

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Donald Martin,	:	
Plaintiff-Appellant,	:	No. 15AP-1052
v.	:	(C.P.C. No. 15CV-6729)
Ohio Adult Parole Authority,	:	(ACCELERATED CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 21, 2016

On brief: *Donald Martin*, pro se.

On brief: *Michael DeWine*, Attorney General, and *Gene D. Park*, for appellee.

APPEAL from the Franklin County Court of Common Pleas

BROWN, J.

{¶1} Donald Martin, plaintiff-appellant, appeals a judgment of the Franklin County Court of Common Pleas, in which the court granted the motion to dismiss filed by the Ohio Adult Parole Authority, defendant-appellee.

{¶2} Appellant is an inmate at the Chillicothe Correctional Institution. In July 2008, he and other inmates filed a federal action in the United States District Court for the Northern District of Ohio, Eastern Division, against appellee and others, alleging that appellee's retroactive application of its 2007 parole guidelines, policies, and procedures violated their rights under the Ex Post Facto and Due Process Clauses of the United States Constitution. During the course of litigation, appellee rescinded the 2007 parole guidelines manual. The district court granted appellee's motion for summary judgment. The court found that appellee's rescission of the guidelines manual rendered the plaintiffs'

arguments with regard to the manual moot. The court also rejected the plaintiffs' other claims. The Sixth Circuit Court affirmed the district court's decision in *Allen v. Collins*, 529 Fed.Appx. 576 (6th Cir.2013).

{¶3} On August 5, 2015, appellant filed a writ of mandamus in the Franklin County Court of Common Pleas. In the complaint, appellant alleged that the circuit court erred when it affirmed the district court's decision. On September 4, 2015, appellee filed a motion to dismiss arguing that appellant's claims were subject to res judicata, appellant's arguments were moot, appellant's complaint did not comply with R.C. 2969.25, and the parole board did not actually place him in the category of murder in the 2009 parole decision, which was one of his arguments.

{¶4} On October 23, 2015, the trial court granted appellee's motion to dismiss. The trial court found res judicata applied because appellant asserted the same claims and issues in *Allen* that he raised in the current case. The court also noted that it agreed with appellee's argument that the mandamus action did not comply with R.C. 2969.25(A). Appellant appeals the judgment, asserting the following assignments of error:

[I.] The Court of Common Pleas Committed Error In Holding That Appellant's Present Action Was Barred By The Former Judgment Or Action Under The Doctrine Of Res Judicata.

[II.] I[t] Would Be Error For The Lower Court To Have Dismissed Appellant's Claims Where The Respondent Claims He had Not Adhered to Ohio Revised Code 2969.25 as that Statu[t]e Is Inapplicable In This Instance.

{¶5} We address appellant's second assignment of error first, as it is dispositive of the appeal. Appellant argues in his second assignment of error that the trial court erred when it found that his complaint should have been dismissed on grounds that the complaint did not comply with R.C. 2969.25, which provides:

(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. The affidavit shall include all of the following for each of those civil actions or appeals:

(1) A brief description of the nature of the civil action or appeal;

(2) The case name, case number, and the court in which the civil action or appeal was brought;

(3) The name of each party to the civil action or appeal;

(4) The outcome of the civil action or appeal, including whether the court dismissed the civil action or appeal as frivolous or malicious under state or federal law or rule of court, whether the court made an award against the inmate or the inmate's counsel of record for frivolous conduct under section 2323.51 of the Revised Code, another statute, or a rule of court, and, if the court so dismissed the action or appeal or made an award of that nature, the date of the final order affirming the dismissal or award.

{¶6} In the present case, although the court's decision addressed *res judicata* as a grounds for dismissal in greater detail, the court also indicated that it believed appellant failed to comply with the requirements in R.C. 2969.25(A). We agree that appellant has not complied with R.C. 2969.25(A).

{¶7} As the Supreme Court of Ohio has held, "[t]he requirements of R.C. 2969.25 are mandatory and failure to comply with them requires dismissal of an inmate's complaint." *State ex rel. Hall v. Mohr*, 140 Ohio St.3d 297, 2014-Ohio-3735, ¶ 4, citing *State ex rel. Washington v. Ohio Adult Parole Auth.*, 87 Ohio St.3d 258, 259 (1999). Thus, both the affidavit of waiver and the certified statement of account "must be filed at the time the complaint is filed, and an inmate may not cure the defect by later filings." *Id.*, citing *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, ¶ 9. *See also Morris v. Franklin Cty. Court of Common Pleas*, 10th Dist. No. 05AP-596, 2005-Ohio-6306, ¶ 6 (noting "[c]ompliance with R.C. 2969.25 is mandatory and failure to comply subjects an inmate's action to dismissal").

{¶8} Here, appellant did submit an affidavit with his complaint; however, it was deficient. Appellant's only averment in his affidavit was that in the past five years he filed one civil action. Attached to the affidavit was a document that is basically a printout of the case caption from his prior action. The affidavit and attachment do not satisfy the requirements in R.C. 2969.25(A)(1), (3), and (4). With regard to R.C. 2969.25(A)(1), neither appellant's affidavit nor the attachment provide a description of the nature of the civil action. With regard to R.C. 2969.25(A)(3), the case caption provided in the

attachment does not provide the names of all the plaintiffs and defendants, instead indicating only "et al." R.C. 2969.25(A)(3) requires that the affidavit name "each" party to the action, and "et al." does not satisfy this requirement. With regard to R.C. 2969.25(A)(4), the attachment indicates only that the judgment of the district court was affirmed. It fails to include whether the court dismissed the civil action or appeal as frivolous or malicious, whether the court made an award against appellant or his counsel for frivolous conduct, and, if the court so dismissed the action or appeal or made an award of that nature, the date of the final order affirming the dismissal or award. As indicated above, the requirements of R.C. 2969.25 are mandatory and failure to comply with them requires dismissal of an inmate's complaint. *See Hall* at ¶ 4. Therefore, we find the trial court did not err when it found that dismissal was appropriate based on appellant's failure to comply with the affidavit requirements of R.C. 2969.25(A). For these reasons, we overrule appellant's second assignment of error. Furthermore, given this finding, we need not address the trial court's determination that dismissal was also appropriate based upon res judicata, and appellant's first assignment of error addressing such is rendered moot.

{¶9} Accordingly, appellant's first assignment of error is rendered moot, his second assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

TYACK and KLATT, JJ., concur.
