

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Mustafa Muhammad, :

[Relator,] :

v. : No. 11AP-892

The State of Ohio, : (REGULAR CALENDAR)

[Respondent.] :

D E C I S I O N

Rendered on May 17, 2012

Mustafa Muhammad, pro se.

Ron O'Brien, Prosecuting Attorney, and *Paul Thies*, for
respondent.

IN MANDAMUS
ON OBJECTION TO THE MAGISTRATE'S DECISION

BROWN, P.J.

{¶ 1} Relator, Mustafa Muhammad, has filed this original action requesting that this court issue a writ of mandamus ordering respondent, an unnamed judge of the Franklin County Court of Common Pleas, to rule on his "Writ Of Replevin Motion For Order Of Possession" filed on "July 19" in his underlying criminal case alleging that the county clerk has withheld money from him stemming from his original appearance bond.

{¶ 2} The matter was referred to a magistrate of this court pursuant to Civ.R. 53(C) and Loc.R. 12(M) of the Tenth District Court of Appeals. On December 7, 2011, the magistrate issued a decision, which is appended to this decision, recommending that this court dismiss relator's complaint due to relator's failure to comply with the requirements of R.C. 2969.25. Specifically, the magistrate determined that relator had failed to submit the statement required by R.C. 2969.25(C) setting forth the balance in his inmate account

for the preceding six months as certified by the institutional cashier, as well as a statement of all other cash and things of value owned by the inmate. Relator has filed an objection to the magistrate's decision.

{¶ 3} In his objection, relator argues that he did, in fact, file a statement from the institutional cashier pursuant to R.C. 2969.25(C). R.C. 2969.25 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.

{¶ 4} "It is well-settled that compliance with the requirements of R.C. 2969.25 is mandatory, and that the failure to comply with R.C. 2969.25 requires dismissal of the action." *State ex rel. Evans v. Ohio Adult Parole Auth.*, 10th Dist. No. 10AP-730, 2011-Ohio-2871, ¶ 4, citing *State ex rel. Washington v. Ohio Adult Parole Auth.*, 87 Ohio St.3d 258 (1997).

{¶ 5} In the present case, the document relator submitted at the time of filing does not satisfy the requirements of R.C. 2969.25. The document does not set forth the balance in relator's inmate account for each of the preceding six months. Although it does purport to state relator's account balance; total state pay credited for the preceding six months; the average monthly state pay for the preceding six months; and the total funds received from all sources, excluding state pay, for the preceding six months, it does not "[set] forth the balance in the inmate account of the inmate for each of the preceding six months." R.C. 2969.25(C)(1). In addition, relator has failed to file a statement that sets forth all other cash and things of value relator owns; thus, relator has failed to meet the requirements of R.C. 2969.25(C)(2). For these reasons, we agree with the magistrate that the document does not meet the requirements of R.C. 2969.25. Therefore, relator's objection is overruled.

{¶ 6} Based upon this court's independent review of the matter, we find that the magistrate has properly determined the facts and applied the pertinent law to them. Accordingly, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained therein. In accordance with the magistrate's recommendation, we hereby dismiss relator's action.

Action dismissed.

KLATT and CONNOR, JJ., concur.

APPENDIX A

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Mustafa Muhammad, :
[Relator,] :
v. : No. 11AP-892
The State of Ohio, : (REGULAR CALENDAR)
[Respondent.] :

MAGISTRATE'S DECISION

Rendered on December 7, 2011

Mustafa Muhammad, pro se.

*Ron O'Brien, Prosecuting Attorney, and Paul Thies, for
respondent.*

IN MANDAMUS ON MOTION FOR JUDGMENT ON THE PLEADINGS

{¶ 7} Relator, Mustafa Muhammad, has filed this original action requesting that this court order respondent, an unnamed judge of the Franklin County Court of Common Pleas, to rule on his "Writ of Replevin Motion For Order Of Possession" filed on "July 19" in his underlying criminal case alleging that the county clerk has withheld money from him stemming from his original appearance bond.

Findings of Fact:

{¶ 8} 1. Relator is an inmate currently incarcerated at Toledo Correctional Institution.

{¶ 9} 2. On July 19, relator filed a "Writ of Replevin Motion For Order Of Possession" in the Franklin County Court of Common Pleas. According to his complaint,

the motion was filed in his underlying criminal case, *State v. Muhammad*, Franklin C.P. No. 04CR-3444.

{¶ 10} 3. Relator filed this mandamus action on July 18, 2011 asserting that respondent had not yet ruled on his motion.

{¶ 11} 4. On November 9, 2011, respondent filed a motion for judgment on the pleadings arguing that relator's case should be dismissed because: (1) relator failed to name the proper party and this court lacks subject-matter jurisdiction; (2) the Franklin County Clerk of Courts has already refunded the initial bond to relator; and (3) relator has twice filed the same mandamus action in the Supreme Court of Ohio. *State ex rel. Muhammad v. O'Shaughnessy*, 127 Ohio St.3d 1529, 2010-Ohio-2060; *State ex rel. Muhammad v. O'Shaughnessy*, 126 Ohio St.3d 1613, 2010-Ohio-1466.

{¶ 12} 5. A review of the record demonstrates that the relator has complied with R.C. 2969.25(A) by filing an affidavit listing each civil action or appeal of a civil action he has filed in the past five years and providing specific information regarding each civil action or appeal. However, although relator has attached an affidavit of indigency, he has failed to include a statement in the amount of his inmate account for the preceding six months as certified by the institutional cashier or a statement of all other cash and things of value owned by him.

{¶ 13} 6. Relator has not responded to respondent's motion for judgment on the pleadings and the matter as currently before the magistrate.

Conclusions of Law:

{¶ 14} For the reasons that follow, it is this magistrate's decision that this court should dismiss relator's action.

{¶ 15} 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.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

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

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

{¶ 16} 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.

{¶ 17} 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 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.

{¶ 18} Likewise, in *State ex rel. Ridenour v. Brunsman*, 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.

{¶ 19} 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.

{¶ 20} Pursuant to the above cited authority and because relator cannot cure this deficiency at a later date, it is this magistrate's decision that this court should dismiss his complaint. As such, respondent's motion for judgment on the pleadings is denied as moot. 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/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).