

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Allen James Semenchuk,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 10AP-753
v.	:	(C.P.C. No. 10CVH-06-8674)
	:	
Ohio Adult Parole Authority,	:	(ACCELERATED CALENDAR)
	:	
Defendant-Appellee.	:	

---

D E C I S I O N

Rendered on April 21, 2011

---

*Allen James Semenchuk, pro se.*

*Michael DeWine, Attorney General, and Jason Fuller, for appellee.*

---

APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶1} Plaintiff-appellant, Allen James Semenchuk ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas dismissing appellant's complaint for declaratory judgment against defendant-appellee, Ohio Adult Parole Authority ("appellee"), for failure to comply with R.C. 2969.25(C). For the following reasons, we reverse.

{¶2} On June 9, 2010, appellant, currently in the custody of the Ohio Department of Rehabilitation and Correction, filed a complaint for declaratory judgment against appellee regarding various parole issues. At that time, appellant also filed a motion, pursuant to R.C. 2969.25, to waive the prepayment of filing fees with the clerk of courts. R.C. 2969.25(C) states, in pertinent part:

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 \* \* \* 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.

{¶3} On July 13, 2010, the trial court dismissed appellant's action, pursuant to R.C. 2969.25(C), because appellant did not file the requisite accounting statement *certified* by the institutional cashier. The trial court cited *State ex rel. Ridenour v. Brunsman*, 117 Ohio St.3d 260, 261, 2008-Ohio-854, in which the Supreme Court of Ohio held that "[t]he requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate's action to dismissal." *Id.* at ¶5, quoting *State ex rel. White v. Bechtel*, 99 Ohio St.3d 11, 2003-Ohio-2262. However, in its dismissal entry, the trial court did not specify whether the dismissal was with or without prejudice.

{¶4} On August 6, 2010, appellant timely filed his notice of appeal, setting forth the following three assignments of error for our consideration:

**ASSIGNMENT OF ERROR I**

THE TRIAL COURT ERRED TO THE PREJUDICE OF THE PLAINTIFF WHEN IT DISMISSED PLAINTIFF'S ACTION PURSUANT TO ORC 2969.25(C)(1) A STATUTE THAT IS FACIALLY AND AS APPLIED UNCONSTITUTIONAL.

**ASSIGNMENT OF ERROR II**

THE TRIAL COURT ERRED TO THE PREJUDICE OF THE PLAINTIFF WHEN IT DISMISSED PLAINTIFF'S ACTION PURSUANT TO O.R.C. 2969.25(C)(1) AND CIVIL RULE 41(B)(1) WITHOUT NOTICE OR EXPLORING ALTERNATIVES TO DISMISSAL.

**ASSIGNMENT OF ERROR III**

THE COURT ERRED TO THE PREJUDICE OF THE PLAINTIFF WHEN IT FAILED TO ADJUDICATE THIS ACTION ON ITS MERITS.

{¶5} We begin by addressing appellant's second assignment of error, which effectively renders the first and third assignments of error moot. In his second assignment of error, appellant argues that, pursuant to Civ.R. 41(B)(1), the trial court erred by dismissing appellant's complaint without first providing appellant notice of the pending dismissal. We agree.

{¶6} Franklin County Court of Common Pleas, General Division, Loc.R. 9.02(A) states "if the party initiating the civil action is an inmate, he/she must comply with the provisions of R.C. 2969.25. Failure to comply with R.C. 2969.25 shall be grounds for dismissal of the action pursuant to Civ.R. 41(B)(1)."

{¶7} Civ.R. 41(B)(1) governs involuntary dismissals stating that "[w]here the plaintiff fails to prosecute, or comply with these rules or any court order, the court upon motion of a defendant or on its own motion may, *after notice to the plaintiff's counsel,*

dismiss an action or claim." (Emphasis added.) Further, Civ.R. 41(B)(3) states that "[a] dismissal under division (B) of this rule and any dismissal not provided for in this rule, except as provided in division (B)(4) of this rule, operates as an adjudication upon the merits *unless the court, in its order for dismissal, otherwise specifies.*" (Emphasis added.)

{¶8} In addressing the notice requirement set forth in Civ.R. 41(B)(1), the Supreme Court of Ohio reasoned that "[a] dismissal on the merits is a harsh remedy that calls for the due process guarantee of prior notice," and therefore, "[w]e hold that the notice requirement of Civ.R. 41(B)(1) applies to *all* dismissals with prejudice." *Ohio Furniture Co. v. Mindala* (Feb. 12, 1986), 22 Ohio St.3d 99, 101. (Emphasis sic.) Further, in *Harris v. Harris* (June 24, 1999), 10th Dist. No. 98AP-1077, this court stated that "[a] party has notice of an impending dismissal with prejudice when it 'has been informed that dismissal is a possibility and has had a reasonable opportunity to defend against dismissal,'" quoting *Quonset Hut, Inc. v. Ford Motor Co.* (1997), 80 Ohio St.3d 46, 49.

{¶9} In the present matter, the record indicates that the trial court failed to specify whether appellant's complaint was to be dismissed with or without prejudice. (See July 13, 2010 Dismissal Entry.) Therefore, pursuant to Civ.R. 41(B)(3), we find that the trial court effectuated a dismissal "with prejudice." In addition, the record indicates that, in violation of Civ.R. 41(B)(1), the trial court failed to provide prior notice to appellant regarding the pending dismissal, with prejudice, of appellant's complaint.

{¶10} In its brief, appellee argues that the trial court dismissed appellant's complaint "without prejudice"; however, because the trial court's entry does not specify that the dismissal is "without prejudice," we, as a reviewing court, cannot infer the trial

court's intentions. (See Appellee's Brief at 2.) It is well-settled that "a court speaks only through its journal," and, therefore, the trial court's dismissal entry determines this issue. *State ex. rel. Gen. Motors Corp. v. Indus. Comm.*, 10th Dist. No. 03AP-782, 2005-Ohio-356, ¶8, citing *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, ¶6.

{¶11} Appellant's second assignment of error is sustained, thereby rendering his first and third assignments of error moot.

{¶12} For the foregoing reasons, appellant's second assignment of error is sustained, and his first and third assignments of error are moot. We reverse the judgment of the Franklin County Court of Common Pleas and remand this cause to that court for further proceedings in accordance with law and consistent with this decision.

*Judgment reversed and cause remanded.*

BROWN and SADLER, JJ., concur.

---