

[Cite as *Halder v. Ohio Dept. of Rehab. & Corr.*, 2009-Ohio-4489.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Biswanath Halder,	:	
Plaintiff-Appellant,	:	
v.	:	No. 09AP-154
Ohio Department of Rehabilitation and Correction,	:	(C.P.C. No. 07CVH10-14754)
Defendant-Appellee.	:	(REGULAR CALENDAR)
	:	

D E C I S I O N

Rendered on September 1, 2009

Biswanath Halder, pro se.

Richard Cordray, Attorney General, and Ashley D. Rutherford,
for appellee.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} Biswanath Halder, plaintiff-appellant, appeals from the judgment of the Franklin County Court of Common Pleas, in which the court granted the motion for judgment on the pleadings filed by the Ohio Department of Rehabilitation and Correction ("ODRC"), defendant-appellee.

{¶2} Appellant is an inmate in a prison operated by ODRC. On October 30, 2007, appellant filed a complaint for declaratory judgment and injunctive relief against

ODRC. Appellant termed himself "First-Party Plaintiff pro se," and numerous other inmate plaintiffs were listed as plaintiffs and signed the complaint. However, the allegations in the complaint related only to appellant. None of the other "plaintiffs" alleged any causes of action. Appellant alleged that ODRC's definition of "indigent inmate" in ODRC Policy 59-LEG-01 conflicted with the definition of "indigent" set forth in R.C. 120.51(B), violating his constitutional right to access the courts. Thereafter, appellant filed an affidavit of indigency, affidavit of prior actions, and affidavit as to fulfillment of the grievance process. On December 27, 2007, appellant, along with the "plaintiffs" named in the original complaint, filed a motion for leave to amend complaint, seeking to add 77 more plaintiffs to the case. Also on December 27, 2007, appellant filed a motion for class action certification.

{¶3} On April 17, 2008, ODRC file a motion for judgment on the pleadings, asserting that appellant failed to comply with R.C. 2969.25(C). On December 1, 2008, the trial court filed a decision granting ODRC's motion, finding appellant failed to provide a statement setting forth the balance in his inmate account for each of the preceding six months and failed to have the statement certified by the institutional cashier. The trial court issued a judgment journalizing the December 1, 2008 decision on March 2, 2009. Appellant appeals the judgment of the trial court, asserting the following assignment of error:

The trial court erred when it sustained the Motion for Judgment on the Pleadings of Defendant Ohio Department of Rehabilitation and Correction.

{¶4} In appellant's assignment of error, appellant argues the trial court erred when it granted ODRC's motion for judgment on the pleadings. A trial court's decision on

a Civ.R. 12(C) motion for judgment on the pleadings is reviewed by an appellate court de novo. *Vinicky v. Pristas*, 163 Ohio App.3d 508, 2005-Ohio-5196, ¶3. Pursuant to Civ.R. 12(C), a judgment on the pleadings is appropriate if the court finds, beyond doubt, that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. In ruling on the Civ.R. 12(C) motion, the court construes as true all the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the non-moving party. *Corporex Dev. & Constr. Mgt., Inc. v. Shook, Inc.*, 106 Ohio St.3d 412, 2005-Ohio-5409, ¶2. The determination of a motion for judgment on the pleadings is limited solely to the allegations in the pleadings and any writings attached to the pleadings. *Vinicky* at ¶3, citing *Peterson v. Teodosio* (1973), 34 Ohio St.2d 161.

{¶5} In granting ODRC's motion, the trial court found appellant failed to provide a statement setting forth the balance in his inmate account for each of the preceding six months and failed to have the statement certified by the institutional cashier. Appellant claims that he fully complied with R.C. 2969.25(C), which provides:

(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.

{¶6} Here, appellant contends that he complied with R.C. 2969.25(C) when he filed an affidavit of indigency, an affidavit as to prior actions, and an affidavit as to fulfillment of grievance procedure. We initially note that there is some ambiguity in the record whether the other "plaintiffs" named in the original complaint, besides appellant, were actually plaintiffs in the case below and are appellants in the present appeal. In its appellate brief, ODRC asserts that the other inmates named in the original complaint were not plaintiffs because they merely signed the complaint. The trial court served the decision only upon appellant, referred only to him throughout the decision, and addressed only his failure to comply with R.C. 2969.25. Therefore, it appears that the trial court considered only appellant a true plaintiff. Further, in the present case, appellant is the only appellant listed in the appellate docketing system.

{¶7} With regard to appellant's assignment of error, our review of the documents filed with appellant's complaint fails to reveal a statement that sets forth the balance in appellant's inmate account for each of the preceding six months, as certified by the institutional cashier. Thus, we must agree with the trial court that appellant failed to comply with R.C. 2969.25(C)(1). The Supreme Court of Ohio has held that 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. Norris v. Giavasis*, 100 Ohio St.3d 371, 2003-Ohio-6609, ¶4. Therefore, because appellant failed to comply with R.C. 2969.25(C)(1), the trial court did not err when it granted judgment on the pleadings to ODRC pursuant to Civ.R. 12(C).

{¶8} However, appellant has attached to his appellate brief a copy of an affidavit of indigency that ostensibly complies with R.C. 2969.25(C)(1), and such copy bears a

time stamp from the common pleas clerk of courts. The time stamp indicates the affidavit was filed October 30, 2007, the same date as the complaint was filed in this case, and was time stamped one minute after the complaint was time stamped. Thus, although it appears that appellant filed the proper affidavit with his complaint, for reasons unknown, the affidavit did not become part of the official court record. Although this court is unable to consider the affidavit attached to appellant's appellate brief, as it was not a part of the record before either the trial court or this court, appellant has filed with the trial court a Civ.R. 60(B) motion for relief from judgment, in which he argues that he filed all of the documents necessary under R.C. 2969.25(C)(1) and attaches the copy of the time-stamped affidavit of indigency. Therefore, assuming our above observations are accurate, the trial court should remedy the error in addressing appellant's Civ.R. 60(B) motion. Nevertheless, despite this irregularity, for the reasons explained above, we must overrule appellant's assignment of error in the present appeal.

{¶9} Accordingly, appellant's assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

FRENCH, P.J., and KLATT, J., concur.
