

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Mustafa Muhammad,

•

•

Relator,

•

•

V.

□

□

No. 11AP-296

Franklin County Court of Common Plea[s],

•

•

(REGULAR CALENDAR)

Respondent.

□

□

DECISION

Rendered on January 24, 2012

Mustafa Muhammad, pro se.

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

IN MANDAMUS

BROWN, P.J.

{¶1} Relator, Mustafa Muhammad, an inmate at the Toledo Correctional Institution, has filed an original action requesting that this court issue a writ of mandamus ordering respondent, identified as the "Franklin County Court of Common Plea[s]," to hear relator's request for a writ of replevin he allegedly filed on June 22, 2010 in the Franklin County Court of Common Pleas. On May 4, 2011, respondent filed a motion to dismiss relator's action. On May 24, 2011, relator filed a motion for leave to amend his complaint.

{¶2} This 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. The magistrate issued a decision which is appended to this decision, including findings of fact and conclusions of law, recommending that this court deny relator's motion for leave to amend his complaint, and further recommending that this court grant respondent's motion to dismiss the action. No objections have been filed to that decision.

{¶3} Finding no error of law or other defect on the face of the magistrate's decision, this court adopts the magistrate's decision as our own, including the findings of fact and conclusions of law. In accordance with the magistrate's recommendation, relator's motion for leave to amend his complaint is denied, and respondent's motion to dismiss this action is hereby granted.

*Relator's motion for leave denied;
respondent's motion to dismiss granted; action dismissed.*

TYACK and DORRIAN, JJ., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Mustafa Muhammad,	:	
Relator,	:	
v.	:	No. 11AP-296
Franklin County Court of Common Plea[s],	:	(REGULAR CALENDAR)
Respondent.	:	

MAGISTRATE'S DECISION

Rendered on June 13, 2011

Mustafa Muhammad, pro se.

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

IN MANDAMUS ON RESPONDENT'S MOTION TO DISMISS

{¶4} In this original action, relator, Mustafa Muhammad, an inmate of the Toledo Correctional Institution ("TCI"), requests that a writ of mandamus issue against respondent which relator identifies as the "Franklin County Court of Common Plea[s]." Relator requests that the writ order respondent to "hear" his request for a writ of replevin allegedly filed on June 22, 2010 in the Franklin County Court of Common Pleas.

Findings of Fact:

{¶5} 1. On April 1, 2011, relator, a TCI inmate, filed this mandamus action against the named respondent.

{¶6} 2. Relator has not deposited with the clerk of this court the sum of \$100 as security for the payment of costs. See Loc.R. 12(B).

{¶7} 3. With his complaint, relator filed a document captioned "Affidavit of Indigency" executed February 17, 2011. Also with his complaint, relator filed a document captioned "Institutional Cashier's Certification of Inmate Account" which purports to have been certified by the TCI cashier on February 18, 2011.

{¶8} 4. However, relator did not file with his complaint the affidavit required by R.C. 2969.25(A) that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court.

{¶9} 5. On May 4, 2011, respondent moved for dismissal of this action.

{¶10} 6. On May 6, 2011, the magistrate issued an order that relator shall file his response to the motion to dismiss no later than May 27, 2011.

{¶11} 7. On May 24, 2011, relator moved for leave to amend his complaint by adding an affidavit executed by relator on May 19, 2011. The affidavit purports to comply with R.C. 2969.25(A).

{¶12} 8. On May 24, 2011, relator also filed a document captioned "Relator's Response to Respondent's Motion to Dismiss."

Conclusions of Law:

{¶13} It is the magistrate's decision that this court grant respondent's May 4, 2011 motion to dismiss for the failure of relator to satisfy the filing requirements imposed upon an inmate confined in a state correctional institution pursuant to R.C. 2969.25.

{¶14} R.C. 2969.25 states in part:

(A) At the time that an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court an affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court. * * *

{¶15} In *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, an inmate, Carlos J. Fuqua, filed in the Allen County Court of Appeals a petition for a writ of habeas corpus. He requested leave to proceed in forma pauperis but he did not file the affidavit required by R.C. 2969.25(A) describing each civil action or appeal of a civil action that he had filed in the previous five years in any state or federal court.

{¶16} Fuqua's prison warden, Jesse J. Williams, moved to dismiss the petition.

{¶17} Fuqua requested leave in the court of appeals to amend his petition with the affidavit required by R.C. 2969.25(A).

{¶18} The court of appeals dismissed the petition for habeas corpus and Fuqua appealed as of right to the Supreme Court of Ohio.

{¶19} The Supreme Court of Ohio, in *Fuqua*, at ¶9, states:

* * * Fuqua's belated attempt to file the required affidavit does not excuse his non-compliance. See R.C. 2969.25(A), which requires that the affidavit be filed "[a]t the time that an inmate commences a civil action or appeal against a government entity or employee." (Emphasis added.)

{¶20} In *Hawkins v. S. Ohio Correctional Facility*, 102 Ohio St.3d 299, 2004-Ohio-2893, an inmate, Jomo Hawkins, petitioned the Scioto County Court of Appeals for a writ of habeas corpus. However, Hawkins' petition did not contain the R.C. 2725.04(D) commitment papers, nor the affidavit required by R.C. 2969.25(A). Later, Hawkins filed an un-notarized statement purporting to be his R.C. 2969.25(A) affidavit.

{¶21} Following dismissal of his action, Hawkins appealed as of right to the Supreme Court of Ohio. Citing *Fuqua*, the *Hawkins* court affirmed the judgment of the court of appeals.

{¶22} Here, relator failed to satisfy the requirements of R.C. 2969.25(A) as of the date of the filing of his complaint, April 1, 2011.

{¶23} However, attempting to remedy his failure to satisfy the R.C. 2969.25(A) filing requirement, relator has moved for leave to amend his complaint by adding a document he believes will satisfy R.C. 2969.25(A).

{¶24} But allowing relator to amend his complaint by adding the document will not satisfy R.C. 2969.25(A)'s requirement. See *State ex rel. White v. Ohio Adult Parole Auth.* (May 3, 2011), 10th Dist. No. 10AP-1093 (memorandum decision).

{¶25} Accordingly, it is the magistrate's decision that this court deny relator's May 24, 2011 motion for leave to amend his complaint. It is further the magistrate's decision that this court grant respondent's motion to dismiss this action.

s/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).