

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

AARON CALDWELL,	:	
	:	
Plaintiff-Appellee,	:	No. 108561
	:	
v.	:	
	:	
ACTIVE TIME L.L.C.,	:	
	:	
Defendant-Appellant.	:	

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: October 3, 2019**

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Civil Appeal from the Rocky River Municipal Court  
Case No. 18 CVF 2275

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***Appearances:***

Aaron Caldwell, *pro se*.

Michael P. Harvey Co., L.P.A., and Michael P. Harvey, *for  
appellant*.

EILEEN A. GALLAGHER, J.:

{¶ 1} Defendant-appellant Active Time L.L.C. appeals the trial court's adoption of the magistrate's judgment for plaintiff-appellee Aaron Caldwell. We affirm.

## **Relevant Background Facts**

{¶ 2} In October 2018, Caldwell filed suit in the Rocky River Municipal Court, Small Claims Division, alleging that Active Time, his former employer, owed him wages. Active Time answered and filed counterclaims. The case was transferred to the court's general division.

{¶ 3} Initially, Caldwell did not answer Active Time's counterclaims. Active Time moved for default judgment and Caldwell moved for leave to file an answer instanter. The magistrate denied Active Time's motion and allowed Caldwell to answer.

{¶ 4} The case proceeded to trial before the magistrate. Appellant has failed to submit any record of the proceedings as part of this appeal. The magistrate granted judgment to Caldwell in the amount of \$961 in damages as to his claim and granted Caldwell judgment on Active Time's counterclaims. The trial court adopted the magistrate's decision.

{¶ 5} Active Time now appeals asserting four assignments of error:

1. The trial court erred in failing to award default judgment against Mr. Caldwell.
2. The trial court erred in failing to enforce a trial subpoena for a target that did not respond on the claim that twenty-three (23) days was not enough time to respond.
3. The trial court erred in awarding Mr. Caldwell \$961.00 when he was paid for all of his teaching time.

4. The trial court erred in failing to award Active Time/Creative Classes anything on its Counterclaims.

**Motions for Default Judgment and for Leave to File Answer  
Instanter**

{¶ 6} In its first assignment of error, Active Time argues that the trial court erred by denying its motion for default judgment on its counterclaims, instead allowing Caldwell to file an answer. Its argument consists of the bare statement that the trial court “permitted Mr. Caldwell to answer the Counterclaims late, without excusable neglect without having even responded to the Motion for Default.” Active Time does not otherwise substantiate its claim.

{¶ 7} As an initial matter, this court reviews a trial court’s adoption of a magistrate’s decision for an abuse of discretion. *Kaur v. Singh*, 8th Dist. Cuyahoga No. 107774, 2019-Ohio-3512, ¶ 8. We also review a court’s Civ.R. 6(B)(2) determination for abuse of discretion. *Wilson v. Sanson*, 8th Dist. Cuyahoga No. 87685, 2006-Ohio-6269, ¶ 34. Moreover, we review a court’s ruling on a motion for default judgment for an abuse of discretion. *Goodyear v. Waco Holdings, Inc.*, 8th Dist. Cuyahoga No. 91432, 2009-Ohio-619, ¶ 19. A court abuses its discretion where its decision is arbitrary, unconscionable or unreasonable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 8} Here, the magistrate judge granted Caldwell’s motion and denied Active Time’s motion. In so doing, the magistrate recognized that the case was transferred in February 2019 to the general division and that Caldwell filed his

answer in March. The magistrate also noted that Caldwell originally filed the case in the small claims division where, pursuant to local rule, he would not have been required to file an answer. The trial court agreed and adopted the magistrate's decision.

{¶ 9} We find no abuse of discretion and Active Time articulates no basis for us to conclude otherwise. We overrule this assignment of error.

### **Motion to Compel**

{¶ 10} In the second assignment of error, Active Time complains that the trial court erred by denying its "Motion to Compel and/or to Enforce the Subpoena and for Sanctions."

{¶ 11} Active Time claims that it sought Caldwell's employment records from a different employer and that employer failed to respond to its request. Were we to assume that the court erred by denying the motion, Active Time nevertheless does not claim that any prejudice resulted. *See Cincinnati Ins. Co. v. Thompson & Ward Leasing Co.*, 158 Ohio App.3d 369, 2004-Ohio-3972, 815 N.E.2d 1126, ¶ 19 (10th Dist.), citing *Smith v. Flesher*, 12 Ohio St.2d 107, 233 N.E.2d 137 (1967) ("Claimed error alone may not support reversal; the party assigning error must demonstrate prejudice resulting therefrom.").

{¶ 12} We do note that there are multiple deficiencies with Active Time's motion as well as the underlying subpoena that belie any assumption that the court erred by denying the motion. For example, while the certificate of service on the motion indicates that it was "forwarded via email" to Caldwell, there is no indication

that Active Time served it on Caldwell's other employer. Further, on the record before us, the subpoena itself does not appear to comply with Civ.R. 45. Accordingly, we find no abuse of discretion and overrule the assignment of error.

### **Errors in Judgment**

{¶ 13} We address the third and fourth assignments of error together because they are related, both challenging the court's judgment. The third assignment of error challenges the \$961 judgment awarded to Caldwell on his complaint and the fourth challenges the judgment in favor of Caldwell on Active Time's counterclaims.

{¶ 14} Both of these assignments of error fail for the same reason. Active Time cannot demonstrate any error on the record. *See* App.R. 16(A)(7). As noted, Active Time did not include a transcript of the proceedings that underlie the judgment it now challenges.

{¶ 15} Moreover, the trial court rejected Active Time's proposed App.R. 9(C) statement of the facts on the basis that there was no transcript. The court explained that pursuant a local rule, such proceedings are recorded only upon request or if the court otherwise deems it appropriate. The court also acknowledged that although Active Time objected to the magistrate's decision, it nevertheless failed to file an affidavit of the evidence as required by Civ.R. 53. As a result and, because the case was heard by a magistrate judge, the court recognized that it could not fully review the findings of fact.

{¶ 16} Similarly, without a record of the proceedings, we are unable to find error in the court’s judgment adopting the magistrate’s decision. *See State ex rel. Greene v. Montgomery Cty. Bd. of Elections*, 121 Ohio St.3d 631, 2009-Ohio-1716, 907 N.E.2d 300, ¶ 22, quoting *Crane v. Perry Cty. Bd. of Elections*, 107 Ohio St.3d 287, 2005-Ohio-6509, 839 N.E.2d 14, ¶ 37 (“Without the transcript, we have ‘no choice but to presume the validity of the lower court’s proceedings, and affirm.’”). The fact that Active Time failed to request that the court create a record of the proceedings in no way relieves it of the duty to establish any claimed error on the record. Because Active Time cannot identify any such error, we overrule the third and fourth assignments of error.

{¶ 17} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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EILEEN A. GALLAGHER, JUDGE

MARY EILEEN KILBANE, A.J., and  
MARY J. BOYLE, J., CONCUR