

[Cite as *State ex rel. Easley v. Burke*, 2012-Ohio-4548.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. David Easley,	:	
Relator,	:	
v.	:	No. 12AP-486
Doctor Burke,	:	(REGULAR CALENDAR)
Respondent.	:	

D E C I S I O N

Rendered on October 2, 2012

David Easley, pro se.

IN MANDAMUS
ON SUA SPONTE DISMISSAL

FRENCH, J.

{¶ 1} Relator, David Easley, an inmate of the Southern Ohio Correctional Facility, filed an original action, which asks this court to issue a writ of mandamus against respondent "Doctor Burke," an alleged employee of the Ohio Department of Rehabilitation and Correction.

{¶ 2} This matter was referred to a magistrate pursuant to Civ.R. 53(C) and Loc.R. 13(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 sua sponte dismiss this action because relator failed to meet mandatory filing requirements of R.C. 2969.25(A) and (C). No objections to the magistrate's decision have been filed.

{¶ 3} Finding no error law or other defect in the magistrate's decision, we adopt the decision as our own, including the findings of fact and conclusions of law contained in it. In accordance with the magistrate's decision, we sua sponte dismiss this action.

Cause dismissed.

BRYANT and TYACK, JJ., concur.

A P P E N D I X

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Relator,	:	No. 12AP-486
	:	
v.	:	(REGULAR CALENDAR)
	:	
Doctor Burke,	:	
	:	
Respondent.	:	

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

Rendered on June 29, 2012

David Easley, pro se.

IN MANDAMUS
ON SUA SPONTE DISMISSAL

{¶ 4} In this original action, relator, David Easley, an inmate of the Southern Ohio Correctional Facility ("SOCF") requests that a writ of mandamus issue against respondent "Doctor Burke," an alleged employee of the Ohio Department of Rehabilitation and Correction.

Findings of Fact:

{¶ 5} 1. On June 7, 2012, relator, an SOCF inmate, filed this original action against an alleged government employee.

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

{¶ 7} 3. On June 7, 2012, relator filed with his complaint a document captioned "Affidavit of Indigency;" however, the document is not notarized and is thus not truly an affidavit.

{¶ 8} 4. Relator has not filed a statement setting forth the balance in his inmate account for each of the [preceding] six months, as certified by the institutional cashier pursuant to R.C. 2969.25(C)(1).

{¶ 9} 5. On June 7, 2012, relator filed with his complaint a document captioned "Prior Actions;" however, this document is not an affidavit and cannot satisfy R.C. 2969.25(A).

Conclusions of Law:

{¶ 10} It is the magistrate's decision that this court sua sponte dismiss this action. R.C. 2969.25 states:

(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.

{¶ 11} Relator's failure to meet the mandatory filing requirements of R.C. 2969.25(A) and (C) requires dismissal of this action. *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533; *Hawkins v. S. Ohio Corr. Facility*, 102 Ohio St.3d 299, 2004-Ohio-2893.

{¶ 12} Accordingly, it is the magistrate's decision that this court sua sponte dismiss this action.

/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).