

[Cite as *State ex rel. Brooks v. S. Ohio Corr. Facility*, 2012-Ohio-4952.]
IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Ulious Brooks,	:	
	:	
Relator,	:	No. 12AP-577
	:	
v.	:	(REGULAR CALENDAR)
	:	
Warden of Southern Ohio	:	
Correctional Facility,	:	
	:	
Respondent.	:	
	:	

D E C I S I O N

Rendered on October 25, 2012

Ulious Brooks, pro se.

IN MANDAMUS
ON SUA SPONTE DISMISSAL

FRENCH, J.

{¶ 1} Relator, Ulious Brooks, filed an original action, which asks this court to issue a writ of mandamus ordering respondent, Warden of Southern Ohio Correctional Facility, to "stop taking money order gifts that his family sends him."

{¶ 2} This matter was referred to a magistrate pursuant to Civ.R. 53(C) and Loc.R. 13(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 his complaint because relator has failed to comply with the mandatory requirements of R.C. 2969.25(C). Because relator's

application for an alternative writ seeks the same relief sought here, that application is denied as moot. 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, relator's application for an alternative writ is rendered moot, and we sua sponte dismiss this action.

*Application for alternative writ rendered moot;
cause dismissed.*

BRYANT and KLATT, JJ., concur.

A P P E N D I X

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Relator,	:	No. 12AP-577
	:	
v.	:	(REGULAR CALENDAR)
	:	
Warden of Southern Ohio	:	
Correctional Facility,	:	
	:	
Respondent.	:	
	:	

MAGISTRATE'S DECISION

Rendered on July 25, 2012

Ulious Brooks, pro se.

**IN MANDAMUS
ON SUA SPONTE DISMISSAL**

{¶ 4} Relator, Ulious Brooks, has filed this original action requesting that this court issue a writ of mandamus ordering respondent Warden of Southern Ohio Correctional Facility to "stop taking money order gifts that his family sends him."

Findings of Fact:

{¶ 5} 1. Relator is an inmate currently incarcerated at Southern Ohio Correctional Facility.

{¶ 6} 2. On July 10, 2012, relator filed a complaint for a writ of mandamus asking this court to order respondent to "stop taking money order gifts that his family sends him."

{¶ 7} 3. Relator has attached exhibits, including copies of grievances he has filed and two responses he received from respondent. Relator appears to be arguing that neither respondent nor anyone else working for the Department of Rehabilitation and Correction can deduct money from his inmate account, on a monthly basis, to pay for court costs occasioned as a result of relator having filed cases both in federal court and in county court.

{¶ 8} 4. At the time he filed this mandamus action, relator did file a prior actions affidavit indicating that, during the previous five years, he has filed civil actions or appeals of civil actions in state or federal courts required by R.C. 2969.25(A).

{¶ 9} 5. At the time he filed this mandamus action, relator failed to comply with the mandatory requirements of R.C. 2969.25(C) which required him to file an affidavit that includes (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 other cash and things of value owned by the inmate.

{¶ 10} 6. At the time he filed this mandamus complaint, relator also filed an application for an alternative writ seeking the same relief he seeks in his mandamus action.

Conclusions of Law:

{¶ 11} Because relator has failed to comply with the mandatory requirements of R.C. 2969.25(C), it is this magistrate's decision that this court should deny relator's request for an alternative writ and, because his failure to comply with the mandatory requirements of R.C. 2969.25(C) cannot be cured, this court should dismiss his complaint.

{¶ 12} In *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, the Supreme Court of Ohio affirmed the judgment of the court of appeals from Medina County which had dismissed the complaint of George D. Pamer, an inmate at Mansfield

Correctional Institution, for his failure to comply with the requirements of R.C. 2969.25(C). Specifically, the Supreme Court stated:

Pamer's cashier statement did not set forth the account balance for the month immediately preceding his mandamus complaint--August 2005. See R.C. 2969.25(C)(1), which requires an inmate filing a civil action against a government employee seeking waiver of prepayment of court filing fees to file a "statement that sets forth the balance in the inmate account for each of the preceding six months, as certified by the institutional cashier." Pamer's failure to comply with R.C. 2969.25(C)(1) warranted dismissal of the complaint. *State ex rel. Foster v. Belmont Cty. Court of Common Pleas*, 107 Ohio St.3d 195, 2005-Ohio-6184, 837 N.E.2d 777, ¶ 5.

In addition, nothing in R.C. 2969.25 required the court of appeals to afford Pamer the opportunity to pay the requisite filing fee before dismissing the case when Pamer expressly requested waiver of prepayment of those fees.

Finally, because Pamer did not prevail and did not establish his indigency, the court of appeals did not abuse its discretion in ordering him to pay the costs of the proceeding. See *State ex rel. Frailey v. Wolfe* (2001), 92 Ohio St.3d 320, 321, 750 N.E.2d 164; Civ.R. 54(D).

Id. at ¶ 5-7.

{¶ 13} Likewise, in *State ex rel. Ridenour v. Brunzman*, 117 Ohio St.3d 260, 2008-Ohio-854, the Supreme Court of Ohio affirmed the judgment of the Ross County Court of Appeals which had dismissed the complaint filed by William L. Ridenour because of his failure to comply with R.C. 2969.25(C). In that case, Ridenour had filed a motion for reconsideration attaching a statement setting forth his inmate account balance for the six month preceding the filing of his complaint; however, the statement was not certified by the prison cashier.

{¶ 14} In affirming the judgment of the appellate court, the Supreme Court stated:

"The requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate's action to dismissal." *State ex rel. White v. Bechtel*, 99 Ohio St.3d 11, 2003-Ohio-2262, 788 N.E.2d 634, ¶ 5. Ridenour failed to comply with

R.C. 2969.25(C)(1), which requires an inmate filing a civil action against a government employee seeking waiver of prepayment of court filing fees to file with the complaint 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."

Moreover, although Ridenour claims that the court erred in failing to grant him leave to amend his complaint to comply with R.C. 2969.25(C)(1), he never filed a motion to amend his complaint. Instead, he filed a motion for reconsideration, which was "a nullity because his mandamus action was filed originally in the court of appeals, rendering App.R. 26(A) inapplicable." *State ex rel. Washington v. Crush*, 106 Ohio St.3d 60, 2005-Ohio-3675, 831 N.E.2d 432, ¶ 5.

Id. at ¶ 6.

{¶ 15} Pursuant to the above-cited authority and because relator cannot cure these deficiencies at a later date, it is this magistrate's decision that this court should dismiss his complaint. Because relator's application for an alternative writ seeks the same relief sought in this mandamus action, his request should be denied as moot.

/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).