

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio ex rel. Corey Hazel,	:	
Relator,	:	
v.	:	No. 11AP-299
State of Ohio, Judge John F. Bender,	:	(REGULAR CALENDAR)
Franklin County Court of Common Pleas,	:	
Respondent.	:	

D E C I S I O N

Rendered on February 2, 2012

Corey Hazel, pro se.

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

IN MANDAMUS

BROWN, P.J.

{¶1} Relator, Corey Hazel, an inmate of the Chillicothe Correctional Institution, has filed this original action requesting that this court issue writs of mandamus, prohibition, and procedendo against respondent, the Honorable John F. Bender, a judge in the Franklin County Court of Common Pleas. Respondent has filed a motion to dismiss, and relator has 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 the appended decision, including findings of fact and conclusions of law, and recommended that this court deny relator's motion for leave to amend his complaint and grant respondent's motion to dismiss. No objections have been filed to that decision.

{¶3} As there have been no objections filed to the magistrate's decision, and it contains no error of law or other defect on its face, based on an independent review of the file, this court adopts the magistrate's decision. Relator's motion for leave to amend his complaint is denied, and respondent's motion to dismiss is granted.

*Motion to dismiss granted;
action dismissed.*

TYACK and DORRIAN, JJ., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Corey Hazel,	:	
Relator,	:	
v.	:	No. 11AP-299
State of Ohio, Judge John F. Bender,	:	(REGULAR CALENDAR)
Franklin County Court of Common Pleas,	:	
Respondent.	:	

MAGISTRATE'S DECISION

Rendered on June 8, 2011

Corey Hazel, pro se.

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

IN MANDAMUS, PROHIBITION AND PROCEDENDO ON RESPONDENT'S MOTION TO DISMISS

{¶4} In this original action, relator, Corey Hazel, an inmate of the Chillicothe Correctional Institution ("CCI"), requests that writs of mandamus, prohibition and procedendo issue against respondent, the Honorable John F. Bender, a Judge of the Franklin County Court of Common Pleas.

Findings of Fact:

{¶5} 1. On April 4, 2011, relator filed this original action seeking writs of mandamus, prohibition and procedendo against 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. On April 4, 2011, with his complaint, relator filed a document captioned "Affidavit of Relator[']s Civil Actions Filed Within the Last Five Years Pursuant to R.C. 2969.25."

{¶8} 4. On April 4, 2011, with his complaint, relator filed a document captioned "Affidavit of Indigency" executed February 2, 2011. The document states:

I, Corey Hazel, do hereby state that I am without the necessary funds to pay the costs of this action for the following reasons:

I am currently incarcerated at the CCI and I have been incarcerated since 07. I work at the prison but receive only 18 dollars per month.

Pursuant to Rule XV, Section 3, of the Rules of Practice of the Supreme Court of Ohio, I am requesting that the filing fee and security deposit, if applicable, be waived.

{¶9} 5. On April 27, 2011, relator filed a statement regarding his inmate account as certified by the CCI cashier.

{¶10} 6. On May 5, 2011, respondent moved for dismissal of this action, or, in the alternative, for summary judgment.

{¶11} 7. On May 16, 2011, invoking Civ.R. 15(A), relator moved to amend his complaint by having this court accept the CCI cashier's statement. The motion also requested that this court accept a May 16, 2011 filed document captioned "Affidavit of

Indigency, Affidavit of Waiver of Prepayment Court's Full Filing Fees." Executed May 11, 2011, the affidavit states:

Before me, a Notary Public in and for Ross County, Ohio, personally appeared Relator, Corey Hazel in the above entitled action, and who being first duly sworn according to law, deposes and says that he is presently imprisoned at Chillicothe Correctional Institution and that he is presently without necessary funds or assets of any kind with which to employ counsel or without the means to obtain funds or assets for prepayment of the court's full filing fees or court costs. Relator now seeks a waiver of prepayment of the court's full filing fees.

Pursuant to R.C. 2969.25(C)(1), the attached certified six month statement of the inmates account is true and accurate to the best of my knowledge.

Pursuant to R.C. 2969.25(C)(2), Relator deposes and states that there is no other cash and/or things of value owned by the inmate at this time.

Conclusions of Law:

{¶12} It is the magistrate's decision that this court grant respondent's May 5, 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.

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. * * *

* * *

(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.

{¶13} 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.

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

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

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

{¶17} 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.)

{¶18} 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.

{¶19} 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.

{¶20} Here, relator failed to satisfy the requirements of R.C. 2969.25(C) as of the date of the filing of his complaint, April 4, 2011.

{¶21} At the filing of his complaint, relator failed to file a proper affidavit of indigency that "sets forth all other cash and things of value owned by the inmate" and he failed to file a certified institutional cashier's statement regarding his inmate account.

{¶22} However, attempting to remedy his failure to satisfy the R.C. 2969.25(C) filing requirements, relator has moved for leave to amend his complaint by adding documents he believes will satisfy R.C. 2969.25(C).

{¶23} But allowing relator to amend his complaint by adding the documents will not satisfy R.C. 2969.25(C)'s requirement which calls for the filing of the affidavit "with the complaint." See *State ex rel. White v. Ohio Adult Parole Auth.* (May 3, 2011), 10th Dist. No. 10AP-1093 (Memorandum Decision).

{¶24} Accordingly, it is the magistrate's decision that this court deny relator's May 16, 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).