IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel.	:	
Andre Conley,		
	:	
Relator,		
	:	No. 12AP-250
v.		
	:	(REGULAR CALENDAR)
Judge(s), Franklin County Court of		
Common Pleas,	:	
Respondent(s).]	:	

D E C I S I O N

Rendered on July 31, 2012

Andre Conley, pro se.

Ron O'Brien, Prosecuting Attorney, for respondent(s).

IN MANDAMUS

FRENCH, J.

{¶ 1} Relator, Andre Conley ("relator"), filed an original action, which asks this court to issue a writ of mandamus ordering respondent Timothy Horton, judge of the Franklin County Court of Common Pleas, to rule on a motion that is pending in relator's underlying criminal case.

{¶ 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 dismiss this action because relator, an inmate, failed to comply with statutory filing requirements. Relator did not file objections to the

magistrate's decision.   Rather, on May 10, 2012, relator filed a document entitled "Reconsideration to Re-file Our Motion Strictly for Justice under our United States of America's Constitution." If relator intended this to be an objection to the magistrate's decision, it is untimely. If relator intended this to be an application for reconsideration, appellate procedural rules do not allow for such a filing.   Nevertheless, we have undertaken an independent review of the record in this matter, and we note the following procedural history.

{¶ 3}   On March 27, 2012, the magistrate issued an order that advised relator of his failure to post a deposit or file an affidavit of indigency. The magistrate ordered: "[U]nless a filing fee and a motion for leave to make late payment or an affidavit of indigency is filed with the clerk not later than April 5, 2012, this action will be sua sponte dismissed." On March 29, 2012, the magistrate issued a decision recommending that we sua sponte dismiss relator's action. In his subsequent filing with the court, relator complained that he was not able to comply with the magistrate's March 27, 2012 order prior to issuance of her decision recommending dismissal, and we agree. In her decision, however, the magistrate explained that, in addition to his failure to pay the required filing fee, relator also failed to file an affidavit listing each civil action or appeal of a civil action that he had filed in the past five years. Therefore, even if relator had complied with the magistrate's March 27, 2012 order and paid the filing fee or, in the alternative, filed an affidavit of indigency, his complaint still would be subject to dismissal for his failure to file the separate affidavit concerning other actions. Therefore, relator suffered no prejudice as a result of the magistrate issuing her decision prior to April 5, 2012.

{¶ 4}   Having reviewed the record in this matter independently, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained in it.   We deny relator's May 10, 2012 request for reconsideration. Accordingly, we dismiss this action.

Request for reconsideration denied;
cause dismissed.

BROWN, P.J., and TYACK, J., concur.

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	:	
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	:	(REGULAR CALENDAR)
Judge(s), Franklin County Court of Common Pleas,	:	
Respondent(s).]	:	

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

Rendered on March 29, 2012

Andre Conley, pro se.

Ron O'Brien, Prosecuting Attorney, for respondent(s).

IN MANDAMUS
ON SUA SPONTE DISMISSAL

{¶ 5}   Relator, Andre Conley, has filed this original action requesting that this court issue a writ of mandamus ordering respondent(s), judge(s) of the Franklin County Court of Common Pleas, to rule on a motion which is pending in his underlying criminal case.

Finding of Fact:

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

{¶ 7} 2. Relator is in prison following a guilty plea to involuntary manslaughter, aggravated burglary, and aggravated arson. Relator's aggregate sentence is 26 years of incarceration.

{¶ 8} 3. Relator filed a motion for delayed appeal in this court pursuant to App.R. 5(A). Relator also requested that counsel be appointed and requested that he be granted leave to proceed in forma pauperis.

{¶ 9} 4. In a memorandum decision filed March 21, 2006, this court denied relator's motions.

{¶ 10} 5. On March 22, 2012, relator filed this mandamus action in this court. Relator has not filed the affidavit required by R.C. 2969.25(A) requiring that he list any prior civil actions or appeals that he may have filed.

{¶ 11} 6. Relator also has not filed a statement of the amount in his inmate account for the proceeding six months as certified by the institutional cashier pursuant to R.C. 2969.25(C).

Conclusions of Law:

{¶ 12} The magistrate recommends that the present action be dismissed. First, 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 addition, relator has not complied with other requirements of R.C. 2969.25.

{¶ 13} R.C. 2969.25(A) requires an inmate to file, at the time he commences a civil action against a governmental entity or employee, an affidavit listing each civil action or appeal of a civil action that he filed in the past five years, providing specific information regarding each civil action or appeal. In the present action, relator has not filed the required affidavit.

{¶ 14} 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

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[1]Under 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 $10) is forwarded to the clerk each month until the fees are paid.

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.

{¶ 15} 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.*, 87 Ohio St.3d 258 (1999); *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421 (1998); *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285 (1997).

{¶ 16} In the present action, relator has not filed the required affidavit regarding his other civil actions, if any. In addition, relator has not filed an affidavit of indigency that includes the required information and, thus, he cannot qualify for payment of fees in installments from his prison account. Therefore, dismissal of the complaint is warranted.

{¶ 17} The magistrate, accordingly, recommends that the court sua sponte dismiss this action.

/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).