**[Cite as *State v. Good*, 2004-Ohio-1736.]**

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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| State of Ohio, | : | |
| Plaintiff-Appellee, | : | No. 03AP-549<br>(C.P.C. No. 99CR-04-1743) |
| v. | : | |
| Jefferson L. Good, | : | No. 03AP-550<br>(C.P.C. No. 00CR-02-732) |
| Defendant-Appellant. | : | (REGULAR CALENDAR) |
| | : | |

O P I N I O N

Rendered on April 6, 2004

*Ron O'Brien,* Prosecuting Attorney, and *Jennifer L. Coriell,* for appellee.

*Jefferson L. Good,* pro se.

APPEAL from the Franklin County Court of Common Pleas.

WATSON, J.

**{¶1}** Defendant-appellant, Jefferson L. Good, appeals from the judgment of the Franklin County Court of Common Pleas denying his motions to "Quash, Set Aside or Recall Execution" of payment of his court costs. For the following reasons, we affirm.

**{¶2}** On April 7, 1999, defendant was indicted on one count of burglary in case No. 99CR-04-1743. He pled guilty and was sentenced to five years in prison. No fine

was imposed but the court ordered defendant to pay court costs. Defendant appealed his sentence only, which this court affirmed. *State v. Good* (Dec. 5, 2000), Franklin App. No. 00AP-409. On February 10, 2000, defendant was indicted on one count of attempted burglary, two counts of receiving stolen property, and one count of forgery in case No. 00CR-02-732. On June 8, 2000, defendant pled guilty to a lesser count of burglary and two counts of receiving stolen property. No fine was imposed but defendant was again ordered to pay court costs. Defendant did not appeal any issues from the second case.

**{¶3}** On or about November 22, 2002, defendant was served with two court orders to pay court costs in the total amount of $404 for both cases. The orders notified defendant he could state objections to the execution or attachment of his prison account within 14 days. Defendant submitted objections. The warden denied his objections and attached his prison account. Since that time, money is taken out of defendant's prison account each month and sent to the clerk of courts to satisfy his obligation.[1] Defendant subsequently filed a "Motion to Quash, Set Aside or Recall Execution" which had taken place against his prison account. In that motion, defendant claimed certain exemptions applied precluding attachment of his account. Defendant also maintained that the $10 left in his account was insufficient to maintain an adequate level of hygiene. The trial court denied the motion and stated that defendant may petition the court for suspension of court costs after his release from prison, if he continues to believe that he will not have the ability to pay. The trial court did not specify the reason for denial. Defendant filed the instant appeal.

**{¶4}** Defendant ("appellant") asserts the following assignments of error:

[1] By law, an inmate's prison account must retain $10 per month. Ohio Adm.Code 5120-5-03(E).

> I. THE TRIAL COURT ERRED BY FAILING TO FIND THAT APPELLANT WAS ENTITLED TO CLAIM EXEMPTIONS TO THE TAKING OF MONEY FROM HIS PRISON ACCOUNT PURSUANT TO REVISED CODE SECTION 2329.66(A)(13) WHICH IS GOVERNED BY REVISED CODE SECTIONS 2329.69 and 5120.133(B) and OHIO ADMINISTRATIVE CODE SECTION 5120-5-03(C).
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> II. THE TRIAL COURT ERRED BY FAILING TO FIND THAT REVISED CODE SECTIONS 2949.14, 2949.092 and 2949.15 PRECLUDE THE COURT FROM THE TAKING OF MONEY FROM APPELLANT'S PRISON ACCOUNT BASED UPON APPELLANT'S INDIGENT STATUS.
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> III.THE TRIAL COURT ERRED BY FAILING TO RECOGNIZE THAT THE EXECUTION AGAINST APPELLANT'S PRISON ACCOUNT WAS INEQUITABLE, UNJUST, OR UNCONSTITUTIONAL AND THAT THE EXECUTION DENIES DUE PROCESS WHEN PRISON ADMINISTRATORS ARE MAKING DETERMINATIONS BEST LEFT TO THE JUDICIARY.

**{¶5}** Under Ohio Civ.R. 3(A), "[a] civil action is commenced by filing a complaint with the court, if service is obtained within one year from such filing upon a named defendant * * *." A motion to quash, or any type of motion for that matter, is insufficient to commence an action. *State ex rel. Simms v. Sutula* (1998), 81 Ohio St.3d 110 (holding that a *motion* for writ of procedendo was insufficient under Civ.R. 3[A]; original actions for extraordinary relief such as a writ of procedendo, *must* be commenced by filing a complaint or petition rather than a motion).

**{¶6}** As stated previously, appellant filed a motion to quash, set aside or recall execution. We find the procedure used by appellant improper under Civ.R. 3(A). At the time appellant filed the motion, there was no pending action. Appellant's criminal case was closed. Appellant himself stated that he was not seeking to vacate the imposition of costs *nor* was he seeking to attack his conviction or sentence through post-conviction

relief. Appellant was challenging the process used to collect his monetary obligation. Appellant stated that certain exemptions apply to prevent the warden from taking money from his prison account to satisfy the debt. Therefore, we find appellant's motion insufficient to invoke either the trial court's or this court's jurisdiction and should have been initiated below by complaint or petition. *Ohio Environmental Protection Agency v. Ross Incineration Services, Inc.* (1989), 63 Ohio App.3d 648, 651 ("A motion to quash is not a substitute for commencing an action such as a declaratory judgment or injunctive relief." Motion to quash was not filed pursuant to any pending action as required under Civ.R. 3[A]). Appellant must file an original action pursuant to Civ.R. 3(A).

**{¶7}** For the foregoing reasons, appellant's first, second and third assignments of error are overruled. Since appellant failed to comply with Civ.R. 3(A), the trial court lacked jurisdiction and properly dismissed the motion. Accordingly, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

LAZARUS, P.J., and KLATT, J., concur.