

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State ex rel. Edward D. Taylor,	:	
Relator,	:	
v.	:	No. 11AP-335
Gary Mohr, Director, Ohio Department of Rehabilitation and Correction and DeCarlo M. Blackwell, Institutional Inspector, London Correctional Institution,	:	(REGULAR CALENDAR)
Respondents.	:	
	:	

DECISION

Rendered on March 27, 2012

Edward D. Taylor, pro se.

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

IN MANDAMUS

TYACK, J.

{¶ 1} Edward D. Taylor filed this action in mandamus, seeking a writ to compel that certain documents be provided to him as public records.

{¶ 2} In accord with Loc.R. 12, the case was referred to a magistrate to conduct appropriate proceedings. Respondents Gary Mohr, director, Ohio Department of Rehabilitation and Correction and DeCarlo M. Blackwell, institutional inspector at London Correctional Institution filed a motion to dismiss the case, alleging that Taylor had not complied with R.C. 2969.25(C), which reads:

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.

{¶ 3} The magistrate recommends that the motion be sustained, based upon the rulings of the Supreme Court of Ohio in *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507 and *State ex rel. Ridenour v. Brunsman*, 117 Ohio St.3d 260, 2008-Ohio-854. The magistrate included the recommendation in a magistrate's decision issued December 19, 2011, which is appended to this decision.

{¶ 4} No one has filed objections to the magistrate's decision. No error of law or fact is present on the face of the magistrate's decision. We therefore adopt the findings of fact and conclusions of law contained in the magistrate's decision and dismiss this case.

Case dismissed.

SADLER and CONNOR, JJ., concur.

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v.	:	No. 11AP-335
	:	
Gary Mohr, Director, Ohio Department	:	(REGULAR CALENDAR)
of Rehabilitation and Correction and	:	
DeCarlo M. Blackwell, Institutional	:	
Inspector, London Correctional Institution,	:	
	:	
Respondents.	:	
	:	

MAGISTRATE'S DECISION

Rendered on December 19, 2011

Edward D. Taylor, pro se.

Michael DeWine, Attorney General, and Jason Fuller, for respondents.

IN MANDAMUS
ON MOTIONS

{¶ 5} Relator, Edward D. Taylor, has filed this original action requesting that this court issue a writ of mandamus ordering respondents Gary Mohr ("Mohr") as Director of the Ohio Department of Rehabilitation and Correction and DeCarlo M. Blackwell ("Blackwell") as the Institutional Inspector at London Correctional Institution to provide him with certain records he requested.

Findings of Fact:

{¶ 6} 1. Relator is an inmate currently incarcerated at Madison Correctional Institution.

{¶ 7} 2. According to his complaint, on March 25, 2011 relator made a public records request to Blackwell seeking copies of a particular e-mail.

{¶ 8} 3. On March 28, 2011, Blackwell replied as follows:

Taylor I will assist you with the matter but I will not give you a copy of the e-mail. I have assisted you each time you came to my office.

(Emphasis omitted.)

{¶ 9} 4. On April 6, 2011, relator filed the instant mandamus action in this court.

{¶ 10} 5. On September 19, 2011, a magistrate's order issued giving respondents until September 28, 2011 to file their answer or show cause why relator's request for a writ of mandamus should not be granted.

{¶ 11} 6. On October 24, 2011, relator filed a motion for summary judgment.

{¶ 12} 7. On November 21, 2011, Mohr filed motions to stay the proceedings and to file a motion to dismiss instant.

{¶ 13} 8. On November 28, 2011, the magistrate granted Mohr's motions.

{¶ 14} 9. On November 29, 2011, Blackwell filed a motion for leave to join instant in the motion to dismiss filed by Mohr.

{¶ 15} 10. In an order filed December 6, 2011, that motion was granted.

{¶ 16} 11. A review of relator's complaint reveals that relator did comply with the requirements of R.C. 2969.25(A) by filing an affidavit of prior actions.

{¶ 17} 12. Relator has failed to comply with R.C. 2969.25(C). Relator has failed to file an affidavit including a statement of the amount in his inmate account for the preceding six months as certified by the institutional cashier and a statement of all other cash and things of value owned by the inmate.

{¶ 18} 13. Relator did file a "CASHIER'S STATEMENT" arguably signed by the cashier; however, the statement does not provide the amount in relator's inmate account for the preceding six months.

{¶ 19} 14. The matter is currently before the magistrate on motions.

Conclusions of Law:

{¶ 20} For the reasons that follow, it is this magistrate's decision that this court should grant respondents' motion to dismiss because of relator's failure to comply with the mandatory requirements of R.C. 2969.25(C) and relator's motion for summary judgment should be denied as moot.

{¶ 21} 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 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.

{¶ 22} Compliance with the provisions of R.C. 2969.25 is mandatory and the failure to satisfy the statutory requirements is grounds for dismissal of the action. *State ex rel. Washington v. Ohio Adult Parole Auth.* (1999), 87 Ohio St.3d 258; *State ex rel. Zanders v. Ohio Parole Bd.* (1998), 82 Ohio St.3d 421; *State ex rel. Alford v. Winters* (1997), 80 Ohio St.3d 285.

{¶ 23} In *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, the Ohio Supreme Court 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

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 \$10. Following that payment, all income in the inmate's account (excluding the \$10) is forwarded to the clerk each month until the fees are paid.

account for each of the preceding six months, as certified by the institutional cashier." Pamer's failure to comply with R.C. 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.

In addition, nothing in R.C. 2969.25 required the court of appeals to afford Pamer the opportunity to pay the requisite filing fee before dismissing the case when Pamer expressly requested waiver of prepayment of those fees.

Finally, because Pamer did not prevail and did not establish his indigency, the court of appeals did not abuse its discretion in ordering him to pay the costs of the proceeding. See *State ex rel. Frailey v. Wolfe* (2001), 92 Ohio St.3d 320, 321, 750 N.E.2d 164; Civ.R. 54(D).

Id. at ¶5-7.

{¶ 24} Likewise, in *State ex rel. Ridenour v. Brunzman*, 117 Ohio St.3d 260, 2008-Ohio-854, the Supreme Court of Ohio 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 month preceding the filing of his complaint; however, the statement was not certified by the prison cashier.

{¶ 25} 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.

{¶ 26} Pursuant to the above-cited authority and because relator cannot cure these deficiencies at a later date, it is this magistrate's decision that this court should grant respondents' motion and dismiss relator's complaint. Relator's motion for summary judgment should be denied. Further, pursuant to the above authority, inasmuch as relator did not prevail and did not establish his indigency, this court should order him to pay the costs of the proceedings.

/s/ Stephanie Bisca Brooks
STEPHANIE BISCA BROOKS
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).