

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Fred Gladden,	:	
Plaintiff-Appellant,	:	
v.	:	No. 05AP-567
Grafton Correctional Institution,	:	(C.C. No. 2003-12191)
Defendant-Appellee.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on December 6, 2005

Fred Gladden, pro se.

Jim Petro, Attorney General, and *Lisa M. Eschbacher*, for appellee.

APPEAL from the Ohio Court of Claims.

TRAVIS, J.

{¶1} This is an appeal by appellant, Fred Gladden, from a decision and judgment of the Ohio Court of Claims that found in favor of appellee, Grafton Correctional Institution, following a trial on the merits. Appellant, an inmate at the Grafton Correctional Institution, filed a civil action against the institution in which he alleged that a correctional officer had assaulted him during a routine pat-down search of inmates.

{¶2} Pursuant to Civ.R. 53, the case was referred to a magistrate of the Court of Claims. The magistrate heard the evidence and, on December 20, 2004, rendered a

decision in favor of the institution. On January 10, 2005, appellant filed an objection to the magistrate's decision.

{¶3} On May 10, 2005, the trial court found that appellant had failed to file a transcript of the proceedings before the magistrate. The court overruled the objection and adopted the magistrate's decision. On June 1, 2005, appellant filed his notice of appeal to this court.

{¶4} Appellant raises a single assignment of error that reads as follows:

THE TRIAL COURT ERRED BY ABUSING ITS
DISCRETION BY RELYING ON A CLEARLY ERRONEOUS
FINDING OF FACT WHEN IT IMPROPERLY APPLIED THE
LAW.

{¶5} Civ.R. 53(E) governs objections to the decision of a magistrate. Objections may be filed within 14 days of the filing of the decision regardless of whether the court has adopted the decision pursuant to Civ.R. 53(E)(4)(c). The objections must be stated with particularity.

{¶6} To afford a meaningful review of the factual determinations of a magistrate, a court must have a transcript of the proceedings or, if a transcript is not available, an affidavit of all of the evidence presented. A party who objects to the decision of a magistrate has the obligation to provide a transcript of the proceedings, or an affidavit if a transcript is not available. Civ.R. 53(E)(3)(c).

{¶7} The rule does not provide the objecting party with an option to file either a transcript or an affidavit. An affidavit may be employed only where a transcript of the proceedings is not available. A transcript is not unavailable merely because the original stenographic notes have not been transcribed or because a party elects not to order a

transcript of the proceedings. Where a transcript can be produced, the transcript is available and must be provided to the trial court in support of objections to a magistrate's decision. Appellant failed to offer any reason why a transcript of the proceedings was not available.

{¶8} Even where a transcript is not available, an affidavit provided under Civ.R. 53(E)(3)(c) must include all of the evidence presented to the magistrate, not merely selected portions of the evidence. An affidavit that does not include all of the evidence presented does not comply with Civ.R. 53(E)(3)(c). In this case, the trial court noted that the affidavit presented by appellant failed to include all of the evidence presented to the magistrate.

{¶9} The failure to provide a transcript waives the right to assign error in the adoption of the magistrate's factual findings by the court. Civ.R. 53(E)(3)(d). *Baddour v. Rehab. Serv. Comm.*, Franklin App. No. 04AP-1090, 2005-Ohio-5698. Without a transcript of the proceedings before the magistrate, we cannot review appellant's various objections to factual findings made by the magistrate, or their adoption by the trial court. Therefore, appellant's assignments of error are overruled and the judgment of the Ohio Court of Claims is affirmed.

Judgment affirmed.

SADLER and McGRATH, JJ., concur.
