

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Larry Taylor,	:	
Relator,	:	
v.	:	No. 16AP-132
Ohio Adult Parole Authority,	:	(REGULAR CALENDAR)
Andre Imbrogno, Chair of	:	
the Ohio Adult Parole Board,	:	
Respondent.	:	

D E C I S I O N

Rendered on September 30, 2016

On brief: *Larry Taylor, pro se.*

IN MANDAMUS
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

BROWN, J.

{¶ 1} Relator, Larry Taylor, has filed an original action requesting this court to issue a writ of mandamus ordering respondent, the Ohio Adult Parole Authority, to conduct a proper parole hearing.

{¶ 2} Pursuant to Civ.R. 53 and Loc.R. 13(M) of the Tenth District Court of Appeals, this matter was referred to a magistrate of this court who issued the appended decision, including findings of fact and conclusions of law, recommending that this court dismiss this action because relator failed to comply with the mandatory filing requirements of R.C. 2969.25(A) and (C). Specifically, the magistrate found that relator had not filed an affidavit of prior actions, pursuant to R.C. 2969.25(A), nor had he paid the filing fee in compliance with R.C. 2969.25(C) by filing an affidavit which included the

statement of the amount in his inmate account for the preceding six months, as certified by the institutional cashier, and a statement of all other cash and things of value he owns.

{¶ 3} Relator has filed two pro se objections to the magistrate's decision. Under his first objection, relator contends that his affidavit of indigency "may have been left out or inadvertently misplaced." Under his second objection, relator argues he was "not made aware that he had to file an asset form."

{¶ 4} As noted by the magistrate, the requirements of R.C. 2969.25 are mandatory. *See, e.g., State ex rel. Evans v. Ohio Adult Parole Auth.*, 10th Dist. No. 10AP-730, 2011-Ohio-2871, ¶ 4. As such, "the failure to comply with R.C. 2969.25 requires dismissal of the action." *Id.* Further, "[a] belated attempt to file an affidavit that complies with R.C. 2969.25 does not excuse the noncompliance." *State ex rel. Young v. Clipper*, 142 Ohio St.3d 318, 2015-Ohio-1351, ¶ 9. Similarly, the statement of the inmate's account balance, required pursuant to R.C. 2969.25(C), "must be part of the initial filing of the petition and cannot later be added or amended to the petition." *State ex rel. Sevilla v. State*, 10th Dist. No. 14AP-479, 2015-Ohio-737, ¶ 6, citing *Hazel v. Knab*, 130 Ohio St.3d 22, 2011-Ohio-4608, ¶ 1.

{¶ 5} Relator's contention that he was unaware of the filing requirements of R.C. 2969.25 is unavailing. *See, e.g., Brown v. Ohio Adult Parole Auth.*, 10th Dist. No. 09AP-797, 2010-Ohio-872, ¶ 11 (fact that appellant "is not trained in the law is not a justifiable excuse for failing to file the required documents [under R.C. 2969.25] with his complaint"; under Ohio law, "pro se litigants are presumed to have knowledge of the law and of correct legal procedure and are held to the same standard as all other litigants"). Here, because relator failed to file the proper affidavits and documents at the commencement of his action, his objections are overruled.

{¶ 6} Following an independent review of this matter, we find the magistrate has properly determined the facts and applied the appropriate law. Accordingly, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained therein. In accordance with the magistrate's recommendation, relator's action is hereby dismissed.

Objections overruled; action dismissed.

KLATT and SADLER, JJ., concur.

APPENDIX
IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio ex rel. Larry Taylor,	:	
Relator,	:	
v.	:	No. 16AP-132
Ohio Adult Parole Authority,	:	(REGULAR CALENDAR)
Andre Imbrogno, Chair of	:	
the Ohio Adult Parole Board,	:	
Respondent.	:	

MAGISTRATE'S DECISION

Rendered on March 18, 2016

Larry Taylor, pro se.

**IN MANDAMUS
ON SUA SPONTE DISMISSAL**

{¶ 7} Relator, Larry Taylor, has filed this original action requesting that this court issue a writ of mandamus ordering respondent, the Ohio Adult Parole Authority ("OAPA"), to conduct a proper parole hearing.

Findings of Fact:

{¶ 8} 1. Relator is an inmate currently incarcerated at Marion Correctional Institution.

{¶ 9} 2. On February 24, 2016, relator filed the instant mandamus action asking this court to order the OAPA to conduct a proper parole hearing.

{¶ 10} 3. At the time relator filed this mandamus action, he did not file an affidavit of prior actions as required by R.C. 2969.25(A), nor did he pay the filing fee for complying with R.C. 2969.25(C) by filing an affidavit including the statement of the amount in his

inmate account for each of the preceding six months, as certified by the institutional cashier, as well as a statement of all other cash and things of value he owns.

Conclusions of Law:

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

{¶ 12} 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.

{¶ 13} 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.

{¶ 14} 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 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).

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

{¶ 16} 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.

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.

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

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

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

{¶ 20} 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.)

{¶ 21} 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.

{¶ 22} 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.

{¶ 23} 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.

{¶ 24} 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.

{¶ 25} 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.

{¶ 26} 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

this action. 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

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).