

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Joseph A. Cross, Jr.,	:	
Plaintiff-Appellant,	:	
v.	:	No. 09AP-364 (C.P.C. No. 09CVH03-3366)
Ohio Adult Parole Authority Chief et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on September 24, 2009

Joseph A. Cross, Jr., pro se.

Richard Cordray, Attorney General, and Ryan G. Dolan, for appellees.

APPEAL from the Franklin County Court of Common Pleas.

McGRATH, J.

{¶1} Plaintiff-appellant, Joseph A. Cross, Jr. ("appellant"), appeals from the judgment of the Franklin County Court of Common Pleas denying his request for injunctive relief and dismissing his complaint.

{¶2} On March 5, 2009, appellant, an inmate currently incarcerated at the Chillicothe Correctional Institution, filed a complaint against defendants-appellees, the Ohio Adult Parole Authority ("OAPA") and Paula Harris (collectively "appellees"). Appellant's complaint sought declaratory and injunctive relief. In his complaint, appellant

chiefly alleged his due process and equal protection rights were violated at his parole hearing and that the United States Constitution is void. By decision and entry filed March 18, 2009, the trial court sua sponte dismissed appellant's complaint for failure to comply with the mandatory requirements of R.C. 2969.25 by failing to submit an affidavit of indigency.

{¶3} On appeal, appellant fails to specifically set forth alleged error by the trial court. Rather, appellant continues to argue appellees violated his constitutional rights. App.R. 16(A)(7) states, in relevant part, that an appellant's brief shall include "[a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions[.]" App.R. 12(A)(2) states that "the court may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A)." *State v. Sutton*, 10th Dist. No. 06AP-708, 2007-Ohio-3792, ¶68. As stated by the Ninth District Court of Appeals: "[I]t is the duty of the appellant, not this court, to demonstrate his assigned error through an argument that is supported by citations to legal authority and facts in the record." *State v. Vinson*, 9th Dist. No. 23739, 2007-Ohio-6045, ¶25, quoting *State v. Taylor* (Feb. 9, 1999), 9th Dist. No. 2783-M.

{¶4} "[F]ailure to comply with the rules governing practice in the appellate courts is a tactic which is ordinarily fatal." *Lias v. Beekman*, 10th Dist. No. 06AP-1134, 2007-Ohio-5737, ¶6, quoting *State ex rel. Petro v. Gold*, 166 Ohio App.3d 371, 2006-Ohio-943, ¶51, appeal not allowed, 110 Ohio St.3d 1439, 2006-Ohio-3862, reconsideration denied, 111 Ohio St.3d 1418, 2006-Ohio-5083. "It is not the duty of [an

appellate] court to search the record for evidence to support an appellant's argument as to alleged error." *Id.* at ¶94, citing *Slyder v. Slyder* (Dec. 29, 1993), 9th Dist. No. 16224; *Sykes Constr. Co. v. Martell* (Jan. 8, 1992), 9th Dist. No. 15034, cause dismissed, 64 Ohio St.3d 1402. See also *State ex rel. Physicians Commt. For Responsible Medicine v. Bd. of Trustees of The Ohio State Univ.*, 108 Ohio St.3d 288, 2006-Ohio-903, ¶13. "It is also not appropriate for [an appellate court] to construct the legal arguments in support of an appellant's appeal." *Petro* at ¶94. "If an argument exists that can support [an] assignment of error, it is not [an appellate] court's duty to root it out." *Id.* quoting *Cardone v. Cardone* (May 6, 1998), 9th Dist. No. 18349, dismissed, appeal not allowed by 83 Ohio St.3d 1429.

{¶5} Nonetheless, we will construe appellant's appeal as an argument that the trial court erred in dismissing his complaint. Relator has not paid filing fees, nor has he fulfilled the requirements in R.C. 2969.25 for payment of fees from his inmate account in installments. 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. Under R.C. 2969.25(C), an inmate who seeks waiver of prepayment on the grounds of indigency must file an affidavit that includes: (1) a statement of the amount in his inmate account for 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.

{¶6} The Supreme Court of Ohio stated "it is well-settled that ' "[t]he requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate's action to dismissal." ' " *State ex rel. Manns v. Henson*, 119 Ohio St.3d 348,

2008-Ohio-4478, ¶4, quoting *State ex rel. Ridenour v. Brunsman*, 117 Ohio St.3d 260, 2008-Ohio-854, ¶5, quoting *State ex rel. White v. Bechtel*, 99 Ohio St.3d 11, 2003-Ohio-2262, ¶5; *Martin v. McKnight*, 10th Dist. No. 08AP-633, 2008-Ohio-6914, ¶9, discretionary appeal not allowed by 121 Ohio St.3d 1451, 2009-Ohio-1820. It is clear from the record that appellant failed to comply with R.C. 2969.25(C), and that such failure to comply fully with the requirements of R.C. 2969.25 subjects his complaint to dismissal.

{¶7} Accordingly, the trial court correctly dismissed appellant's complaint, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

BRYANT and BROWN, JJ., concur.
