

APPENDIX "D"

Howard v. Mgmt. & Training Corp., 2020 Ohio LEXIS 757

Supreme Court of Ohio
March 26, 2020, Decided
2019-1662.

Reporter

2020 Ohio LEXIS 757 * | 158 Ohio St. 3d 1445 | 2020-Ohio-1110 | 141 N.E.3d 971

Howard v. Mgt. & Training Corp.

Notice:

DECISION WITHOUT PUBLISHED OPINION

Prior History:

Marion App. No. 9-19-40, 2019-Ohio-4408 [*1].

Howard v. Management & Training Corp., 2019-Ohio-4408, 2019 Ohio App. LEXIS 4481 (Ohio Ct. App., Marion County, Oct. 28, 2019)

Core Terms

reconsideration motion

Opinion

MOTION AND PROCEDURAL RULING

On appellee's motion to strike motion for reconsideration. Motion denied. Appellee may file a memorandum in response to the motion for reconsideration within ten days.

Howard v. Mgmt. & Training Corp., 2020 Ohio LEXIS 757, 158 Ohio St. 3d 1445, 2020-Ohio-1110, 141 N.E.3d 971, 158 Ohio St. 3d 1445, 2020-Ohio-1110, 141 N.E.3d 971 (Ohio March 26, 2020)

Appendix "C"

Howard v. Mgt. & Training Corp., 2020 Ohio LEXIS 435

Supreme Court of Ohio
February 18, 2020, Decided
2019-1662.

Reporter

2020 Ohio LEXIS 435 * | 158 Ohio St. 3d 1410 | 2020-Ohio-518 | 139 N.E.3d 932 | 2020 WL 770352

Howard v. Mgt. & Training Corp.

Notice:

DECISION WITHOUT PUBLISHED OPINION

Subsequent History: Reconsideration denied by, Motion denied by **Howard v. Mgt. & Training Corp.**, 2020-Ohio-3018, 2020 Ohio LEXIS 1274 (Ohio, May 26, 2020)

Prior History:

Marion App. No. 9-19-40, 2019-Ohio-4408 [*1].

Howard v. Management & Training Corp., 2019-Ohio-4408, 2019 Ohio App. LEXIS 4481 (Ohio Ct. App., Marion County, Oct. 28, 2019)

Core Terms

preliminary injunction

Judges: Donnelly, J., dissents and would accept the appeal on proposition of law No. II.

Opinion

APPEAL NOT ACCEPTED FOR REVIEW

Appellant's complaint for a preliminary injunction and "motion for leave for corrections and additions to complaint for a preliminary injunction" denied.

Donnelly, J., dissents and would accept the appeal on proposition of law No. II.

[Howard v. Mgt. & Training Corp., 2020 Ohio LEXIS 435, 158 Ohio St. 3d 1410, 2020-Ohio-518, 139 N.E.3d 932.](#)

Howard v. Management & Training Corp., 2019-Ohio-4408

Court of Appeals of Ohio, Third Appellate District, Marion County
October 28, 2019, Decided
CASE NO. 9-19-40

Reporter

2019-Ohio-4408 * | 2019 Ohio App. LEXIS 4481 ** | 2019 WL 5549541

JEFFERY L. HOWARD, PLAINTIFF-APPELLANT, v. MANAGEMENT AND TRAINING CORPORATION, ET AL., DEFENDANTS-APPELLEES.

Subsequent History: Discretionary appeal not allowed by, Injunction denied by, Motion denied by Howard v. Mgt. & Training Corp., 158 Ohio St. 3d 1410, 2020-Ohio-518, 2020 Ohio LEXIS 435, 139 N.E.3d 932 (Feb. 18, 2020)
Motion denied by Howard v. Mgmt. & Training Corp., 158 Ohio St. 3d 1445, 2020-Ohio-1110, 2020 Ohio LEXIS 757, 141 N.E.3d 971 (Mar. 26, 2020)

Prior History:

[**1] Appeal from Marion County Common Pleas Court. Trial Court No. 2016CV0519.

Howard v. Mgmt. & Training Corp., 2018 U.S. Dist. LEXIS 190632 (N.D. Ohio, Nov. 7, 2018)

Disposition:

Judgment Affirmed.

Core Terms

inmate, grievance, assigned error, civil action, EXHAUST, grievance procedure, informal complaint, motion to dismiss

Case Summary

Overview

HOLDINGS: [1]-The trial court did not err in dismissing an inmate's complaint against the operator of a correctional

complex because the inmate failed to comply with R.C. 2969.26(A) since nothing in his complaint nor the exhibits

attached to the complaint reflected that he had pursued the inmate grievance procedure concerning his negligence claims;

[2]-The trial court's decision to dismiss the complaint for the failure to comply with R.C. 2969.25(A) was supported by the record because the inmate failed to file an affidavit in compliance with R.C. 2969.25(A) when he initiated the lawsuit by filing his complaint.

Outcome

Judgment affirmed.

LexisNexis® Headnotes

- Civil Procedure > ... > Defenses, Demurrs & Objections > Motions to Dismiss > Failure to State Claim

HNI Motions to Dismiss, Failure to State Claim

A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted tests only the legal sufficiency of the complaint. For a court to dismiss on this basis, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him or her to recovery. In ruling on a Civ.R. 12(B)(6) motion, the court must accept the factual allegations contained in the complaint as true and draw all reasonable inferences from these facts in favor of the plaintiff. If there is a set of facts consistent with the complaint that would allow for recovery, the court must not grant the motion to dismiss. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Civil Rights Law > ... > Procedural Matters > Federal Versus State Law > Exhaustion Doctrine

[View more legal topics](#)**HN2 Federal Versus State Law, Exhaustion Doctrine**

R.C. 2969.26(A) provides that if an inmate commences a civil action or appeal against a governmental entity or employee, and if the inmate's claim is subject to the grievance procedure system, the inmate must file: (1) an affidavit stating the grievance was filed, along with the date on which the decision regarding the grievance was received, and (2) a copy of any written decision received regarding the grievance from the grievance system. More like this Headnote

[Shepardize](#) - Narrow by this Headnote (0)

• Civil Rights Law > Protection of Rights > Prisoner Rights > Confinement Conditions[View more legal topics](#)**HN3 Prisoner Rights, Confinement Conditions**

The inmate grievance procedure is designed to address inmate complaints related to any aspect of institutional life that directly and personally affects the grievant. It is a three-step process set out in Ohio Admin. Code 5120-9-31. Step one is the filing of an informal complaint. Ohio Admin. Code 5120-9-31(J)(1). The informal complaint is to be filed within fourteen days of the incident giving rise to the complaint. The staff must then respond to the informal complaint within seven days. Step two is to obtain a notification of grievance, if the inmate is unsatisfied with the resolution of the informal complaint. Ohio Admin. Code 5120-9-31(J)(2). The notification of grievance is to be filed within fourteen days of the informal complaint response. The inspector of institutional services shall provide a written response to the grievance within fourteen days of receipt. Step three is the filing of an appeal of the disposition of grievance to the office of the Chief Inspector of ODRC. Ohio Admin. Code 5120-9-31(J)(3). This appeal must be filed within fourteen days of the

Appendix "A" 4 of 8

disposition of grievance. An inmate does not exhaust his or her remedies under Ohio Admin. Code 5120-9-31 until he or

she has received a decision in an appeal to the office of the Chief Inspector. More like this Headnote

[Shepardize](#) - Narrow by this Headnote (0)

- Civil Rights Law > ... > Procedural Matters > Federal Versus State Law > Exhaustion Doctrine

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HN4 Federal Versus State Law, Exhaustion Doctrine

Compliance with R.C. 2969.26(A) is mandatory and that an inmate's failure to comply with the statute warrants dismissal

of the inmate's action. More like this Headnote

[Shepardize](#) - Narrow by this Headnote (0)

- Civil Rights Law > Protection of Rights > Prisoner Rights > Confinement Conditions

[View more legal topics](#)

HNS Prisoner Rights, Confinement Conditions

R.C. 2969.25(A) requires that at the time an inmate commences a civil action against a government entity or employee,

the inmate must file an affidavit that contains a (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, and (4) the outcome of the civil action or appeal. The requirements of R.C. 2969.25 are mandatory

and failure to comply with them requires dismissal of an inmate's complaint. The affidavit required by R.C.

2969.25(A) must be filed at the time the complaint is filed, and an inmate may not cure the defect by later filings. More

like this Headnote

Shepardize - Narrow by this Headnote (0)

Counsel: Jeffrey L. Howard Appellant.

Edward O. Patton for Appellees, Management and Training Corporation, et al.

Judges: SHAW, J. PRESTON and WILLAMOWSKI, J.J., concur.

Opinion by: SHAW

Opinion

SHAW, J.

[*P1] Plaintiff-appellant, Jeffery L. Howard, appeals the June 14, 2019 judgment of the Marion County Court of Common Pleas granting the motion to dismiss his complaint filed by defendants-appellees, Management and Training Corporation, et al. ("collectively referred to as "MTC" or "Appellees"), on the basis that Howard failed to comply with the mandates of R.C. 2969.25 and R.C. 2969.26.

[*P2] Howard is an inmate at the North Central Correctional Complex ("NCCC"), which is operated by MTC. In 2017, Howard first initiated this civil suit for monetary damages in the Marion County Court of Common Pleas, alleging that Appellees violated his First, Eighth, and Fourteenth Amendment rights under the United States Constitution. The case was removed to Federal District Court where all but two state claims were dismissed through summary judgment.

[*P3] On April 2, 2019, the District Court remanded the remaining claims to the Common Pleas Court, which involved Howard's allegations, premised upon a theory of common law [*2] negligence, that he was not provided with appropriate prison-issued winter footwear and that he received inadequate medical care for the osteoarthritis in his feet. Howard also alleged that the Chief Inspector and MTC negligently hired, supervised, retained, and disciplined personnel employed at the correctional facility.

[*P4] On May 10, 2019, Appellees filed a motion to dismiss Howard's claim pursuant to Civ.R. 12(B)(6).

[*P5] On June 14, 2019, the Common Pleas Court granted Appellees' motion to dismiss the complaint on the grounds that Howard failed "to exhaust all administrative remedies prior to commencing an action pursuant to R.C. 2969.25 and 2969.26(A)." (Doc. No. 31).

[*P6] Howard filed this appeal, asserting the following assignments of error.

ASSIGNMENT OF ERROR NO. ONE

COURT COMMITTED PLAIN ERROR DISMISSING APPELLANT'S COMPLAINT FOR FAILURE TO EXHAUST AND FAILURE TO COMPLY WITH O.R.C. 2969.26(A)(2).

ASSIGNMENT OF ERROR NO. TWO

COURT DISMISSAL FOR FAILURE TO EXHAUST WAS ERRONEOUS AND INJUDICIOUS.

ASSIGNMENT OF ERROR NO. THREE

**THE TRIAL COURT DISMISSAL OF APPELLANT'S COMPLAINT PURSUANT TO OHIO REVISED CODE—
ORC 2969.25 AND 2969.26(A)(1&2) IS ERRONEOUS AND PLAIN ERROR.**

ASSIGNMENT OF ERROR NO. FOUR

**THE TRIAL COURT ABUSED ITS DISCRETION DISMISSAL [SIC] APPELLANT'S COMPLAINT
PURSUANT [**3] TO O.R.C. 2969.26(A)(2).**

ASSIGNMENT OF ERROR NO. FIVE

**THE TRIAL COURT DEPENDENCE ON CASE THAT HAD NO PRECEDENTIAL VALUE WAS ERRONEOUS
AND PLAIN ERROR.**

[*P7] Due to the fact all the assignment of errors challenge the Common Pleas Court's decision to grant Appellees' motion to dismiss the complaint, we elect to address them together.

First, Second, Third, Fourth and Fifth Assignments of Error

[*P8] On appeal, Howard claims the Common Pleas Court erred in granting Appellees' motion to dismiss the complaint. Initially, we note that in his brief Howard appears to conflate his arguments pertaining to his Federal Constitutional claims dismissed by the District Court with the negligence claims handled by the Common Pleas Court. As previously stated, this appeal only concerns the state negligence claims raised by Howard that were resolved by the Common Pleas Court.

Standard of Review

[*P9] **HNI** A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted tests only the legal sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548, 1992- Ohio 73, 605 N.E.2d 378 (1992). For a court to dismiss on this basis, "it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery." *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus. In ruling on a Civ.R. 12(B)(6) motion, the court must accept [**4] the factual allegations contained in the complaint as true and draw all reasonable inferences from these facts in favor of the plaintiff. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). If there is a set of facts consistent with the complaint that would allow for recovery, the court must not grant the motion to dismiss. *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 144, 573 N.E.2d 1063 (1991).

Failure to Exhaust Prison Inmate Grievance Procedure

[*P10] The Common Pleas Court granted the motion to dismiss Howard's complaint on the grounds he failed to establish that he exhausted all administrative remedies through the prison inmate grievance procedure prior to commencing an action pursuant to R.C. 2969.26(A). R.C. 2969.26(A) **HN2** provides that if an inmate commences a civil action or appeal against a governmental entity or employee, and if the inmate's claim is subject to the grievance procedure system, the inmate must file: (1) an affidavit stating the grievance was filed, along with the date on which the decision regarding the grievance was received; and (2) a copy of any written decision received regarding the grievance from the grievance system.

[*P11] **HN3** The inmate grievance procedure is designed to address inmate complaints related to any aspect of institutional life that directly and personally affects the grievant. It is a three-step process set [*5] out in Ohio Admin. Code 5120-9-31. Step one is the filing of an informal complaint. Ohio Admin. Code 5120-9-31(J)(1). The informal complaint is to be filed within fourteen days of the incident giving rise to the complaint. The staff must then respond to the informal complaint within seven days. Step two is to obtain a notification of grievance, if the inmate is unsatisfied with the resolution of the informal complaint. Ohio Admin. Code 5120-9-31(J)(2). The notification of grievance is to be filed within fourteen days of the informal complaint response. The inspector of institutional services shall provide a written response to the grievance within fourteen days of receipt. Step three is the filing of an appeal of the disposition of grievance to the office of the Chief Inspector of ODRC. Ohio Admin. Code 5120-9-31(J)(3). This appeal must be filed within fourteen days of the disposition of grievance.

[*P12] Notably, an inmate does not exhaust his remedies under Ohio Admin. Code 5120-9-31 until he has received a decision in an appeal to the office of the Chief Inspector. *State ex rel. Sloan v. Mohr*, 7th Dist. Belmont No. 16 BE 0055, 2017-Ohio-7504, ¶ 7. The Supreme Court of Ohio has recently held, in another matter involving the same parties in the case *sub judice*, that **HN4** "compliance with R.C. 2969.26(A) is mandatory and that an inmate's failure to comply with the statute [*6] warrants dismissal of the inmate's action." *State ex rel. Howard v. Turner*, 156 Ohio St. 3d 285, 2019-Ohio-759, ¶ 6, 125 N.E.3d 875.

[*P13] Here, the record demonstrates that Howard has failed to comply with R.C. 2969.26(A). Nothing in his complaint nor the exhibits attached to the complaint reflects that he has pursued the inmate grievance procedure concerning his negligence claims. While Howard has attached as exhibits to his complaint various copies purportedly documenting his pursuit of relief under the grievance system concerning his Federal Constitutional claims, he has not included with his complaint any documents demonstrating his efforts to administratively resolve his state negligence claims nor has he included an affidavit attesting to his having exhausted his remedies under the grievance system with respect to these claims. Therefore, the record supports the Common Pleas Court's determination that Howard failed to comply with R.C. 2969.26(A).

Affidavit of Prior Civil Actions

[*P14] In addition, R.C. 2969.25(A) **HN5** requires that *at the time an inmate commences a civil action against a government entity or employee*, the inmate must file an affidavit that contains a (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; [*7] (3) the name of each party to the civil action or appeal; and (4) the outcome of the civil action or appeal. "The requirements of R.C. 2969.25 are mandatory and failure to comply with them requires dismissal of an inmate's complaint." *State ex rel. Hall v. Mohr*, 140 Ohio St.3d 297, 2014-Ohio-3735, ¶ 4, 17 N.E.3d 581. "[T]he affidavit required by R.C. 2969.25(A) must be filed at the time the complaint is filed, and an inmate may not cure the defect by later filings." *Id.*, citing *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, ¶ 9, 797 N.E.2d 982. Here, the record indicates that Howard failed to file an affidavit in compliance with R.C. 2969.25(A) when he initiated this lawsuit by filing his complaint. Accordingly, we find that the trial court's decision to dismiss the complaint for the failure to comply with R.C. 2969.25(A) is supported by the record.

Failure to State a Claim

[*P15] Even assuming Howard complied with the statutory mandates previously discussed, he failed to allege in his complaint any operative facts to substantiate his claim that the Chief Inspector and MTC has negligently hired, supervised, retained, and disciplined NCCC personnel. Specifically, Howard has failed to plead sufficient facts to demonstrate incompetence of the employee, actual or constructive knowledge of the incompetence on behalf of the employer, and an act of omission by the employee. *See, Kingston Mound Manor I v. Keeton*, 4th Pickaway No. 18CA15, 2019-Ohio-3260, ¶ 33 (setting forth the [*8] elements of a negligent hiring, retention, or supervision claim).

[*P16] Based on the foregoing, we conclude that the trial court did not err in dismissing Howard's complaint on the grounds he failed to comply with the requirements of R.C. 2969.25 and 2969.26. Accordingly, the assignments of error are overruled and the judgment of the trial court is affirmed.

Judgment Affirmed

PRESTON and WILLAMOWSKI, J.J., concur.

Footnotes

- The record reveals that the District Court granted summary judgment in favor of Appellees on the basis that Howard's claims were either time-barred or did not state a claim for which relief could be granted. (Doc. No. 23).

Howard v. Management & Training Corp., 2019-Ohio-4408, 2019 Ohio App. LEXIS 4481, 2019 WL 5549541, 2019 WL 5549541 (Ohio Ct. App., Marion County October 28, 2019)