

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Dwight D. Clark,	:	
Relator,	:	
v.	:	No. 16AP-411
Judge Mark A. Serrott,	:	(REGULAR CALENDAR)
Respondent.	:	

D E C I S I O N

Rendered on March 14, 2017

Dwight D. Clark, pro se.

Ron O'Brien, Prosecuting Attorney, and Jason S. Wagner,
for respondent.

IN MANDAMUS
ON SUA SPONTE DISMISSAL

BRUNNER, J.

{¶ 1} Relator, Dwight D. Clark, filed this original action requesting that this Court issue a writ of mandamus ordering respondent, the Honorable Mark A. Serrott, judge of the Franklin County Court of Common Pleas, to award him 76 days of jail-time credit in his underlying criminal case.

{¶ 2} This Court referred this matter to a magistrate pursuant to Civ.R. 53(C) and Loc.R. 13(M) of the Tenth District Court of Appeals. The relator did not file a brief or objections to the magistrate's decision. After the magistrate dictated the appended decision, but before it was published, respondent filed a motion to dismiss for failure to state a claim pursuant to Civ.R. 12(B)(6).

{¶ 3} The magistrate issued a decision, including findings of fact and conclusions of law, recommending that this Court sua sponte dismiss this action because relator has

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failed to comply with mandatory requirements of R.C. 2969.25(C), which requires strict compliance, and the relator cannot cure this deficiency after the fact.

{¶ 4} The magistrate recommended that respondent's motion to dismiss be denied as moot.

{¶ 5} Finally, the magistrate recommended that because relator did not prevail and did not establish indigency, this Court should order relator to pay the costs of the proceedings.

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

{¶ 7} Having reviewed the record in this matter and finding no error of law or other defect on the face of the magistrate's decision, this Court adopts the magistrate's decision as our own, including the findings of fact and conclusions of law contained in it. Consistent with the magistrate's decision, we dismiss this action and deny respondent's motion to dismiss as moot. Further, inasmuch as relator did not prevail and did not establish indigency, this Court orders relator to pay the costs of the proceedings.

*Petition for writ of mandamus dismissed;
respondent's motion to dismiss denied as moot;
relator ordered to pay costs of these proceedings.*

LUPER SCHUSTER and HORTON, JJ., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

The State ex rel. Dwight D. Clark,	:	
Relator,	:	
v.	:	No. 16AP-411
Judge Mark A. Serrott,	:	(REGULAR CALENDAR)
Respondent.	:	

MAGISTRATE'S DECISION

Rendered on June 28, 2016

Dwight D. Clark, pro se.

IN MANDAMUS
ON SUA SPONTE DISMISSAL

{¶ 8} Relator, Dwight D. Clark, has filed this original action requesting that this court issue a writ of mandamus ordering respondent, the Honorable Mark A. Serrott, judge of the Franklin County Court of Common Pleas, to award him 76 days of jail-time credit in his underlying criminal case.

Findings of Fact:

{¶ 9} 1. Relator is an inmate currently incarcerated at Southern Ohio Correctional Facility.

{¶ 10} 2. On June 1, 2016, relator filed this mandamus action requesting this court to order respondent to credit him with 76 days of jail-time credit in his underlying criminal case in Franklin C.P. No. 15CR-313.

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{¶ 11} 3. At the time he filed his original action, relator included an affidavit of prior civil actions which he has filed in the preceding five years.

{¶ 12} 4. At the time he filed this mandamus action, relator filed an affidavit of indigency; however, relator did not attach thereto a statement of the amount in his inmate account for each of the preceding six months as certified by the institutional cashier and a statement of all other cash and things of value he owns. Instead, relator attached a document purporting to show the average deposits and balances for the preceding six months.

{¶ 13} 5. After the time the magistrate dictated this decision and before it was released, respondent filed a motion to dismiss.

Conclusions of Law:

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

{¶ 15} 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 the inmate's 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.

{¶ 16} 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).

{¶ 17} In *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, the Supreme Court of Ohio affirmed the judgment of the court of appeals from Medina County which had dismissed the complaint of George D. Pamer, an inmate at Mansfield

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 ten dollars) is forwarded to the clerk each month until the fees are paid.

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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.

{¶ 18} Likewise, in *State ex rel. Ridenour v. Brunzman*, 117 Ohio St.3d 260, 2008-Ohio-854, the Supreme Court 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 months preceding the filing of his complaint; however, the statement was not certified by the prison cashier.

{¶ 19} 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, P 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

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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, P 5.

Id. at ¶ 5-6.

{¶ 20} Pursuant to the above-cited authority and because relator cannot cure this deficiency at a later date, it is this magistrate's decision that this court should dismiss relator's complaint. As such, respondent's motion to dismiss is denied as moot. Further, pursuant to the above-cited authority, inasmuch as relator did not prevail and did not establish indigency, this court should order relator 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).