

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Don Hall,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 10AP-73
v.	:	(C.P.C. No. 09CVH-03-4773)
	:	
Terry Collins et al.,	:	(ACCELERATED CALENDAR)
	:	
Defendants-Appellees.	:	

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D E C I S I O N

Rendered on August 17, 2010

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*Don Hall*, pro se.

*Richard Cordray*, Attorney General, and *Ashley Rutherford*,  
for appellees.

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APPEAL from the Franklin County Court of Common Pleas.

BRYANT, J.

{¶1} Plaintiff-appellant, Don Hall, appeals from a judgment of the Franklin County Court of Common Pleas granting the motion to dismiss of defendants-appellees, Terry Collins, Director, Ohio State Department of Rehabilitation and Correction, and Cynthia Mausser, Chair, Ohio Adult Parole Authority. Because plaintiff failed to comply with the requirements of R.C. 2969.25, the trial court properly dismissed plaintiff's complaint.

## I. Procedural History

{¶2} On March 31, 2009, plaintiff filed a complaint seeking declaratory relief against defendants, as well as two other persons who never were served. Although plaintiff's complaint is difficult to understand, the trial court's decision granting defendants' motion to dismiss indicates plaintiff, representing himself, is incarcerated at the Marion Correctional Institution as the result of a 1992 guilty plea to three counts of rape involving plaintiff's son. Plaintiff was sentenced to a substantial term of incarceration.

{¶3} According to the trial court's decision, plaintiff attempted on multiple occasions to have his sentence vacated or set aside, to withdraw his guilty plea, or to pursue a delayed appeal. Plaintiff apparently was granted parole on August 9, 2007, but parole was suspended and plaintiff was returned to the institution to serve out the maximum of the sentence imposed upon him.

{¶4} In his complaint, plaintiff poses several arguments, the gist of which seeks a determination that he properly may be released from incarceration. In considering the complaint, the trial court determined plaintiff's allegations failed to state a claim upon which relief could be granted. In addition, the court concluded plaintiff failed to comply with the requirements of R.C. 2969.25. As a result, the court granted defendants' motion to dismiss.

## II. Assignments of Error

{¶5} Plaintiff appeals, assigning the following errors:

I. Abuse of Discretion; The FC. Court abuse of discretion can be found by review of the original plaintiff's brief, whereas, the brief is *incontra* to the courts decree "Background" contained in the Decision and Entry at appeal.

II. The due process clause requires a court as well as the Appellate to adhere to Statutory Procedures; The Court abused the due process procedure when it granted the defendant Motion to Dismiss on a defective claim.

III. The Due Process Clause requires a Court as well as a Plaintiff and/or Defendant to adhere to Statutory Procedures. In the case at bar the Court abused its discretion when it granted defendant's Motion To Dismiss pursuant to a bad faith defective claim; quoting page 5 ¶ 2 .... "They further argue Plaintiff did not exhaust all administrative remedies prior to filing this action, as required by R.C. §2969.26(A)[.]

(Sic passim.)

### III. Dismissal—R.C. 2969.25

{¶6} R.C. 2969.25(A) specifies that "[a]t the time an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court an affidavit" describing "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." R.C. 2969.25(C) provides that "[i]f an inmate who files a civil action \* \* \* 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," then "the inmate shall file with the complaint \* \* \* 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 indigency must contain a statement setting forth (1) the balance in the inmate's account "for each of the preceding six months, as certified by the institutional cashier," and (2) "all other cash and things of value owned by the inmate at the time."

{¶7} When plaintiff filed his complaint, he also filed an "Affidavit of Prior Action," to which plaintiff swore before a notary public. (R. 7.) The affidavit lists by name and case

number the actions plaintiff filed against governmental entities or employees in federal or state court, describes the nature of the action and states the outcome. The affidavit arguably comports with the statutory requirements of R.C. 2969.25.

{¶8} Plaintiff's affidavit of indigency does not. The affidavit of indigency, though ultimately inadequate, satisfies a portion of the requirements of R.C. 2969.25(C) in that plaintiff's affidavit states he receives a maintenance fee from the Department of Rehabilitation and Correction in the amount of \$18 to \$22 per month and has no other Ohio assets such as property, pension, savings or other personal property. The affidavit further indicates plaintiff is a chronic care patient with chronic heart disease and his only other income is in the form of charitable goodwill donations.

{¶9} R.C. 2969.25(C)(1), however, also requires that the affidavit include a statement setting forth the balance in the inmate's account for each of the preceding six months, along with the institutional cashier's certification of the statement. Attached to plaintiff's affidavit of indigency is a document entitled Inmate Demand Statement in the Name of Don Hall. It appears to set forth beginning and ending account balances beginning on September 5, 2008 and ending on March 2, 2009, but no cashier's certification is attached. As a result, the trial court properly concluded that "Plaintiff did not fulfill that statutory requirement because he failed to file a certified copy of his average balance for the past six months, as required by R.C. §2969.25(C)(1)." (Decision, 11.)

{¶10} The Supreme Court of Ohio stated "[i]t is well settled that ' [t]he requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate's action to dismissal.' " *State ex rel. Manns v. Henson*, 119 Ohio St.3d 348, 2008-Ohio-4478, ¶4, quoting *State ex rel. Ridenour v. Brunsman*, 117 Ohio St.3d 260,

2008-Ohio-854, ¶5, quoting *State ex rel. White v. Bechtel*, 99 Ohio St.3d 11, 2003-Ohio-2262, ¶5. Plaintiff's attempt to file as part of his appeal the documents necessary to satisfy R.C. 2969.25(C) fails: documents must be filed at the time the complaint is filed. *Brown v. Ohio Adult Parole Auth.*, 10th Dist. No. 09AP-797, 2010-Ohio-872, ¶11. Plaintiff's failure to comply fully with the requirements of R.C. 2969.25 when he filed his complaint subjects his complaint to dismissal.

{¶11} Because the trial court did not err in dismissing plaintiff's complaint for failure to comply with the requirements of R.C. 2969.25, plaintiff's assignments of error are moot, as are his motions requesting judicial notice. The judgment of the trial court is affirmed.

*Motions denied as moot;  
judgment affirmed.*

KLATT and FRENCH, JJ., concur.

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