

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

The State ex rel. William H. Evans, Jr.,	:	
Relator,	:	
v.	:	No. 16AP-238
[Patrick M.] McGrath, Judge,	:	(REGULAR CALENDAR)
Court of Claims of Ohio,	:	
Respondent.	:	

D E C I S I O N

Rendered on December 22, 2016

On brief: *William H. Evans, Jr., pro se.*

On brief: *Michael DeWine, Attorney General, Jordan S. Berman and Renata Y. Staff, for respondent.*

IN PROHIBITION
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

KLATT, J.

{¶ 1} Relator, William H. Evans, Jr., an inmate at the Ross Correctional Institution, commenced this original action in prohibition challenging the trial court's denial of his motion for summary judgment in a case pending in the Ohio Court of Claims.

{¶ 2} Pursuant to Civ.R. 53 and Loc.R. 13(M) of the Tenth District Court of Appeals, we referred this matter to a magistrate who issued a decision, including findings of fact and conclusions of law, which is appended hereto. The magistrate found that relator failed to deposit with the clerk of this court the monetary sum required as security for payment of costs as required by Loc.R. 13(B) of the Tenth District Court of Appeals. Although relator requested leave to proceed in forma pauperis, relator failed to file with his complaint a statement setting forth the balance in his inmate account for each of the

preceding six months, as certified by the institution cashier, as required by R.C. 2969.25(C)(1). The magistrate also found that relator failed to allege any set of facts in his complaint that would support a writ of prohibition. Therefore, the magistrate concluded that relator also failed to state a claim upon which relief in prohibition could be granted. For these reasons, the magistrate has recommended that we sua sponte dismiss this action.

{¶ 3} Relator has filed objections to the magistrate's decision. In his first objection, relator argues he complied with R.C. 2969.25(C)(1). We disagree.

{¶ 4} Although acknowledging that he did not file the required certified six-month account statement with his complaint, relator contends he was unable to file the account statement with his complaint. Relator also contends that he has since filed the statement. However, the law requires the statement be filed with the complaint.

{¶ 5} As noted by the magistrate, the Supreme Court of Ohio has held that R.C. 2969.25(C)(1) does not permit a delayed filing of the required affidavit and certified six-month statement of account. *State ex rel. Jackson v. Calabrese*, 143 Ohio St.3d 409, 2015-Ohio-2918; *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533. Accordingly, relator's failure to file with his complaint the certified six-month account statement requires us to dismiss this action. Therefore, we overrule relator's first objection.

{¶ 6} In his second objection, relator contends the magistrate erred when he found relator's complaint fails to state a claim in prohibition. Because we are required to dismiss relator's complaint due to his failure to comply with R.C. 2969.25(C)(1), we overrule as moot relator's objection to the portion of the magistrate's decision that finds relator failed to state a claim.

{¶ 7} Following an independent review of this matter, we find that the magistrate has properly determined the facts and applied the appropriate law. Therefore, 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 decision, we sua sponte dismiss relator's complaint.

Objections overruled; case dismissed.

BROWN and SADLER, JJ., concur.

APPENDIX**IN THE COURT OF APPEALS OF OHIO****TENTH APPELLATE DISTRICT**

The State ex rel. William H. Evans, Jr.,	:	
Relator,	:	
v.	:	No. 16AP-238
[Patrick M.] McGrath, Judge, Court of Claims of Ohio,	:	(REGULAR CALENDAR)
Respondent.	:	
	:	

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

Rendered on June 23, 2016

William H. Evans, Jr., pro se.

Michael DeWine, Attorney General, and Renata Y. Staff, for respondent.

**IN PROHIBITION
ON RESPONDENT'S MOTION TO DISMISS
ON SUA SPONTE DISMISSAL**

{¶ 8} In this original action, relator, William H. Evans, Jr., an inmate of the Ross Correctional Institution ("RCI"), requests that a writ of prohibition issue against respondent, the Honorable Patrick M. McGrath, a judge of the Ohio Court of Claims.

Findings of Fact:

{¶ 9} 1. On March 30, 2016, relator, an RCI inmate, filed this prohibition action against respondent.

{¶ 10} 2. In the instant complaint, relator refers to this court's recent decision in *Evans v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 15AP-463, 2015-Ohio-3492 ("the *Evans* appeal").

{¶ 11} 3. In the *Evans* appeal, this court reversed the judgment of the Court of Claims ("trial court") that had dismissed relator's action against the Ohio Department of Rehabilitation & Correction ("ODRC").

{¶ 12} 4. In the Court of Claims, relator had alleged that ODRC was negligent based on his allegation that he had been served food containing rodent parts.

{¶ 13} 5. In the *Evans* appeal, this court held that dismissal of the Court of Claims action was improper because relator had sufficiently alleged an injury upon which a negligence action could be maintained. Upon reversing the trial court's dismissal, this court remanded to the Court of Claims for further appropriate proceedings.

{¶ 14} 6. In the instant complaint, relator alleges that, following this court's reversal of the trial court's judgment, he filed a motion for summary judgment which the trial court denied. Relator seems to argue that respondent failed to follow the law-of-the-case doctrine in denying the summary judgment motion. Apparently, relator concludes that a writ of prohibition is warranted by respondent's denial of his summary judgment motion.

{¶ 15} 7. Here, in this action, relator has not deposited with the clerk of this court the monetary sum required as security for payment of costs. *See* Loc.R. 13(B) of the Tenth District Court of Appeals.

{¶ 16} 8. Within his complaint, relator makes application for leave to proceed in forma pauperis. In that regard, relator states:

APPLICATION TO PROCEED UNDER IN FORMA
PAUPERIS STATUS DUE TO INDIGENCE

Relator receives (only) state-pay as an inmate, which is six (\$6.00) per month, and he is listed under "medical idle" status and no job due to health.

He receives no support from any other sources, and he has only the \$6.00/month to pay costs for hygiene, stationary, and other life's necessities, and cannot afford to pay costs of this action, and respectfully asks the court to waive the filing fee and any other costs related to this action in prohibition.

After this case is filed, Evans will promptly have his institutional Cashier to forward a copy of his 6-month account statement.

(Emphasis sic.)

{¶ 17} 9. The last page of relator's four-page complaint is an affidavit executed by relator on March 25, 2016. The affidavit, in general terms, avers to the accuracy of the complaint and the application for leave to proceed in forma pauperis.

{¶ 18} 10. On April 11, 2016, relator filed a document captioned "Notice of Submission of 6-Month Statement of Earnings." The document was signed by relator on April 5, 2016. The document states:

This Complaint in prohibition was filed on March 30, 2016. Inmates are not issued their 6-month account statement directly, and therefore, Evans now hereby submits this to his Cashier at R.C.I. for him to complete the 6-month account statement and mail it to this Court/Case for filing, which is thus accompanying this instant Notice.

{¶ 19} Attached to the April 11, 2016 notice is a five-page document certified by the RCI institutional cashier. Among the information provided, the document sets forth the entries in relator's institutional inmate account beginning October 1, 2015 through April 7, 2016.

{¶ 20} Presumably, by his April 11, 2016 filing in this action, relator endeavors to satisfy the filing requirement set forth at R.C. 2969.25(C)(1), which requires a statement certified by the institutional cashier regarding the inmate account.

{¶ 21} 11. On May 2, 2016, respondent filed a motion to dismiss. In his memorandum in support, respondent does not argue that relator has failed to satisfy the inmate filing requirements set forth at R.C. 2969.25. However, respondent does argue, pursuant to Civ.R. 12(B)(6), the complaint fails to state a claim upon which relief in prohibition can be granted.

{¶ 22} 12. On May 11, 2016, relator filed a memorandum contra respondent's motion to dismiss.

{¶ 23} 13. On May 17, 2016, respondent filed his reply.

Conclusions of Law:

{¶ 24} It is the magistrate's decision that this court sua sponte dismiss this action and also grant respondent's motion to dismiss.

Failure to Satisfy Inmate Filing Requirements

{¶ 25} R.C. 2969.25(C) provides:

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.

{¶ 26} Here, relator failed to file with his complaint an affidavit containing a statement that sets forth the balance in his inmate account for each of the preceding six months, as certified by the institution cashier pursuant to R.C. 2969.25(C)(1). Later, on April 11, 2016, some 12 days after the filing of his complaint, relator endeavored to file a statement certified by the institutional cashier regarding his inmate account. However, the statute does not permit delayed statements. *State ex rel. Jackson v. Calabrese*, 143 Ohio St.3d 409, 2015-Ohio-2918; *State ex rel. Boles v. Knab*, 129 Ohio St.3d 222, 2011-Ohio-2859; *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533.

{¶ 27} Relator's delayed filing of the R.C. 2969.25(C)(1) statement of the institutional cashier cannot satisfy the filing requirement. R.C. 2969.25(C) provides that the inmate "shall file with the complaint" the affidavit containing the statement.

{¶ 28} Accordingly, the failure to file with his complaint the statement of the institutional cashier under R.C. 2969.25(C)(1) requires this court to dismiss this action. *Jackson; Boles; Fuqua*.

Failure to State a Claim in Prohibition

{¶ 29} "Absent extraordinary circumstances, such as an intervening decision by the Supreme Court, an inferior court has no discretion to disregard the mandate of a superior court in a prior appeal in the same case." *Nolan v. Nolan*, 11 Ohio St.3d 1, (1984), syllabus.

{¶ 30} A writ of prohibition can issue in a case where the trial court has disregarded the mandate of a superior court in a prior appeal in the same case. *State ex rel. Cordray v. Marshall*, 123 Ohio St.3d 229, 2009-Ohio-4986.

{¶ 31} However, relator fails to allege any set of facts in his complaint upon which this court could conclude that respondent disregarded the mandate of this court in the *Evans* appeal or that respondent violated the law-of-the-case doctrine.

{¶ 32} Accordingly, relator has failed to state a claim upon which relief in prohibition can be granted.

{¶ 33} For all the above reasons, it is the magistrate's decision that this court sua sponte dismiss this action on grounds that relator has failed to satisfy the inmate filing requirements set forth at R.C. 2969.25(C)(1). It is further the magistrate's decision that this court grant respondent's motion to dismiss on grounds that relator has failed to state a claim in prohibition.

/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).