

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

[State ex rel.] Kevin Baker, :
Relator, :
v. : No. 05AP-597
Franklin County Common Pleas [Court], : (REGULAR CALENDAR)
Respondent. :

D E C I S I O N

Rendered on November 10, 2005

Kevin Baker, pro se.

Ron O'Brien, Prosecuting Attorney, and *Paul Thies*, for respondent.

IN MANDAMUS
ON MOTION TO DISMISS

BROWN, P.J.

{¶1} Relator, Kevin Baker, an inmate at the Noble Correctional Institution, has filed an original action seeking a writ of mandamus to require respondent, Franklin County Court of Common Pleas, to rule on his petition for post-conviction relief.

{¶2} This matter was referred to a magistrate of this court pursuant to Civ.R. 53(C) and Loc.R. 12(M) of the Tenth District Court of Appeals. On July 1, 2005, respondent filed a motion to dismiss, asserting that relator had failed to comply with the filing requirements of R.C. 2969.25.

{¶3} On July 27, 2005, the magistrate issued a decision, including findings of fact and conclusions of law, recommending that this court grant respondent's motion to dismiss on the basis that relator did not comply with R.C. 2969.25(A). (Attached as Appendix A.) No objections have been filed to that decision.

{¶4} Upon review of the record, we agree with the magistrate that relator has failed to comply with the mandatory requirements of R.C. 2969.25(A), and that such failure constitutes grounds for dismissal. See *State ex rel. Washington v. Ohio Adult Parole Auth.* (1999), 87 Ohio St.3d 258, 259.

{¶5} Based upon an examination of the magistrate's decision and an independent review of the evidence, and finding no error of law or other defect on the face of magistrate's decision, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained therein. In accordance with the recommendation of the magistrate, this action is dismissed.

Action dismissed.

PETREE and SADLER, JJ., concur.

APPENDIX A

IN THE COURT OF APPEALS OF OHIO

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[State ex rel.] Kevin Baker,	:	
Relator,	:	
v.	:	No. 05AP-597
Franklin County Common Pleas [Court],	:	(REGULAR CALENDAR)
Respondent.	:	

MAGISTRATE'S DECISION

Rendered on July 27, 2005

Kevin Baker, pro se.

Ron O'Brien, Prosecuting Attorney, and Paul Thies, for respondent.

IN MANDAMUS ON MOTION TO DISMISS

{¶6} Relator, Kevin Baker, has filed this original action requesting that this court issue a writ of mandamus ordering respondent Franklin County Court of Common Pleas to rule on his petition for post-conviction relief. Respondent has filed a motion to dismiss.

Findings of Fact:

{¶7} 1. Relator is an inmate currently incarcerated at the Noble Correctional Institution.

{¶8} 2. On June 8, 2005, relator filed the instant mandamus action in this court.

{¶9} 3. On July 1, 2005, respondent filed a motion to dismiss because of relator's failure to comply with R.C. 2969.25.

{¶10} 4. On July 14, 2005, relator filed a memorandum contra requesting that this court be lenient and stay the within action in order to give him time to comply with the filing requirements.

{¶11} 5. The matter is currently before the magistrate on respondent's motion to dismiss.

Conclusions of Law:

{¶12} Respondent asserts that relator has failed to comply with the mandatory filing requirements of R.C. 2969.25(A) in commencing this action. Pursuant thereto, relator is required to file an affidavit disclosing or describing all prior civil actions or appeals which he has initiated during the past five years. The Supreme Court of Ohio has held that the requirements of R.C. 2969.25 are mandatory and that failure to comply with them is grounds for dismissal. See *State ex rel. Alford v. Winters* (1997), 80 Ohio St.3d 285; *State ex rel. Zanders v. Ohio Parole Bd.* (1998), 82 Ohio St.3d 421.

{¶13} Inasmuch as relator has failed to comply with the mandatory filing requirements of R.C. 2969.25(A), it is this magistrate's decision that respondent's motion to dismiss should be granted and that relator's mandamus action should be dismissed. R.C. 2969.25(A) specifically provides that the affidavit is to be filed at the time the inmate

commences the civil action and there are no provisions in the statute for the granting of a stay. As such, the motion to dismiss should be granted and relator's mandamus action should be dismissed.

 /s/ Stephanie Bisca Brooks
STEPHANIE BISCA BROOKS
MAGISTRATE