

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

[State of Ohio ex rel.]	:	
Daniel Spurlock,	:	
	:	
Relator,	:	No. 12AP-1002
	:	
v.	:	(REGULAR CALENDAR)
	:	
Timothy Alan Spurlock,	:	
	:	
Respondent.	:	

D E C I S I O N

Rendered on April 18, 2013

Daniel Spurlock, pro se.

IN MANDAMUS

McCORMAC, J.

{¶ 1} Relator, Daniel Spurlock, has filed this original action requesting that this court issue a writ of mandamus ordering respondent, Timothy Alan Spurlock, to "quit using drugs and take care of his 2 children so his 70 and 71 year old parents don't have to."

{¶ 2} Pursuant to Civ.R. 53 and Loc.R. 13(M) of the Tenth Appellate District, this matter was referred to a magistrate who issued a decision, including findings of fact and conclusions of law, which is appended hereto. Therein, the magistrate concluded that relator failed to comply with the mandatory requirements of both R.C. 2969.25(A) and (C). Accordingly, the magistrate recommended that this court dismiss relator's mandamus action and order him to pay the costs of the proceedings.

{¶ 3} No objections have been filed to the magistrate's decision.

{¶ 4} Finding no error of law or other defect in the magistrate's decision, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law therein. In accordance with the magistrate's decision, relator's mandamus action is dismissed, and he is ordered to pay the costs of these proceedings.

Action dismissed.

BRYANT and CONNOR, JJ., concur.

McCORMAC, J., retired of the Tenth Appellate District,
assigned to active duty under authority of the Ohio
Constitution, Article IV, Section 6(C).

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

[State of Ohio ex rel.]	:	
Daniel Spurlock,	:	
	:	
Relator,	:	No. 12AP-1002
	:	
v.	:	(REGULAR CALENDAR)
	:	
Timothy Alan Spurlock,	:	
	:	
Respondent.	:	

MAGISTRATE'S DECISION

Rendered on December 17, 2012

Daniel Spurlock, pro se.

IN MANDAMUS ON SUA SPONTE DISMISSAL

{¶ 5} Relator, Daniel Spurlock, has filed this original action requesting that this court issue a writ of mandamus ordering respondent, Timothy Allen Spurlock, to "quit using drugs and take care of his 2 children so his 70 and 71 year old parents don't have to."

Findings of Fact:

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

{¶ 7} 2. On November 29, 2012, relator filed this mandamus action asking this court to order Timothy Spurlock to stop using drugs and care for his children.

{¶ 8} 3. At the time he filed his complaint, relator filed a motion for leave to proceed in forma pauperis. Relator attached thereto what appears to be a statement from the cashier noting that relator's current balance is \$1.97, that the total amount of payroll credited to his account for the preceding 6 months was \$34.50, and that the average monthly payroll amount is \$5.75.

{¶ 9} 4. Relator did not file an affidavit containing a description of each civil action or appeal of a civil action that he has filed in the previous five years nor has relator indicated that he has not filed any such actions.

Conclusions of Law:

{¶ 10} The magistrate recommends that this court sua sponte dismiss relator's mandamus action because he has failed to comply with the requirements of both R.C. 2969.25(A) and (C).

{¶ 11} 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.

{¶ 12} 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 his inmate account for each of 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.

{¶ 13} 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*

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 \$10) is forwarded to the clerk each month until the fees are paid.

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).

{¶ 14} In the present action, relator has not filed the required affidavit regarding his other civil actions, if any.

{¶ 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.

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.)

{¶ 19} 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.

{¶ 20} 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.

{¶ 21} 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.

{¶ 22} 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.

{¶ 23} 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.

Id. at ¶ 5-6.

{¶ 24} Pursuant to the above-cited authority and because relator cannot cure these deficiencies at a later date, it is this magistrate's decision that this court should dismiss his complaint.

{¶ 25} Because relator has failed to comply with the mandatory filing requirements of R.C. 2969.25(A) and (C), it is this magistrate's decision that this court should dismiss these actions. 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/ MAGISTRATE
STEPHANIE BISCA BROOKS

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).