

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

[State ex rel. Cheryl Pankey,	:	
Relator,	:	
v.	:	No. 12AP-782
Judge Kimberly Cocroft,	:	(REGULAR CALENDAR)
Respondent.]	:	

D E C I S I O N

Rendered on February 7, 2013

Cheryl Pankey, pro se.

Ron O'Brien, Prosecuting Attorney, and *Jeffrey C. Rogers*,
for respondent.

IN PROCEDENDO

McCORMAC, J.

{¶ 1} Relator, Cheryl Pankey, filed an original action in this court which asks this court to issue a writ of procedendo ordering respondent, Judge Kimberly Cocroft, to rule on relator's motion for post-conviction relief filed on November 15, 2011 and amended on April 25, 2012. Relator seeks a writ of procedendo requiring respondent to proceed to final judgment because she asserts that there is no reason for delay.

{¶ 2} This matter was referred to a magistrate of this court pursuant to Civ.R. 53(C) and Loc.R. 13(M) of the Tenth District Court of Appeals. On September 27, 2012, the magistrate rendered the appended decision which contains findings of fact and conclusions of law with the recommendation that this court sua sponte dismiss the action.

{¶ 3} As noted in the magistrate's appended decision, the sua sponte dismissal was based on the failure of relator to comply with R.C. 2969.25(A) and (C). Relator's

failure to meet the mandatory filing requirements of this statute requires dismissal of the action. *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533.

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

{¶ 5} Finding no error of 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 deny the requested writ of procedendo.

{¶ 6} On September 28, 2012, respondent's attorney filed a motion to dismiss the action in the common pleas court. That motion basically asserted the same reasons for dismissal that were recognized by the magistrate of this court. The respondent's motion was ordered to be submitted to this court for determination with the merits of the action. In light of our decision, it is moot.

Writ of procedendo denied.

BRYANT and TYACK, 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 ex rel. Cheryl Pankey,	:	
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	:	No. 12AP-782
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	:	(REGULAR CALENDAR)
Judge Kimberly Cocroft,	:	
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MAGISTRATE'S DECISION

Rendered on September 27, 2012

Cheryl Pankey, pro se.

IN PROCEDENDO ON SUA SPONTE DISMISSAL

{¶ 7} In this original action, relator, Cheryl Pankey, an inmate of the Franklin Medical Center ("FMC") of the Ohio Department of Rehabilitation and Correction, requests that this court issue a writ of procedendo against the Honorable Kimberly Cocroft, a judge of the Franklin County Court of Common Pleas.

Findings of Fact:

{¶ 8} 1. On September 7, 2012, relator, an FMC inmate, filed this original action requesting that a writ of procedendo issue against the Honorable Kimberly Cocroft.

{¶ 9} 2. Relator has not deposited with the clerk of this court the sum required as security for the payment of costs. *See* Loc.R. 13(B).

{¶ 10} 3. Relator has not filed an affidavit that she is seeking a waiver of the prepayment of this court's full filing fees and an affidavit of indigency as required by R.C. 2969.25(C).

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

{¶ 12} 5. Relator has not filed an affidavit that contains a description of each civil action or appeal of a civil action that she has filed in the previous five years in any state or federal court, as required by R.C. 2969.25(A).

Conclusions of Law:

{¶ 13} 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.

{¶ 14} 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.

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

/S/ MAGISTRATE
KENNETH W. MACKE

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).