveal that, attached to his complaint, relator filed an "Affidavit of Verity" in which he states that he is a ward of the state "whom is paid twenty dollars a month state pay, with no other cash or things of value owned by me at this time."

{¶ 6} Relator also filed, attached to his complaint, a cashier's statement, dated November 16, 2018, signed by "S. Taylor, Cashier at Lake Erie Correctional." The statement states that the beginning date of the statement is "5/16/18" and the ending date is "11/16/18." It states, broken down into six spaces, the total amount of payroll credited to the inmate account, total amount credited from all other sources to the inmate account, and total expenditures for all other transactions from the inmate account. It states "the current balance for this individual [is] \$5.02." The cashier's statement has a very faint partial stamp at the bottom which reads "LaECI CASHIER'S OFFICE"; however, it is not incorporated by affidavit. Although the magistrate notes that relator filed a motion to proceed in forma

pauperis at the time he filed his complaint, we do not find any separate motion to proceed in forma pauperis in the record.

{¶ 7} The record does reveal, however, that on December 20, 2018, one day after the magistrate filed her decision, respondent filed a motion to dismiss. In the motion to dismiss, respondent argued that relator's request in his writ of mandamus did not constitute a request for public records as defined under R.C. 149.011(G) and 149.43. Respondent further argued that relator failed to comply with the necessary filing requirements of R.C. 2969.25, specifically 2969.25(A).

{¶ 8} R.C. 2969.25(A) states:

(A) At the time that an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court an affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court. The affidavit shall include all of the following for each of those civil actions or appeals:

(1) A brief description of the nature of the civil action or appeal;

(2) The case name, case number, and the court in which the civil action or appeal was brought;

(3) The name of each party to the civil action or appeal;

(4) The outcome of the civil action or appeal, including whether the court dismissed the civil action or appeal as frivolous or malicious under state or federal law or rule of court, whether the court made an award against the inmate or the inmate's counsel of record for frivolous conduct under section 2323.51 of the Revised Code, another statute, or a rule of court, and, if the court so dismissed the action or appeal or made an award of that nature, the date of the final order affirming the dismissal or award.

{¶ 9} Relator filed, attached to his complaint, an affidavit of past civil actions filed.

The affidavit reads:

I, Jackie N. Robinson, Relator, here swears that I cannot recall or describe each and ever civil action or appeal of a civil action filed in the previous five years in any state or federal court, the case name, case number, and the court which the civil action

was brought, or appeal, the name of each party to the civil action or appeal. The outcome of said actions was dismissal. No previous actions or appeals were dismissed as frivolous or malicious, and no awards were made against Relator for frivolous or malicious conduct. Relator legal papers has been lost or destroyed by shakedown staff, and Relator is without legal assistance pursuant to *Bounds v. Smith*.

(Sic passim.)

{¶ 10} Respondent's motion to dismiss lists at least seven civil actions which relator has filed in the past five years. On December 21, 2018, respondent withdrew its motion to dismiss "in light of the Magistrate's Decision recommending dismissal." This court granted the motion to withdraw. Notwithstanding, this court will sua sponte consider whether relator has complied with the requirements of R.C. 2969.25(A). In so doing, we will consider the motion for summary judgment filed by relator on December 27, 2018.

{¶ 11} In his motion for summary judgment, relator addresses the arguments as to the merits and compliance with R.C. 2969.25(A) raised by respondent in the motion to dismiss. As to compliance with R.C. 2969.25(A), relator states:

Relator argues that he is not an attorney, nor is he being provided proper legal assistance from prison officials as mandated pursuant to *Bonds v. Smith*, 430 U.S. 817. Relator also argues that procedural defaults will not trump Relator liberty interests and Rights to Due process of the law, as well as the equal protection. Relator has stated on record his reason for any failure to comply with R.C. 2969.25 fully. Relator so swears here that none of his past filings has been ruled frivolous or malicious.

(Relator's Mot. for Sum. Jgmt. at 2.)

{¶ 12} Compliance with the provisions of R.C. 2969.25 is mandatory and failure to satisfy the statutory requirements is grounds for dismissal of the action. *State ex rel. Washington v. Ohio Adult Parole Auth.*, 87 Ohio St.3d 258 (1999); *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421 (1998); *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285 (1997). Relator has failed to comply with R.C. 2969.25(A). Therefore, this court must sua sponte dismiss this action. *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533; *Hawkins v. S. Ohio Corr. Facility*, 102 Ohio St.3d 299, 2004-Ohio-2893.

{¶ 13} Upon review of the magistrate's decision, an independent review of the record, and due consideration of relator's objection, we overrule relator's objection to the

magistrate's decision and adopt the magistrate's decision to sua sponte dismiss the complaint as our own, however we modify the findings of fact and conclusions of law contained in the magistrate's decision as explained above. Accordingly, the requested writ of mandamus is hereby dismissed and relator's motion for summary judgment is rendered moot.

*Objection overruled;
motion for summary judgment moot; action dismissed.*

BROWN and MCGRATH, JJ., concur.

McGRATH, J., retired, formerly of the Tenth Appellate District,
assigned to active duty under authority of the Ohio
Constitution, Article IV, Section 6(C).

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

The State ex rel. Jackie N. Robinson,	:	
Relator,	:	
v.	:	No. 18AP-901
Stephen A. Young, Legal Counsel	:	(REGULAR CALENDAR)
for Ohio Department of Rehabilitation	:	
and Correction,	:	
Respondent.	:	

MAGISTRATE'S DECISION

Rendered on December 19, 2018

Jackie N. Robinson, pro se.

IN MANDAMUS ON SUA SPONTE DISMISSAL

{¶ 14} Relator, Jackie N. Robinson, has filed this original action requesting this court issue a writ of mandamus ordering respondent, Stephen A. Young, Legal Counsel for the Ohio Department of Rehabilitation and Correction, to provide him with certain public records.

Findings of Fact:

{¶ 15} 1. Relator is an inmate currently incarcerated at Lake Erie Correctional Institution.

{¶ 16} 2. On November 27, 2018, relator filed this mandamus action asserting that respondent had failed to provide him with public records which he requested pursuant to Revised Code Chapter 149.

{¶ 17} 3. Relator attached Exhibit B to his complaint. Exhibit B sets out 12 different items, the majority of which ask that respondent verify certain facts. His public records request did not identify any specific records.

{¶ 18} 4. Relator attached as Exhibit C a letter dated November 2, 2018 from respondent to relator explaining that his request seeks information and not any specific records of ODRC and, as such, does not constitute a request for records as such is defined under R.C. 149.011(G) and 149.43.

{¶ 19} 5. At the time he filed his complaint, relator filed a motion to proceed in forma pauperis. Relator failed to attach thereto a statement of the amount in his inmate account for each of the preceding six months, as certified by the institutional cashier.

Conclusions of Law:

{¶ 20} The magistrate recommends that this court sua sponte dismiss this action because relator has failed to comply with the requirements of R.C. 2969.25(C).

{¶ 21} In regard to filing fees, R.C. 2969.25(C) and 2969.22 distinguish between paying the full amount of filing fees upon filing (referred to as "prepayment" of fees) and paying the fees pursuant to periodic deductions from the inmate's account maintained by the prison.¹ Under R.C. 2969.25(C), an inmate who seeks waiver of prepayment on grounds of indigency must file an affidavit that includes: (1) a statement of the amount in the inmate's account for each of the preceding six months as certified by the institutional cashier, and (2) a statement of all other cash and things of value owned by the inmate.

{¶ 22} Compliance with the provisions of R.C. 2969.25 is mandatory and failure to satisfy the statutory requirements is grounds for dismissal of the action. *State ex rel. Washington v. Ohio Adult Parole Auth.*, 87 Ohio St.3d 258 (1999); *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421 (1998); *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285 (1997).

¹Under the statute, when the inmate has submitted the requisite affidavit of indigency, the clerk charges the inmate's account for funds in excess of ten dollars. Following that payment, all income in the inmate's account (excluding the ten dollars) is forwarded to the clerk each month until the fees are paid.

{¶ 23} In *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, the Supreme Court of Ohio affirmed the judgment of the court of appeals from Medina County which had dismissed the complaint of George D. Pamer, an inmate at Mansfield Correctional Institution, for his failure to comply with the requirements of R.C. 2969.25(C). Specifically, the court stated:

Pamer's cashier statement did not set forth the account balance for the month immediately preceding his mandamus complaint - August 2005. See R.C. 2969.25(C)(1), which requires an inmate filing a civil action against a government employee seeking waiver of prepayment of court filing fees to file a "statement that sets forth the balance in the inmate account for each of the preceding six months, as certified by the institutional cashier." Pamer's failure to comply with R.C. 2969.25(C)(1) warranted dismissal of the complaint. *State ex rel. Foster v. Belmont Cty. Court of Common Pleas*, 107 Ohio St.3d 195, 2005-Ohio-6184, 837 N.E.2d 777, ¶ 5.

Id. at ¶ 5-7.

{¶ 24} Likewise, in *State ex rel. Ridenour v. Brunsman*, 117 Ohio St.3d 260, 2008-Ohio-854, the Supreme Court affirmed the judgment of the Ross County Court of Appeals which had dismissed the complaint filed by William L. Ridenour because of his failure to comply with R.C. 2969.25(C). In that case, Ridenour had filed a motion for reconsideration attaching a statement setting forth his inmate account balance for the six months preceding the filing of his complaint; however, the statement was not certified by the institutional cashier.

{¶ 25} In affirming the judgment of the appellate court, the Supreme Court stated:

"The requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate's action to dismissal." *State ex rel. White v. Bechtel*, 99 Ohio St.3d 11, 2003-Ohio-2262, 788 N.E.2d 634, ¶ 5. Ridenour failed to comply with R.C. 2969.25(C)(1), which requires an inmate filing a civil action against a government employee seeking waiver of prepayment of court filing fees to file with the complaint a "statement that sets forth the balance in the inmate account of the inmate for each of the preceding six months, as certified by the institutional cashier."

Moreover, although Ridenour claims that the court erred in failing to grant him leave to amend his complaint to comply with R.C. 2969.25(C)(1), he never filed a motion to amend his

complaint. Instead, he filed a motion for reconsideration, which was "a nullity because his mandamus action was filed originally in the court of appeals, rendering App.R. 26(A) inapplicable." *State ex rel. Washington v. Crush*, 106 Ohio St.3d 60, 2005-Ohio-3675, 831 N.E.2d 432, ¶ 5.

Id. at ¶ 5-6.

{¶ 26} Pursuant to the above-cited authority and because relator cannot cure this deficiency now or at a later date, it is the magistrate's decision that this court should dismiss relator's complaint. Further, pursuant to the above-cited authority, inasmuch as relator did not prevail and did not establish indigency, this court should order relator to pay the costs of the proceedings.

/S/ MAGISTRATE
STEPHANIE BISCA

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).