

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Jerone McDougald

Court of Appeals No. L-19-1162

Relator

v.

Sonrisa Sehlmeier

DECISION AND JUDGMENT

Respondent

Decided: October 24, 2019

* * * * *

Jerone McDougald, pro se.

Dave Yost, Ohio Attorney General, and Zachary S. O’Driscoll,
Assistant Attorney General, for respondent.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This matter is before the court on three motions: (1) relator’s motion to supplement his petition for a writ of mandamus, (2) respondent’s, Sonrisa Sehlmeier, motion to dismiss relator’s, Jerone McDougald, petition for a writ of mandamus, and (3) relator’s motion to amend his petition to add “State of Ohio, ex rel.” to the caption.

I. Facts and Procedural Background

{¶ 2} On August 6, 2019, relator initiated the present action by filing his petition for a writ of mandamus to compel respondent to release certain documents pursuant to his public records request. Shortly thereafter, relator filed his motion to supplement his writ of mandamus to include an attached exhibit purporting to be respondent's denial of the public records request.

{¶ 3} On August 23, 2019, this court issued an alternative writ and ordered respondent to, within 14 days, either do the act requested or show cause why she is not required to do so by filing an answer or a motion to dismiss. Respondent filed her motion to dismiss on September 5, 2019. Relator has since filed his opposition to the motion, and respondent has filed her reply.

{¶ 4} In addition, contemporaneous with his opposition to the motion to dismiss, relator has filed a motion for leave to amend his petition for a writ of mandamus to include the phrase "State of Ohio, ex rel." in the caption. Respondent opposes this motion.

II. Analysis

A. Relator's Motion to Supplement the Petition

{¶ 5} Relator has moved the court to supplement his petition to include a copy of respondent's June 12, 2019 letter denying his public records requests. Respondent has not objected to the motion. Upon due consideration, we hereby grant relator's motion to supplement his petition.

B. Respondent's Motion to Dismiss the Petition

{¶ 6} Turning to respondent's motion to dismiss, respondent argues, inter alia, that relator has failed to comply with the requirement of R.C. 2969.25(A), which states that “[a]t 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.”

{¶ 7} Relator, for his part, argues that R.C. 2969.25(A) does not apply for two reasons, neither of which have merit.

{¶ 8} First, relator asserts that original actions in this court are governed by our local rules of court, and those rules impose no special filing requirements on inmates. However, notwithstanding that our local rules do not specifically address R.C. 2969.25(A), “[c]ompliance with R.C. 2969.25(A) is mandatory, and failure to comply will warrant dismissal.” *State v. Henton*, 146 Ohio St.3d 9, 2016-Ohio-1518, 50 N.E.3d 553, ¶ 3; *State ex rel. Grissom v. McGookey*, 6th Dist. Erie No. E-05-055, 2005-Ohio-4433, ¶ 2.

{¶ 9} In support of his position that an affidavit is not required under R.C. 2969.25(A), relator cites *State ex rel. McDougald v. Greene*, 155 Ohio St.3d 216, 2018-Ohio-4200, 120 N.E.3d 779, ¶ 9. We find that case to be inapposite. R.C. 2969.25(A) applies where an inmate has filed “a civil action or appeal against a government entity or employee.” R.C. 2969.21(B)(1)(a) defines “a civil action or appeal against a government

entity or employee” as “[a] civil action that an inmate commences against the state, a political subdivision, or an employee of the state or a political subdivision *in a court of common pleas, court of appeals, county court, or municipal court.*” (Emphasis added.) In *Greene*, the Ohio Supreme Court recognized that R.C. 2969.21(B) specifically excludes actions filed in the Ohio Supreme Court and the court of claims from the definition of “a civil action or appeal against a government entity or employee,” and thus held that the affidavit requirement set forth in R.C. 2969.25(A) did not apply to a mandamus petition filed in that court. In contrast, relator filed the present mandamus petition in the court of appeals, and thus is bound by the requirements of R.C. 2969.25(A) to “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.” (Emphasis added.) R.C. 2969.25(A). Here, relator did not file such an affidavit.

{¶ 10} As his second argument, relator asserts that respondent is not a government employee. Respondent, however, is employed by the Toledo Correctional Institution, which is part of the Ohio Department of Rehabilitation and Correction, and is thus a government employee.

{¶ 11} Therefore, because relator has failed to file an affidavit as required by R.C. 2969.25(A), setting forth a description of each civil action that he has filed in the past

five years in any state or federal court, his petition for a writ of mandamus must be dismissed.¹

C. Relator's Motion for Leave to Amend the Petition

{¶ 12} Finally, relator has moved for leave to amend his petition to include the phrase “State of Ohio, ex rel.” in the caption. Because we hold that relator’s petition for a writ of mandamus must be dismissed for failure to comply with R.C. 2969.25(A), relator’s motion for leave to amend is denied as moot.

III. Conclusion

{¶ 13} Accordingly, upon due consideration, relator’s motion to supplement his petition is found well-taken, and is granted. Respondent’s motion to dismiss is found well-taken, and is granted. Relator’s motion for leave to amend his petition is found not well-taken, and is denied as moot.

¹ Subsequent to the drafting of this decision, relator has filed a motion on October 18, 2019, to strike his own argument pertaining to *State ex rel. McDougald v. Greene*, 155 Ohio St.3d 216, 2018-Ohio-4200, 120 N.E.3d 779, ¶ 9, and replace it with an argument that respondent is not a state “officer or employee” under R.C. 109.36. We deny relator’s motion as an untimely motion to amend. Furthermore, relator’s argument under R.C. 109.36 has no merit as that section specifically applies to “sections 109.361 to 109.366 of the Revised Code,” and even if it did apply, respondent is a state “officer or employee” because she works for the Ohio Department of Rehabilitation and Correction which is defined as the “State” under R.C. 109.36(B).

{¶ 14} We hereby order that relator's petition for a writ of mandamus is denied. Costs of these proceedings shall be assessed to relator. The clerk is directed to serve upon all parties, within three days, a copy of this decision in a manner prescribed by Civ.R. 5(B).

Writ denied.

Mark L. Pietrykowski, J.

JUDGE

Christine E. Mayle, P.J.

JUDGE

Gene A. Zmuda, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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