

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

The State ex rel.	:	
William H. Evans, Jr.,	:	
	:	
Relator,	:	
	:	
v.	:	No. 16AP-458
	:	
[Patrick M.] McGrath,	:	(REGULAR CALENDAR)
Judge of [the Court of Claims],	:	
	:	
Respondents.	:	

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D E C I S I O N

Rendered on November 22, 2016

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*William H. Evans, Jr., pro se.*

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IN MANDAMUS AND IN PROHIBITION

TYACK, J.

{¶ 1} William H. Evans, Jr., filed this action seeking a writ of prohibition and a writ of mandamus. In accord with Loc.R. 13(M) of the Tenth District Court of Appeals, the case was referred to a magistrate to conduct appropriate proceedings. The magistrate, upon reviewing the documents filed by Evans, generated a magistrate's decision, appended hereto, which included a recommendation that the case be dismissed because Evans had not complied with R.C. 2969.25(C). Specifically, the decision noted that Evans had not filed a statement of the institutional cashier setting forth the balance of funds in Evans' inmate account.

{¶ 2} Evans has filed objections to the magistrate's decision alleging that, due to the bureaucratic system in place at the prison where he is incarcerated, it is impossible to comply with R.C. 2969.25(C). He argues that inmates are not given such statements of

accounts directly and the institutional cashier, at best, will forward statements of accounts via a separate mailing or parcel service delivery means.

{¶ 3} In reviewing the original complaint filed in this case, Evans is requesting a writ of prohibition to prevent the Court of Claims of Ohio from dismissing his medical malpractice lawsuit. A writ of prohibition will not be issued to bar a judge in a court with clear jurisdiction to hear a lawsuit from taking any specific act. Stated simply, Ohio law does not allow a writ of prohibition to prevent a trial court from dismissing a lawsuit. To the extent that the complaint filed in this appellate court seeks such a writ of prohibition, the complaint does not state a claim upon which relief can be granted.

{¶ 4} The second theory expressed by Evans is that a writ of mandamus should be issued to compel the Court of Claims to allow him to continue pursuing his medical malpractice claim despite the fact that he cannot obtain the affidavit of merit required for individuals to pursue medical claims in Ohio courts. This requirement applies to all plaintiffs in medical claims and not just to inmates.

{¶ 5} For a writ of mandamus to issue, the relator must have a clear legal right to the action the relator seeks to compel by writ. Evans does not have a clear legal right to have a trial court judge disregard or ignore a statutory requirement placed upon plaintiffs in medical claims by the Ohio legislature.

{¶ 6} Regardless of the practical hurdles placed by the Ohio legislation in the path of inmates who attempt to pursue claims, including difficulties in forwarding to the courts the statements of inmate accounts, the hurdles placed before all plaintiffs who wish to pursue medical claims have not been found to be unconstitutional. The Ohio legislature was attempting to allow medical claims with merit to proceed while protecting hospitals and physicians from incurring the costs of defending themselves in court when medical claims cannot be shown to have merit. We cannot compel a trial court to disregard the statutory requirement for an affidavit of merit to be provided.

{¶ 7} Viewed as an action in mandamus, the complaint again does not state a claim upon which relief can be granted.

{¶ 8} Based upon the foregoing, we dismiss the complaint in mandamus and prohibition filed by William H. Evans for reasons other than those contained in the

magistrate's decision. The motion filed by Evans to compel us to review additional documents is rendered moot by our dismissal of the case and is therefore overruled.

*Motion overruled; case dismissed.*

DORRIAN, P.J., and BROWN, J., concur.

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**A P P E N D I X**

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Judge of [the Court of Claims],	:	
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Respondents.	:	

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

Rendered on June 28, 2016

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*William H. Evans, Jr., pro se.*

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IN MANDAMUS AND PROHIBITION  
ON SUA SPONTE DISMISSAL

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

Findings of Fact:

{¶ 10} 1. On June 17, 2016, relator, an RCI inmate, filed this original action against respondent.

{¶ 11} 2. 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.

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

APPLICATION AND AFFIDAVIT TO  
PROCEED IN FORMA PAUPERIS STATUS.

Relator receives only six dollars (\$6.00) per month as State-Pay, under "medical idle" status, with no job due to health. He receives no support from any other sources, and has only the \$6.00/month to pay costs of hygiene, stationary, postage, and other life's necessities, and cannot afford to pay any costs in this action. After this case is filed, and Relator is apprised of the case number, Evans will promptly have his institutional Cashier to forward a copy of his 6-month account statement to this Court/case for filing.

\*\*\*A NOT[A]RIZED VERIFICATION IS HEREIN ON PAGE 5 AND INCLUSIVE TO [ALL] THE ABOVE HEREIN COMPLAINT.\*\*\*

(Emphasis sic.)

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

{¶ 14} 5. Relator did not file with his complaint, pursuant to R.C. 2969.25(C)(1), an affidavit that contains a statement that sets forth the balance in his inmate account for each of the preceding six months, as certified by the institutional cashier.

Conclusions of Law:

{¶ 15} It is the magistrate's decision that this court sua sponte dismiss this action.

{¶ 16} 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.

{¶ 17} Here, by failing to file with his complaint a statement of the institutional cashier, relator has failed to meet the mandatory filing requirements set forth at R.C. 2969.25(C). Thus, this court must dismiss this action. *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533; *Hawkins v. S. Ohio Corr. Facility*, 102 Ohio St.3d 299, 2004-Ohio-2893.

{¶ 18} Accordingly, for all the above reasons, it is the magistrate's decision that this court sua sponte dismiss this action.

/S/ MAGISTRATE

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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).