

[Cite as *State ex rel. Mason v. State*, 2012-Ohio-1613.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

[State ex rel. Lamont A. Mason, :
Relator, :
v. : No. 11AP-808
State of Ohio, : (REGULAR CALENDAR)
Respondent.] :

D E C I S I O N

Rendered on April 10, 2012

Lamont A. Mason, pro se.

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

IN PROCEDENDO

FRENCH, J.

{¶ 1} Relator, Lamont A. Mason ("relator"), an inmate of a state correctional institution, filed an original action, which asks this court to issue a writ of procedendo against respondent state of Ohio.

{¶ 2} This matter was referred to a magistrate pursuant to Civ.R. 53(C) and Loc.R. 12(M) of the Tenth District Court of Appeals. The magistrate issued a decision, which includes findings of fact and conclusions of law and is appended to this decision, recommending that this court dismiss relator's complaint for failure to comply with

mandatory filing requirements contained in R.C. 2969.25(A) and (C). No objections to the magistrate's decision have been filed.

{¶ 3} Finding no error of law or other defect in the magistrate's decision, we adopt the decision as our own, including the findings of fact and conclusions of law contained in it. In accordance with the magistrate's decision, we dismiss relator's complaint.

*Motion to dismiss granted;
action dismissed.*

TYACK and DORRIAN, JJ., concur.

A P P E N D I X

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	:	
Respondent.]	:	

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

Rendered on December 14, 2011

Lamont A. Mason, pro se.

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

IN PROCEDENDO
ON RESPONDENT'S MOTION TO DISMISS

{¶ 4} In this original action, relator, Lamont A. Mason, an inmate of a state correctional institution, requests that this court issue a writ of procedendo.

Findings of Fact:

{¶ 5} 1. On September 22, 2011, relator, an inmate of a state correctional institution, filed this original action for a writ of procedendo.

{¶ 6} 2. Relator has not deposited with the clerk of this court the sum required as security for the payment of costs. See Loc.R. 12(B).

{¶ 7} 3. At the filing of this action, relator did file a document purporting to be an affidavit of indigency that was executed September 15, 2011. However, relator has not filed a statement that sets forth the balance in his inmate account for each of the preceding six months, as certified by the institutional cashier pursuant to R.C. 2969.25(C)(1).

{¶ 8} 4. At the filing of this action, relator did file a document captioned "Relator's statement detailing previous civil actions." The document is supported by relator's affidavit executed September 15, 2011. However, the document fails to comply with R.C. 2969.25(A).

{¶ 9} 5. On October 17, 2011, respondent filed a motion to dismiss this action.

{¶ 10} 6. On October 18, 2011, the magistrate issued an order notifying relator that he shall file his written response to the motion no later than November 4, 2011. Relator has not responded to the motion.

Conclusions of Law:

{¶ 11} It is the magistrate's decision that this court grant respondent's motion to dismiss.

{¶ 12} R.C. 2969.25 states:

(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 * * *.

* * *

(C) 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.

{¶ 13} Relator's failure to meet the mandatory filing requirements of R.C. 2969.25(A) and (C) requires dismissal of this action. *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533; *Hawkins v. S. Ohio Correctional Facility*, 102 Ohio St.3d 299, 2004-Ohio-2893.

{¶ 14} Accordingly, it is the magistrate's decision that this court grant respondent's motion to dismiss.

/s/ Kenneth W. Macke

KENNETH W. MACKE
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).