

COURT OF APPEALS  
TUSCARAWAS COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

HENRY N. HARPER

Plaintiff-Appellant

-vs-

TUSCARAWAS COUNTY  
JOB AND FAMILY SERVICES

Defendant-Appellee

JUDGES:

Hon. W. Scott Gwin, P.J.  
Hon. William B. Hoffman, J.  
Hon. Craig R. Baldwin, J.

Case No. 2015 AP 03 0011

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Tuscarawas County Court  
of Common Pleas, Case No. 2014 MS 12  
0003

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

July 29, 2015

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

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*Hoffman, J.*

{¶1} Plaintiff-appellant Henry N. Harper appeals the February 1, 2015 Order entered by the Tuscarawas County Court of Common Pleas, which ordered the case closed. Defendant-appellee is Tuscarawas County Job and Family Services (“TCJFS”).

#### STATEMENT OF THE FACTS AND CASE

{¶2} Appellant is incarcerated in Belmont Correctional Institution, serving an eight year prison term, which commenced in May, 2010. On August 21, 2012, TCJFS filed a Complaint alleging Appellant’s two minors sons were abused, neglected and/or dependent, and seeking temporary custody of the children. In the Complaint, social worker Jaime Grunder stated, on or about August 19, 2012, Tina Harper, Appellant’s ex-wife and the mother of the two boys, was intoxicated and locked one of the sons out of her home in the middle of the night while the other son was in the home with her. Grunder indicated, “Tina Harper has been charged with child endangering and the same constitutes abuse.” Ultimately, no criminal charges were filed against Tina Harper.

{¶3} On December 31, 2014, Appellant filed a complaint for perjury and false report, seeking to have Jamie Grunder arrested or prosecuted. Appellant based his complaint on the fact Grunder had stated Tina Harper had been charged with child endangering when, in fact, charges were never brought against Tina Harper. Appellant submits Grunder’s statement to that effect was made under oath; therefore, Grunder committed perjury.

{¶4} On January 5, 2015, The Tuscarawas County Clerk of Courts submitted Appellant’s complaint to Tuscarawas County Prosecutor Ryan Styer. Styer filed a Determination under R.C. 2935.09(D) on January 28, 2015, indicating, “Upon review

and investigation and upon consideration of the affidavit and supporting documents, I have determined that a complaint should not be filed by my office for the criminal offenses averred in the affidavit."

{¶15} On February 6, 2015, the trial court issued an order closing the case and removing the matter from the pending docket.

{¶16} It is from this order Appellant appeals, raising the following assignments of error:

{¶17} "I. TUSCARAWAS COUNTY PROSECUTOR RYAN STYER'S FAILURE TO PROSECUTE THE CRIMES IN THE COMPLAINT IN CASE NO. 2014-MS-12 -0003 IS AN ABUSE OF DISCRETION.

{¶18} "II. TUSCARAWAS COUNTY COURT OF COMMON PLEAS JUDGE ELIZABETH LEHIGH THOMAKOS MADE AN UNREASONABLE DECISION IN HER ORDER CLOSING THE CASE, AS PURSUANT TO THE RULES OF CRIMINAL PROCEDURE CRIMINAL RULE 4: WARRANT OR SUMMONS: ARREST.

{¶19} "III. TUSCARAWAS COUNTY PROSECUTOR RYAN STYER AND TUSCARAWAS COUNTY JUDGE ELIZABETH LEHIGH THOMAKOS DETERMINATION NOT TO PROSECUTE AND COMPLY WITH CRIMINAL RULE 4 ARE UNREASONABLE, ARBITRARY, AND UNCONSCIONABLE, DUE TO THE SUFFICIENT AMOUNT OF CLEAR AND CONVINCING EVIDENCE (COURT RECORDS) JAMIE GRUNDER'S PERJURIOUS [SIC] COMPLAINT AND ASSISTANT PROSECUTING ATTORNEY AMANDA K. MILLER'S MOTION TO DISMISS IN CASE NO. 14-1321 PAGES 3 & 9."

I, II, III

{¶10} Because Appellant's three assignments of error all challenge the propriety of Prosecutor Styer's and the trial court's determinations, we shall address said assignments of error together. In his first assignment of error, Appellant contends Prosecutor Styer abused his discretion in failing to prosecute Grunder for the crimes outlined in his complaint. In his second assignment of error, Appellant argues the trial court's order closing the case was unreasonable. In his third assignment of error, Appellant maintains the trial court and Prosecutor Styer's determinations were unreasonable, arbitrary and unconscionable in light of the clear and convincing evidence establishing Grunder's perjury.

{¶11} Before we address the merits of Appellant's assignments of error, we must first determine if Appellant complied with R.C. 2969.25.

{¶12} R.C. 2969.25(A) 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, \* \* \*.

{¶13} A review of Appellant's complaint reveals Appellant failed to provide the trial court with the requisite affidavit of prior civil actions. The requirements of R.C. 2969.25 are mandatory and failure to comply with them requires dismissal of an inmate's complaint. *State ex rel. Washington v. Ohio Adult Parole Auth.*, 87 Ohio St.3d 258, 259, 719 N.E.2d 544 (1999), citing *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 422, 696 N.E.2d 594 (1998). The affidavit required by R.C. 2969.25(A) must be filed at the time the complaint is filed, and an inmate may not cure the defect by later filings. *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003–Ohio–5533, 797 N.E.2d 982, ¶ 9 (an inmate's "belated attempt to file the required affidavit does not excuse his noncompliance. 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' "). Appellant's failure to comply with R.C. 2969.25(A) warrants dismissal of this appeal.

{¶14} We, nonetheless, shall address the merits of Appellant's arguments.

{¶15} "R.C. 2935.09 does not mandate prosecution of all offenses charged by affidavit." *State ex rel. Evans v. Columbus Dept. of Law* (1998), 83 Ohio St.3d 174, 175, 699 N.E.2d 60. "While R.C. 2935.09 provides that a 'private citizen having knowledge of the facts' shall file with a judge, clerk of court, or magistrate an affidavit charging an offense committed in order to cause the arrest or prosecution of the person charged, it must be read *in pari materia* with R.C. 2935.10, which prescribes the subsequent procedure to be followed." *State ex rel. Strothers v. Turner* (1997), 79 Ohio St.3d 272, 273, 680 N.E.2d 1238, (citing *State v. Holbert* (1974), 38 Ohio St.2d 113, 311 N.E.2d

22). A prosecuting attorney will not be compelled to prosecute except when the failure to do so constitutes an abuse of discretion. *State ex rel. Master v. Cleveland* (1996), 75 Ohio St.3d 23, 27, 661 N.E.2d 180, 184

{¶16} Based upon the record before this Court, we do not find the trial court or the prosecutor abused their discretion in failing to bring charges against social worker Jamie Grunder.

{¶17} Appellant's assignments of error are overruled.

{¶18} The judgment of the Tuscarawas County Court of Common Pleas is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Baldwin, J. concur