

[Cite as *State ex rel. Moore v. Ohio Dept. of Rehab. & Corr.*, 2012-Ohio-1070.]  
IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Robert Moore,	:	
	:	
Relator,	:	
	:	
v.	:	No. 11AP-90
	:	
Ohio Department of Rehabilitation	:	(REGULAR CALENDAR)
and Correction,	:	
	:	
Respondent.	:	
	:	

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D E C I S I O N

Rendered on March 15, 2012

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*Robert Moore, pro se.*

*Michael DeWine, Attorney General, and Jason Fuller, for respondent.*

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IN MANDAMUS  
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

FRENCH, J.

{¶ 1} Relator, Robert Moore ("relator"), filed an original action, which asks this court to issue a writ of mandamus ordering respondent, Ohio Department of Rehabilitation and Correction ("ODRC"), to produce certain records pursuant to the Ohio Public Records Act, R.C. 149.43.

{¶ 2} This matter was referred to a magistrate pursuant to Civ.R. 53(C) and Loc.R. 12(M) of the Tenth District Court of Appeals. The magistrate issued a decision,

which includes findings of fact and conclusions of law and is appended to this decision, recommending that this court deny the requested writ.

{¶ 3} No objections have been filed concerning the magistrate's findings of fact, and we adopt them as our own. In brief, relator filed a request for records relating to a program allegedly conducted at the London Correctional Institution, where relator is an inmate. ODRC did not produce the records. Relator filed this action, seeking their production.

{¶ 4} The magistrate determined that relator had not complied with R.C. 2969.26(A), which provides that, if an inmate files a civil action that relates to a matter that "is subject to the grievance system" for the institution in which the inmate is confined, then the inmate must file the following: (1) "[a]n affidavit stating that the grievance was filed and the date on which the inmate received the decision regarding the grievance"; and (2) "[a] copy of any written decision regarding the grievance from the grievance system." Therefore, the magistrate recommended that we grant judgment in favor of ODRC and deny the writ.

{¶ 5} In his objections to the magistrate's decision, relator contends that the grievance process does not or should not apply to public records requests. Relator cites no support for this proposition, nor have we found any. Ohio Adm.Code 5120-9-31(A) provides a grievance procedure "to address inmate complaints related to any aspect of institutional life that directly and personally affects the grievant." We agree with the magistrate that an inmate's request for records concerning an institutional program for inmates falls within the realm of such complaints.

{¶ 6} R.C. 2969.26(A) applies expressly to any "civil action" filed by an inmate concerning a matter that is subject to a grievance procedure. An original action in mandamus is a civil action; therefore, R.C. 2969.26(A) applies to this action. Relator's failure to comply with the mandatory provisions of R.C. 2969.26(A) is grounds for dismissal. *Hamilton v. Wilkinson*, 10th Dist. No. 04AP-502, 2004-Ohio-6982, ¶ 12. Therefore, we overrule relator's objections.

{¶ 7} Having conducted an independent review, we adopt the magistrate's decision, including the findings of fact and conclusions of law contained in it, as our own. Accordingly, we grant judgment in favor of ODRC and deny the requested writ.

*Objections overruled;  
writ of mandamus denied.*

BROWN, P.J., and KLATT, J., concur.

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**A P P E N D I X**

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Robert Moore,	:	
Relator,	:	
v.	:	No. 11AP-90
Ohio Department of Rehabilitation and Correction,	:	(REGULAR CALENDAR)
Respondent.	:	
	:	

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M A G I S T R A T E ' S   D E C I S I O N

Rendered on October 26, 2011

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*Robert Moore, pro se.*

*Michael DeWine, Attorney General, and Jason Fuller, for  
respondent.*

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IN MANDAMUS  
ON MOTIONS FOR SUMMARY JUDGMENT

{¶ 8} In this original action, relator, Robert Moore, an inmate of the London Correctional Institution ("LCI"), requests a writ of mandamus ordering respondent, Ohio Department of Rehabilitation and Correction ("respondent" or "ODRC"), to produce,

pursuant to the Public Records Act, alleged public records relating to the so-called renaissance program allegedly conducted at LCI.

Findings of Fact:

{¶ 9} 1. On January 27, 2011, relator filed this original action against respondent. The complaint presents 32 enumerated paragraphs. Paragraphs 16 through 18 state:

[Sixteen] On or around the 04<sup>th</sup> day of January, 2011, Moore sent a letter (prison kite) to DRC requesting certain records pursuant to R.C. 149.43. In the letter, Moore informed the DRC that he would gladly pre pay for all costs involved, and he further informed it of the law on the issue.

[Seventeen] Moore requested the following records from DRC's London Correctional Institution (LOCI) Renaissance program director Mr. Bellamy (spelling?), and the content of the records request letter, sent by Moore and dated 01-04-2011, is as follows:

" \* \* \* (1) I would like to obtain a copy at my prepaid cost of any and all records that an inmate must sign/fill out when he signs up for and enrolls in the Renaissance program held and offered in the A-4 unit of the London Correctional Institution of the DRC run facility. A copy of the blank documents/records unfilled out is okay. Any agreement, record or other document/records. I think it is called an agreement. \* \* \* (2) Records that depict current amount of inmates enrolled in the program."

[Eighteen] DRC's LOCI office, responded to Moore's public records request when its employee, Mr. Bellamy (spelling?), returned Moore's letter to him on 01-19-2011, and by writing the following on Moore's letter in the area where Moore's [sic] asked for a response (to know the costs involved) to his letter that he sent DRC: "I am not authorized to give anyone or, for purchase any recovery services documents. These documents are for the expressed purpose of what they were created to accomplish, and can not be used for any other reasons. *M.E. Bellamy* (employee signed name).

(Emphases and footnotes omitted.)

{¶ 10} 2. With his complaint, relator submitted his own affidavit executed January 19, 2011. The affidavit presents a copy of relator's handwritten records request (prison kite) and Mr. Bellamy's handwritten response.

{¶ 11} 3. On February 28, 2011, respondent filed its answer to the complaint. Paragraphs 9 through 22 of the complaint are denied "as written." Among the defenses presented, respondent's sixth defense states: "Relator failed to exhaust his administrative remedies, as required by R.C. §2969.26(A)."

{¶ 12} 4. On March 15, 2011, relator moved for summary judgment. In support, relator submitted his affidavit executed March 10, 2011.

{¶ 13} 5. Through his affidavit, relator submitted a copy of the prison kite allegedly sent to Mr. Bellamy on January 4, 2011. The prison kite states:

Dear Sir/Madam, (1) I would like to obtain a copy at my pre paid cost of any and all records that an inmate must sign/fill out when he signs up for and enrolls in the Renaissance [sic] program held and offered in the A 4 Unit of the London Correctional Institution of the DRC run facility. A copy of the blank documents/records unfilled out is okay. Any agreement record or other documents/records. I think its called an agreement. R.C. 149.43 request for records. (2) Records that depict current amount of inmates enrolled in the program.

Please fill request #1 and 2 above and tell me the cost involved so I can pre pay. If I need to clarify for you I [sic] can just let me know and I'll be more specific.

(Emphases sic.)

{¶ 14} 6. Through his affidavit, relator submitted a copy of Mr. Bellamy's response:

I am not authorized to give anyone or for purchase any recovery services documents. These documents are for the expressed purpose of what they were created to accomplishes [sic] [and] can not be used for any other reasons.

{¶ 15} 7. Through his affidavit, relator also submitted an alleged copy of an ODRC public records policy numbered 07-ORD-02 with an effective date of June 12, 2008. According to relator's affidavit:

\* \* \* [A]ttached hereto this affidavit is a true and exact copy of DRC's public records policy that I copied out of its Policy Book that it makes available to its inmates through the London Correctional Institution Law library. \* \* \*

{¶ 16} 8. On March 28, 2011, the magistrate issued an order setting relator's March 15, 2011 motion for summary judgment for submission to the magistrate on April 18, 2011.

{¶ 17} 9. On April 5, 2011, relator filed what he captioned as a "Supplemental Motion to Supplement his Summary Judgment Motion." With this motion, relator submitted another affidavit that he executed March 29, 2011:

On or around the 04th day of January of the year of 2011, I, Robert Moore, served the DRC, by personal hand delivery to its employee M.E. Bellamy of LOCI, a public records request letter on a prison kite because I was out of paper at the time and thats all that I had available to me in my possession. DRC received my letter and gave a response denying my request. I had inmates Frank Brown, # A439-439, and William Campbell # A628-786 witness my hand delivery of the records request letter mentioned herein in case the DRC later said that they never received it. DRC obviously did receive it because it gave a response to the record request letter. On or around the 19th of January of 2011 DRC employee M.E. Bellamy (spelling?) gave a written response to the request and informed Realtor that he was not going to give Realtor any copies at all. This employee made an

executive decision and disregarded company (DRC) policy after he received the request from Realtor. \* \* \*

(Sic passim.)

{¶ 18} 10. On April 15, 2011, respondent filed a memorandum contra relator's motion for summary judgment. Respondent also filed its motion for summary judgment. In support, respondent submitted the affidavit of DeCarlo Blackwell executed April 13, 2011 and the affidavit of Paul Shoemaker executed April 15, 2011.

{¶ 19} The Blackwell affidavit avers:

\* \* \* I have personal knowledge of the facts in this affidavit. I am competent to testify about these facts.

\* \* \* I am employed by the Ohio Department of Rehabilitation and Correction (ODRC) in the London Correctional Institution (LoCI). My position is Institutional Inspector. My duties, in part, include overseeing the application and disposition of all inmate grievances that originate at LoCI. Accordingly, my duties include knowing what kinds of complaints are subject to the grievance process, and what kinds are excluded.

\* \* \* Complaints that are subject to the grievance process are those that are about "any aspect of institutional life that directly and personally affects the grievant." Ohio Adm. Code 5120-9-31(A). This comprises the vast majority of inmate complaints.

\* \* \* There are a limited number of complaints that are not subject to the grievance process. These include complaints that seek an additional or substitute appeal process for hearing officer decisions, rules infraction board decisions, or those issues or actions which already include an appeal mechanism beyond the institutional level or where a final decision has been rendered by central office staff. They also include complaints that are unrelated to institutional life, such as complaints about legislative actions, policies and decisions of the adult parole authority, judicial proceedings and sentencing or complaints whose subject matter is



exclusively within the jurisdiction of the courts or other agencies. Ohio Adm. Code 5120-9-31(B).

\* \* \* Complaints that fall, in part, within the scope of paragraph 3, above, and in part within the scope of paragraph 4, above, are subject to the grievance process to the extent that they are not excluded under paragraph 4, above. Ohio Adm. Code 5120-9-31(B).

\* \* \* If a type of complaint is not specifically excluded in Ohio Adm. Code 5120-9-31, then it is subject to the grievance process.

\* \* \* Complaints about allegedly improper denials of public records requests by institutional staff are not specifically excluded in Ohio Adm. Code 5120-9-31. There is no independent appeal mechanism for such a complaint. Thus, such complaints are subject to the grievance process outlined in Ohio Administrative Code 5120-9-31(K). And ODRC requires inmates to use the grievance process for allegedly improper denials of public records requests by institutional staff.

\* \* \* As a matter of course, my office maintains records of any grievance tha[t] an inmate at LoCI has filed against any institutional staff. I have reviewed all 2011 grievance records of Robert Moore, inmate no. A466-983. In that time, Mr. Moore has not filed or pursued a grievance alleging that any institutional staff denied him a public records request. If he had filed or pursued such a grievance, I would have record of it. If Mr. Moore had such a complaint, it would be subject to the grievance process. Ohio Adm. Code 5120-9-31.

The Shoemaker affidavit avers:

\* \* \* I have personal knowledge of the facts in this affidavit. I am competent to testify about these facts.

\* \* \* I am employed by the Ohio Department of Rehabilitation and Correction (ODRC) in the Office of the Chief Inspector. My position is Assistant Chief Inspector. My duties, in part, include monitoring the application and disposition of the inmate grievance procedure throughout all ODRC institutions. Therefore, my duties include knowing what kinds

of complaints are subject to the grievance process, and what kinds are not.

\* \* \* Complaints that are subject to the grievance process are those that are about "any aspect of institutional life that directly and personally affects the grievant." Ohio Adm. Code 5120-9-31(A). Institutional life generally means life in a prison—an ODRC institution.

\* \* \* Complaints that are not subject to the grievance process include: (1) those that are not about an aspect of institutional life; (2) those that are subject to an appeal mechanism beyond the institutional level; or (3) those that are subject to a final decision by central office staff. Ohio Adm. Code 5120-9-31(A)-(B).

\* \* \* Thus, a complaint about a staff member at ODRC's central office is not subject to the grievance process. This would include a complaint alleging that the Director of ODRC denied a public records request. Such a complaint would concern non-institutional staff (and therefore would not be about institutional life), and it would be subject to a final decision by central office staff.

\* \* \* By contrast, a complaint that an institutional staff member denied a public records request is subject to the grievance process. Such a complaint is not specifically excluded in Ohio Adm. Code 5120-9-31. And there is no independent appeal mechanism for such a complaint. Accordingly, ODRC's Chief Inspector's Office requires inmates to use the grievance process regarding such a complaint.

{¶ 20} 11. On June 6, 2011, the magistrate issued an order setting respondent's April 15, 2011 motion for summary judgment for submission to the magistrate on June 24, 2011.

{¶ 21} 12. Earlier, on April 22, 2011, relator filed a written response to respondent's memorandum contra relator's motion for summary judgment. In support, relator submitted his own affidavit executed April 19, 2011. The affidavit avers in part:

I further state that I am writing a book to sell when I get out of prison so I need copies of these records to use as reference material listed in my book, so there is nothing about institutional life that I need these records for in this case. I further plan on starting my own country when I am released from prison and I need the records to look at as an example of what kind of content needs to be my records that I will create for my own prison that I will start once I open my own country in the land of Enoch. Also, I need the records to have my attorney look over them, so that I can make sure that the public office is using my tax dollars for a purpose that I approve of. If I don't then I plan on filing a lawsuit when I am released from prison challenging their use of taxpayer dollars. I also need the records for other unrelated reasons that I am not mentioning herein this affidavit. \* \* \*

(Sic passim.)

{¶ 22} 13. On April 25, 2011, relator filed what he has captioned as "Relators Supplemental [sic] Response to the Respondents Memorandum Contra to Realtors [sic] Motion for Summary Judgment and Respondents Motion for Summary Judgment." No affidavit was submitted with relator's April 25, 2011 filing.

Conclusions of Law:

{¶ 23} It is the magistrate's decision that this court grant respondent's motion for summary judgment. It is further the magistrate's decision that this court deny relator's motion for summary judgment.

{¶ 24} Summary judgment is appropriate when the movant demonstrates that: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, said party being entitled to have the evidence construed most strongly in his

favor. *Turner v. Turner* (1993), 67 Ohio St.3d 337, 339-40; *Bostic v. Connor* (1988), 37 Ohio St.3d 144, 146; *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. The moving party bears the burden of proving no genuine issue of material fact exists. *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112, 115.

{¶ 25} R.C. 2969.26 states:

(A) If an inmate commences a civil action or appeal against a government entity or employee and if the inmate's claim in the civil action or the inmate's claim in the civil action that is being appealed is subject to the grievance system for the state correctional institution, jail, workhouse, or violation sanction center in which the inmate is confined, the inmate shall file both of the following with the court:

(1) An affidavit stating that the grievance was filed and the date on which the inmate received the decision regarding the grievance.

(2) A copy of any written decision regarding the grievance from the grievance system.

(B) If the civil action or appeal is commenced before the grievance system process is complete, the court shall stay the civil action or appeal for a period not to exceed one hundred eighty days to permit the completion of the grievance system process.

{¶ 26} R.C. 2969.26(A) is mandatory. *Hamilton v. Wilkinson*, 10th Dist. No. 04AP-502, 2004-Ohio-6982, ¶12. Failure to follow the mandates of R.C. 2969.26(A) warrants dismissal of the prisoner's action. *Id.*

{¶ 27} It is undisputed that, following Mr. Bellamy's written response to relator's January 4, 2011 public records request, relator did not file a grievance even though Ohio Adm.Code 5120-9-31 provides for an inmate grievance procedure.

{¶ 28} Ohio Adm.Code 5120-9-31 states:

(A) The department of rehabilitation and correction shall provide inmates with access to an inmate grievance procedure. This procedure is designed to address inmate complaints related to any aspect of institutional life that directly and personally affects the grievant. This may include complaints regarding policies, procedures, conditions of confinement, or the actions of institutional staff.

(B) The inmate grievance procedure will not serve as an additional or substitute appeal process for hearing officer decisions, rules infraction board decisions or those issues or actions which already include an appeal mechanism beyond the institutional level or where a final decision has been rendered by central office staff. Other matters that are not grievable include complaints unrelated to institutional life, such as legislative actions, policies and decisions of the adult parole authority, judicial proceedings and sentencing or complaints whose subject matter is exclusively within the jurisdiction of the courts or other agencies. Complaints which present allegations which fall, in part, within the scope of paragraph (A) of this rule and in part within this paragraph will be considered to the extent they are not excluded under this paragraph.

{¶ 29} It is clear to this magistrate that relator's request for public records relating to the renaissance program at LCI relates to an "aspect of institutional life that directly and personally affects the grievant." Ohio Adm.Code 5120-9-31(A). In fact, it was relator who stated in his memorandum in support of his motion for summary judgment:

\* \* \* Relator requested copies of the records because he desires to be educated about DRC's rehabilitative programming that it offers its inmates. Relator further wants to read any paperwork about the program before giving a commitment to join the programming. DRC is holding up Relator in this regard. This is a loss of use. \* \* \*

(Relator's Motion for Summary Judgment, at 7.)

{¶ 30} But even if relator has some other reason or reasons for requesting the records, the request is, nevertheless, related to an aspect of institutional life that directly

and personally affects the grievant because the records allegedly relate to an LCI program available to prisoners.

{¶ 31} Accordingly, for all the above reasons, it is the magistrate's decision that this court grant respondent's motion for summary judgment. It is further the magistrate's decision that this court deny relator's motion for summary judgment.

/s/ Kenneth W. Macke

KENNETH W. MACKE  
MAGISTRATE

#### **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).