

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

The State ex rel. DeShawn Johnson,	:	
Relator,	:	
v.	:	No. 18AP-986
Judge David E. Cain,	:	(REGULAR CALENDAR)
Respondent.	:	

D E C I S I O N

Rendered on June 25, 2019

On brief: *DeShawn Johnson*, pro se.

IN PROCEDENDO/MANDAMUS
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

LUPER SCHUSTER, J.

{¶ 1} Relator, DeShawn Johnson, commenced this original action requesting that this court issue a writ of procedendo/mandamus ordering respondent, the Honorable David E. Cain, judge of the Franklin County Court of Common Pleas, to issue a final appealable order journalizing Johnson's criminal conviction.

{¶ 2} Pursuant to Civ.R. 53(C) and Loc.R. 13(M) of the Tenth District Court of Appeals, this court referred the matter to a magistrate. As the magistrate noted, Johnson did not pay the filing fee, nor did he, at the time of filing the action, file a statement of the balance of his inmate account for the previous six months certified by an institutional cashier. Under R.C. 2969.25(C), both an affidavit of waiver and the statement of the account balance are mandatory filing requirements. Because Johnson failed to satisfy the mandatory filing requirements of R.C. 2969.25(C), the magistrate, in a January 10, 2019 decision, recommended sua sponte dismissal of the action.

{¶ 3} Johnson filed objections to the magistrate's decision pursuant to Civ.R. 53(D)(3)(b), arguing the magistrate erroneously concluded he failed to file an affidavit of indigency and a statement of his inmate account. Thus, Johnson argues this court should liberally construe the filing requirements of R.C. 2969.25 and conclude he satisfied those requirements.

{¶ 4} As the Supreme Court of Ohio has held, "[t]he requirements of R.C. 2969.25 are mandatory and failure to comply with them requires dismissal of an inmate's complaint." *State ex rel. Hall v. Mohr*, 140 Ohio St.3d 297, 2014-Ohio-3735, ¶ 4, citing *State ex rel. Washington v. Ohio Adult Parole Auth.*, 87 Ohio St.3d 258, 259 (1999). Thus, both the affidavit of waiver and the certified statement of account "must be filed at the time the complaint is filed, and an inmate may not cure the defect by later filings." *Id.*, citing *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, ¶ 9. *See also Morris v. Franklin Cty. Court of Common Pleas*, 10th Dist. No. 05AP-596, 2005-Ohio-6306 (noting "[c]ompliance with R.C. 2969.25 is mandatory and failure to comply subjects an inmate's action to dismissal").

{¶ 5} Here, although Johnson filed a purported affidavit of indigency at the time he filed his complaint in mandamus/procedendo, the statement of account balance he filed was not certified by the institutional cashier. Because it was not certified by the institutional cashier, the statement of his inmate account balance for the previous six months did not satisfy the mandatory filing requirements of R.C. 2969.25(C). Additionally, while Johnson objects to the magistrate's statement that he did not file an affidavit of indigency, the document he filed did not set forth the amount in the inmate's account for each of the preceding six months as certified by the institutional cashier, rendering his affidavit of indigency deficient under R.C. 2969.25(C). Although Johnson provided a certified copy of his statement of inmate account balance along with his objections, Johnson cannot cure the defect in his initial filing through subsequent filings included with his objections. Accordingly, we adopt the magistrate's decision as our own, including the magistrate's findings of fact and conclusions of law.

{¶ 6} Having adopted the magistrate's decision as our own, we overrule Johnson's objections to the magistrate's decision. In accordance with the magistrate's decision, we sua sponte dismiss Johnson's request for a writ of mandamus/procedendo.

Objections overruled; case dismissed.

BROWN and DORRIAN, JJ., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

The State ex rel. DeShawn Johnson,	:	
Relator,	:	
v.	:	No. 18AP-986
Judge David E. Cain,	:	(REGULAR CALENDAR)
Respondent.	:	

MAGISTRATE'S DECISION

Rendered on January 10, 2019

DeShawn Johnson, pro se.

**IN PROCEDENDO/MANDAMUS
ON SUA SPONTE DISMISSAL**

{¶ 7} Relator, DeShawn Johnson, has filed this original action requesting this court issue a writ of procedendo/mandamus ordering respondent, the Honorable David E. Cain, judge of the Franklin County Court of Common Pleas, to rule on the motion for a final appealable order filed by relator on August 21, 2018.

Findings of Fact:

{¶ 8} 1. Relator is an inmate currently incarcerated at Warren Correctional Institution.

{¶ 9} 2. At the time relator filed this action, he did not pay the filing fee nor did he file an affidavit of indigency attaching thereto a certified copy which includes the amount in his inmate account for the six months preceding the filing of the action.

Conclusions of Law:

{¶ 10} 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).

{¶ 11} 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.

{¶ 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).

{¶ 13} 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.

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.

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.

{¶ 14} 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.

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.

{¶ 15} 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).