

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State ex rel. Edward Evans, :
Relator, :
v. : No. 10AP-730
Ohio Adult Parole Authority, : (REGULAR CALENDAR)
Respondent. :

D E C I S I O N

Rendered on June 14, 2011

Edward Evans, pro se.

Michael DeWine, Attorney General, and *Peter L. Jamison*,
for respondent.

IN MANDAMUS
ON MOTION FOR SUMMARY JUDGMENT
AND ON OBJECTIONS TO THE MAGISTRATE'S DECISION

KLATT, J.

{¶1} Relator, Edward Evans, commenced this original action in mandamus seeking an order compelling respondent, Ohio Adult Parole Authority, to release him on parole after providing him with meaningful assistance in securing suitable outside placement. Subsequently, respondent filed a motion for summary judgment.

{¶2} Pursuant to Civ.R. 53 and Loc.R. 12(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, an inmate, failed to comply with the mandatory filing requirements set forth in R.C. 2969.25(A) and (C). Specifically, the magistrate found that relator failed to file an affidavit listing each civil action or appeal of a civil action that he filed in the past five years, and providing specific information regarding each such case or appeal. R.C. 2969.25(A). The magistrate also determined that relator, who sought a waiver of the filing fee due to his alleged indigency, failed to file the mandatory affidavit to support that claim. Specifically, relator did not file an affidavit that included: (1) a statement of the amount in his inmate account for the preceding six months as certified by the institutional cashier; and (2) a statement of all cash and things of value owned by the inmate. R.C. 2969.25(C). Because relator failed to file the required affidavits, the magistrate has recommended that we grant respondent's motion for summary judgment and deny relator's request for a writ of mandamus.

{¶3} Relator has filed objections to the magistrate's decision. Relator argues that after the magistrate issued his decision, relator filed the required affidavits. Therefore, relator contends that this court should address the merits of his complaint. We disagree.

{¶4} It is well-settled that compliance with the requirements of R.C. 2969.25 is mandatory, and that the failure to comply with R.C. 2969.25 requires dismissal of the action. *State ex rel. Washington v. Ohio Adult Parole Auth.*, 87 Ohio St.3d 258, 1999-Ohio-53. Moreover, the affidavit required by R.C. 2969.25(A) must be filed at the time an inmate commences the civil action or appeal. The belated attempt to file the required affidavit does not excuse noncompliance. *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-

Ohio-5533, ¶9; *Hawkins v. S. Ohio Correctional Facility*, 102 Ohio St.3d 2999, 2004-Ohio-2893, ¶5 (belated attempts to file required affidavit do not excuse noncompliance). Because relator failed to file the required affidavits at the commencement of his action, we overrule his objections.

{¶5} 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 grant summary judgment in favor of respondent, and dismiss this action.

*Objections overruled; motion for summary judgment granted;
action dismissed.*

BRYANT, P.J., and SADLER, J., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Edward Evans,	:	
	:	
Relator,	:	
	:	
v.	:	No. 10AP-730
	:	
Ohio Adult Parole Authority,	:	(REGULAR CALENDAR)
	:	
Respondent.	:	

MAGISTRATE'S DECISION

Rendered on January 31, 2011

Edward Evans, pro se.

Michael DeWine, Attorney General, and Peter L. Jamison, for respondent.

IN MANDAMUS
ON MOTION FOR SUMMARY JUDGMENT

{¶6} Relator, Edward Evans, has filed this original action requesting that this court issue a writ of mandamus ordering respondent, Ohio Adult Parole Authority, to release him on parole after providing him with meaningful assistance in securing suitable outside placement.

Findings of Fact:

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

{¶8} 2. On August 2, 2010, relator filed this mandamus action.

{¶9} 3. In his complaint, relator asserts that he was "granted a parole in December 26, of 2007" but that he has not yet been released on parole because "after 3 years of incarceration, his ability to procure placement for a parole is limited to half way houses, as there remain no members of the Realtor's [sic] family that can provide the support necessary for him to stay with them for any period of time." Relator argues that respondent simply refuses to find any of his placements acceptable.

{¶10} 4. On December 7, 2010, respondent filed a motion to attach certain documents into evidence. The authenticity of those documents was provided by Judy Coakley, Executive Assistant of the Ohio Parole Board.

{¶11} 5. In an order filed December 9, 2010, respondent's motion to submit the attached evidence was granted.

{¶12} 6. On January 6, 2011, respondent filed a motion for summary judgment and sought to have the affidavit of James Sweitzer, a parole officer with the state of Ohio, admitted into evidence.

{¶13} 7. In an order mailed January 11, 2011, the magistrate granted respondent's motion for leave to submit the attached affidavit and provided notice that respondent's motion for summary judgment would be submitted to the magistrate on January 24, 2011.

{¶14} 8. The affidavit of parole officer Sweitzer details his extensive efforts to secure suitable placement for relator. Sweitzer has made numerous phone calls to family members of relator, to relator's case manager, to a sex offender specialist for the respondent, and various placement facilities. In conclusion, Sweitzer's affidavit states:

My efforts to find a placement for Evans have been above average. Evans' case is difficult because halfway houses will not take him as a sex offender with a history of violence. Further, the other placement options Evans has offered were unavailable because of financial issues or because they were unwilling to accept him. I am continuing to investigate placement options for Evans.

{¶15} 9. In its motion for summary judgment, respondent also points out that relator has failed to comply with the mandatory filing requirements of R.C. 2969.25(A) and (C).

{¶16} 10. The matter is currently before the magistrate.

Conclusions of Law:

{¶17} For the reasons that follow, it is this magistrate's decision that respondent's motion for summary judgment should be granted.

{¶18} 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.

{¶19} 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

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.

his inmate account for 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.

{¶20} 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.* (1999), 87 Ohio St.3d 258; *State ex rel. Zanders v. Ohio Parole Bd.* (1998), 82 Ohio St.3d 421; *State ex rel. Alford v. Winters* (1997), 80 Ohio St.3d 285.

{¶21} In the present action, relator has not filed the required affidavit regarding his other civil actions, if any. In addition, relator has not filed an affidavit of indigency that includes the required information and, thus, he cannot qualify for payment of fees in installments from his prison account. Therefore, dismissal of the complaint is warranted.

{¶22} Relator asserts that this court cannot consider the affidavit of Sweitzer because it is not properly notarized (no state of Ohio symbol and the notary's name is not legible). However, since the complaint should be dismissed for relator's failure to comply with R.C. 2969.25(A) and (C), the court need not address this issue.

{¶23} Finding that 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 court should grant respondent's motion for summary judgment and relator's complaint should be dismissed.

/s/ Stephanie Bisca Brooks
STEPHANIE BISCA BROOKS
MAGISTRATE

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).