

In the
Supreme Court of Ohio

STATE EX REL. WILLIAM L. RIDENOUR, : Case No. 2007-1831
: :
Relator-Appellant, : :
: : On Appeal from the
v. : : Ross County
: : Court of Appeals,
TIMOTHY BRUNSMAN, WARDEN, : : Fourth Appellate District
: :
Respondent-Appellee. : : Court of Appeals Case
: : No. 07CA2979
: :

**MERIT BRIEF
IN SUPPORT OF RESPONDENT-APPELLEE TIMOTHY BRUNSMAN, WARDEN**

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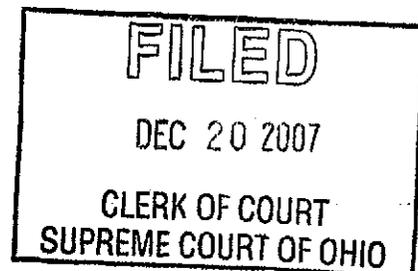


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INTRODUCTION

The General Assembly, in R.C. 2969.25(C), passed a law that required inmates to submit an affidavit of indigency and a certified cashier statement at the time of filing a civil action if they are seeking a waiver of the pre-payment of the filing fees. This Court has consistently held that R.C. 2969.25(C) requires inmates to submit their certified cashier statement at the time of filing their civil complaint. In the event that an inmate fails to submit the required documentation, it is proper for a Court of Appeals to *sua sponte* dismiss the action. The sole question before this Court is whether the Court of Appeals abused its discretion when it *sua sponte* dismissed Ridenour's Petition for his failure to comply with R.C. 2969.25(C).

STATEMENT OF THE CASE AND FACTS

On August 15, 2007, appellant, William L. Ridenour, an inmate at Chillicothe Correctional Institution (CCI), filed a complaint in the Court of Appeals for Ross County. Ridenour sought a writ of mandamus to compel Warden Timothy Brunsman to provide him a rain coat, rubber overshoes, and long underwear. Ridenour moved for waiver of the prepayment of fees to file his mandamus action and submitted an affidavit of indigency and a statement showing his inmate account for the period from February 10, 2007 through August 11, 2007.

On August 28, 2007, the Court of Appeals *sua sponte* dismissed Ridenour's Petition and ordered that he pay costs because he failed to comply with R.C. 2969.25(C).¹ Specifically, Ridenour's cashier statement was not certified as required under the rule. On September 5, 2007, Ridenour filed a motion for reconsideration pursuant to Ohio Appellate Rules. On September 25, 2007, the Court of Appeals denied the motion because a motion for reconsideration pursuant to App.R. 26(A) is inappropriate in an original action.

¹ The Court of Appeals dismissed Ridenour's Petition based on a procedural threshold issue and the order indicates the Court did not place judgment on the merits or dismiss with prejudice.

The sole question before this Court is whether the Court of Appeals abused its discretion when it *sua sponte* dismissed Ridenour's Petition for his failure to comply with R.C. 2969.25(C). The dismissal of Ridenour's Petition was without prejudice, and he is not precluded from filing his complaint in the future. Thus, the decision to *sua sponte* dismiss an inmate's complaint for failure to comply with R.C. 2969.25(C) lies in the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. An abuse of discretion is more than an error of law or judgment, but rather it is a finding that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. Under this standard of review, an appellate court may not merely substitute its judgment for that of the trial court. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. Ridenour can show no abuse of discretion by the Court of Appeals and this Court should affirm the decision of the Court of Appeals.

ARGUMENT

Respondent-Appellee's Proposition of Law:

The Court of Appeals may sua sponte dismiss a complaint for failure to comply with R.C. 2969.25(C).

Ridenour alleges that the Court of Appeals abused its discretion when it *sua sponte* dismissed his complaint for his failure to comply with R.C. 2969.25(C). Ridenour's first challenge (Appellant's Propositions of Law I and II) concerns the duty imposed by R.C. 2969.25(C): 1) He asserts that R.C. 2969.25(C) places the duty to submit the certified cashier statement on the institutional cashier at CCI; and 2) He asserts that R.C. 2969.25(C) does not require him to submit the certified cashier statement at the time of filing his complaint. Ridenour's second challenge (Appellant's Proposition of Law II) concerns the Court of Appeals' failure to: 1) construe his App.R. 26(A) motion for reconsideration as a motion for leave to amend his complaint, and 2) grant him leave to amend his cashier statement to comply with R.C. 2969.25(C).

However, Ridenour cannot show an abuse of discretion by the Court of Appeals where this Court has clearly held that it is proper for courts to dismiss an inmate's complaint when the inmate fails to comply with R.C. 2969.25(C). It is well-settled that the requirements of R.C. 2969.25 are strict and constitutional. *Jefferson v. Ohio Adult Parole Auth.* (1999), 86 Ohio St.3d 304. If the mandatory requirements of R.C. 2969.25 are not followed, the complaint must be dismissed. *State ex rel. Alford v. Winters* (1997), 80 Ohio St.3d 285; *Akbar-El v. Ohio Dept. of Rehab. and Corr.* (1998), 126 Ohio App.3d 644. When Ridenour filed his complaint in the Court of Appeals, he failed to meet the pleading requirements, and his complaint was properly dismissed. Accordingly, this Court should affirm.

- A. R.C. 2969.25(C) 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.”**

R.C. 2969.25(C) clearly 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.” *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, (where an inmate failed to comply with R.C. 2969.25(C)(1) because his cashier statement did not set forth the account balance for the month immediately preceding his mandamus complaint). Under this section, the duty is upon the inmate to file the statement at the time of filing the civil complaint. *Id.* Ridenour incorrectly asserts that the institutional cashier is required by law to perform this duty. In addition, Ridenour cannot demonstrate that the Court of Appeals abused its discretion in finding that he failed to comply with R.C. 2969.25(C)(1).

- B. It is proper for the Court of Appeals to *sua sponte* dismiss an inmate’s complaint when an inmate fails to comply with R.C. 2969.25(C).**

Properly understood, R.C. 2969.25(C) required Ridenour to submit a certified cashier statement at the time of filing his complaint. And as such, the Court of Appeals was free to *sua sponte* dismiss his complaint based on his failure to do so.

- 1. Where the statement setting forth the balance in the inmate account is not certified by the cashier, the statement is deficient under R.C. 2969.25(C)**

Ridenour admits that the cashier statement attached to his complaint did not comply with R.C. 2969.25(C). (Merit Brief of Appellant, p.3) His cashier statement on its face lacks certification by the cashier. (Cashier Statement, attached as Supp. 3-5 to Appellant’s Brief; Court of Appeals August 28, 2007 Decision, *sua sponte* dismissal) Ridenour’s non-compliance with R.C. 2969.25 justified dismissal of his complaint. Ridenour has no right to amend the

cashier statement under R.C. 2969.25, even though it is permissible for a Court to allow an amendment. The Court of Appeals relied upon this Court's opinion in *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533 at ¶9, which provides:

“Finally, Fuqua conceded the point by expressly requesting leave in the court of appeals to amend his petition with the affidavit required by R.C. 2969.25. And Fuqua's belated attempt to file the required affidavit does not excuse his noncompliance. See R.C. 2969.25(A), which requires that the affidavit be filed “[a]t the time that an inmate commences a civil action or appeal against a government entity or employee.” (Emphasis added.)

Fuqua remains good law. Furthermore, this Court has consistently held that “failure to comply with R.C. 2969.25(C)(1) warrant[s] dismissal of the complaint.” *State ex rel. Pamer*, 108 Ohio St. 3d 492 at ¶5 citing *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. Even if Ridenour had requested leave to amend (which he did not accomplish by filing an App.R. 26(A) motion for reconsideration), he still fails to demonstrate an abuse of discretion by the Court of Appeals. Therefore, Ridenour failed to distinguish the ruling set forth in *Fuqua*, and the Court of Appeals did not abuse its discretion when it *sua sponte* dismissed Ridenour's complaint.

2. The Court of Appeals need not review the merits of an inmate's complaint when it *sua sponte* dismisses the complaint for failure to comply with the mandatory pleading requirements of R.C. 2969.25(C).

In an attempt to show that the Court of Appeals abused its discretion, Ridenour states that he was likely to succeed on the merits of his complaint for a writ of mandamus. (Merit Brief of Appellant at p.8) Ridenour believes that the Court of Appeals was not permitted to *sua sponte* dismiss his complaint absent a finding that 1) his complaint was frivolous and 2) he could not prevail on the merits of his claim. (*Id.*, citing *State ex rel. Kralik v. Zwelling*, 101 Ohio St.3d 134, 2004-Ohio-301, 802 N.E.2d 657.) Ridenour misunderstands the law because he believes the Court of Appeals was required to overlook the mandatory pleading requirements of R.C.

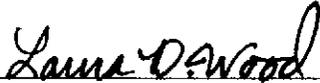
2969.25(C) if he had a valid claim. The requirements of R.C. 2969.25 are threshold issues, and the decision to dismiss Ridenour's complaint for failure to comply with the mandatory pleading requirements was made without prejudice. Even if Ridenour was likely to succeed on the merits of his claim, this fact was immaterial due to Ridenour's failure to comply with R.C. 2969.25(C)(1)—the Court of Appeals did not abuse its discretion when it dismissed his complaint without prejudice.

CONCLUSION

For the above reasons, this Court should affirm the judgment below.

Respectfully submitted,

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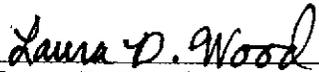
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *Merit Brief in Support of Respondent-Appellee Timothy Brunsman, Warden* was served by U.S. mail this 20th day of December, 2007, upon the following:

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