[Cite as *State ex rel. Schwebel Baking Co. v. Jones*, 2009-Ohio-2506.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Schwebel Baking Company,	:	
Relator,	:	
v.	:	No. 08AP-874
Carl M. Jones and Industrial Commission of Ohio,	:	(REGULAR CALENDAR)
Respondents.	:	

D E C I S I O N

Rendered on May 28, 2009

Stefanski & Associates LLC, and *Janice T. O'Halloran*, for relator.

John A. Sivinski, *Brian Herberth* and *Dustin S. Lewis*, for respondent Carl M. Jones.

Richard Cordray, Attorney General, and *Sandra E. Pinkerton*, for respondent Industrial Commission of Ohio.

IN MANDAMUS
ON OBJECTIONS TO MAGISTRATE'S DECISION

TYACK, J.

{¶1} Schwebel Baking Company ("Schwebel") filed this action in mandamus seeking a writ to compel the Industrial Commission of Ohio ("commission") to vacate its order granting wage loss compensation to Carl M. Jones.

{¶2} In accord with Loc.R. 12, the case was referred to a magistrate to conduct appropriate proceedings. The parties stipulated the pertinent evidence and filed briefs. The magistrate then issued a magistrate's decision containing detailed findings of fact and conclusions of law which is appended to this decision. The magistrate's decision includes a recommendation that we deny the request for a writ.

{¶3} Schwebel has filed objections to the magistrate's decision. Counsel for Jones has filed a memorandum in response. Schwebel has filed a reply memorandum. The case is now before the court for a full, independent review.

{¶4} Jones stopped working for Schwebel after he developed occupational asthma. He began pursuing a career in real estate and became a licensed agent. He was paid wage loss compensation while he received his training. He sought to continue wage loss compensation after his training because he was not yet receiving commissions or other compensation. Schwebel resisted continuing the payments.

{¶5} Hearings were held before a district hearing officer, a staff hearing officer, and ultimately the commission itself. The commission granted wage loss for the closed periods January 19 through February 5, and February 6 through March 25, 2008. The commission noted Jones was working 40 hours or more per week and acknowledged that a period of time is necessary to build success as a realtor, especially in the current real estate market.

{¶6} Schwebel has presented three specific objections to the magistrate's decision:

> I. THE MAGISTRATE ERRED IN DEFINING THE ISSUE PRESENTED AND IN CONCLUDING THAT THE CLAIM-ANT'S TESTIMONY SUPPORTED THE JANUARY 18, 2008

> THROUGH FEBRUARY 6, 2008 NONWORKING WAGE LOSS AWARD.
>
> II. THE MAGISTRATE ERRED IN THE CONCLUSION THAT THE INDUSTRIAL COMMISSION DID NOT ABUSE ITS DISCRETION WHEN IT AWARDED WORKING WAGE LOSS BENEFITS.
>
> III. THE MAGISTRATE ERRED IN THE CONCLUSION THAT THE REPORT BY DR. ROSENBERG SUPPORTS THE WAGE LOSS AWARD.

{¶7} Addressing the third objection first, David M. Rosenberg, M.D., provided an addendum to an earlier report on November 17, 2007 in which he reaffirmed that Jones still needed to avoid exposure to bakery flour and dust because of Jones' occupational asthma. The report was filed within 180 days of the closed periods of wage loss granted. Counsel for Schwebel argues that the report is insufficient under Ohio Adm.Code 4125-1-01(C)(2) because the addendum does not specifically state a list of restrictions; set forth an opinion whether the restrictions are permanent or only temporary; or state the date of the last medical examination.

{¶8} Nothing in the record indicates that asthma is ever temporary. The report of Dr. Rosenberg indicates that Jones cannot inhale flour and/or dust such as would be encountered at a Schwebel's bakery. The commission was within its discretion to rely on the addendum report with or without the mention of a specific date of last medical appointment.

{¶9} The third objection is overruled.

{¶10} The commission could justifiably find that Jones was looking for full-time work during the time period of January 18 through February 6, 2008 because Jones found full-time employment which commenced February 6, 2008. That finding was

supported not only by Jones' testimony, but also by a document from Jones' new employer.

{¶11} The first objection is overruled.

{¶12} The magistrate was also correct to find that the commission did not abuse its discretion in granting working wage loss from February 6, 2008 for a closed period onward. The testimony of Jones indicated that he was working more than 40 hours per week under conditions that made it impossible to conduct a significant job search in addition. He had to be available to respond to telephone calls from real estate clients on very short notice. He had to have links to a call center open 12 hours per day.

{¶13} The second objection is overruled.

{¶14} All three objections having been overruled, the findings of fact and conclusions of law contained in the magistrate's decision are adopted. We also specifically adopt the recommendation of the magistrate that we deny the request for a writ of mandamus.

Objections overruled; writ denied.

BRYANT and McGRATH, JJ., concur.

_____

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Schwebel Baking Company,	:	
Relator,	:	
v.	:	No. 08AP-874
Carl M. Jones and Industrial Commission of Ohio,	:	(REGULAR CALENDAR)
Respondents.	:	

M A G I S T R A T E ' S D E C I S I O N

Rendered on March 16, 2009

Stefanski & Associates LLC, and *Janice T. O'Halloran*, for relator.

John A. Sivinski, *Brian Herberth* and *Dustin S. Lewis*, for respondent Carl M. Jones.

Richard Cordray, Attorney General, and *Sandra E. Pinkerton*, for respondent Industrial Commission of Ohio.

IN MANDAMUS

{¶15} Relator, Schwebel Baking Company, has filed this original action requesting that this court issue a writ of mandamus ordering respondent Industrial Commission of Ohio ("commission") to vacate its order which granted wage loss

compensation to respondent Carl M. Jones ("claimant"), and ordering the commission to find that he is not entitled to that compensation because he did not meet his burden of proving that he was entitled to it.

Findings of Fact:

{¶16} 1. During the course of his employment with relator, claimant contracted "occupational asthma."

{¶17} 2. Due to permanent restrictions, claimant is unable to return to his former position of employment.

{¶18} 3. Following the termination of temporary total disability ("TTD") compensation, claimant sought vocational rehabilitation. Pursuant to staff hearing officer ("SHO") order mailed September 24, 2007, claimant was authorized to begin a course in real estate training:

> Pursuant to the usual, customary, and reasonable cost guidelines authorization is granted for a course in real estate training. The injured worker testified at hearing that he would like to train to become a real estate appraiser. The course in real estate training must comply with Ohio Administrative Code Section 4123-6-02.2(B)(32).
>
> This order is based on the 2/21/07 report of Dr. Rosenberg and the injured worker's testimony at hearing regarding his difficulty finding employment due to the restrictions imposed by the allowed condition of this claim and his desire to become a real estate appraiser.

{¶19} 4. Relator was paying claimant wage loss compensation following the commission's order authorizing claimant to commence real estate training.

{¶20} 5. Relator sought to terminate wage loss compensation due to claimant's failure to submit job search records showing that he was making a good-faith effort to

find employment. The matter was heard before an SHO on December 18, 2007, and the SHO denied relator's motion as follows:

> At this hearing[,] the evidence shows that the injured worker was granted the right to complete a real estate training program as part of his vocational rehabilitation by Staff Hearing Officer order of 09/24/2007. The employer argued that the injured worker had not moved foreword [sic] to get the training that was authorized and he did not search for work.
>
> The injured worker offered testimony that he was enrolled in the real estate program from 10/30/2007 until he completed the program on 12/12/2007. After completing the program[,] he submitted his certificate to his real estate sponsor. The injured worker went on to state that he is now enrolled in that part of the program which deals with preparing to take the real estate examination. In order to take the examination[,] the injured worker was required to pay an examination fee and submit his certificate to the State of Ohio Real Estate Board. The injured worker states that he submitted all the necessary paperwork and that he will take the real estate examination as soon as the real estate board processes his paperwork and notifies him of when and where he is to take the examination. Finally[,] the injured worker stated that the entire process should be completed within the next 30 days.
>
> After hearing the injured worker's testimony the employer agreed to pay additional non-working wage loss benefits for a period not to exceed 30 days from today's hearing date. This agreement was made in order to allow the injured worker the opportunity to complete all steps necessary to acquire his real estate license. Therefore, it is the order of the Staff Hearing Officer that non-working wage loss is to be paid from 10/22/2007 to 01/18/2008. Further wage loss payments are to be considered by the self-insured employer upon receipt of appropriate proof showing entitlement to either non-working wage loss or working wage loss benefits.

{¶21} 6. In March 2008, claimant filed a motion with the commission seeking wage loss compensation from January 18, 2008 on grounds that relator had refused to

pay him that compensation. Claimant attached the following letter from his employer in support:

> Carl "Mick" Jones joined our real estate firm on February 6, 2008. To date, he has not earned any income from Cutler Real Estate.
>
> If you have any questions, please feel free to contact me at (330) 491-2705.
>
> Thank you, CUTLER REAL ESTATE

{¶22} 7. Claimant's motion for wage loss compensation was heard before a district hearing officer ("DHO") on March 25, 2008 and was granted as follow:

> The facts indicate that the Injured Worker was previously paid non-working wage loss through 01/18/2008 pursuant to a 12/18/2007 Staff Hearing Officer order. After 01/18/2008[,] the Injured Worker went to work for a real estate company. The Injured Worker's testimony at hearing was persuasive that he was working at least 40 hours per week in pursuing his career as a realtor. The Injured Worker testified that currently his status is that of a sales associate. However, the Injured Worker stated he will be applying to actually get his application approved and go forward as a realtor. The Injured Worker's activities as detailed by Injured Worker at hearing were that the Injured Worker would take classes, set up a web site, try to get listings, be on the telephone will [sic] potential customers, have floor duty where he was required to answer phones for the realtor, take trips with other realtors to view homes that were currently on the market, and generally pass out cards in order to get listings. The Hearing Officer finds the testimony of the Injured Worker persuasive that he had work[ed] at least 40 hours per week from 01/19/2008 through 03/25/2008. Therefore, the Injured Worker is entitled to working wage loss compensation.
>
> Currently, the Injured Worker is not earning any income as his wages are contingent on sales commissions. The Injured Worker has currently not sold or received any commissions for any sales of a house. Therefore, working wage loss compensation is ordered paid taking into consideration that

> the Injured Worker has not received any wages for the period 01/19/2008 through 03/25/2008.
>
> This decision is based on the Injured Worker's testimony at hearing regarding his work activities, the 02/27/2008 letter from the real estate company, and the documentation in the claim file regarding his job status and wages currently while employed by the real estate company.

{¶23} 8. Relator appealed and the matter was heard before an SHO on May 21, 2008. The SHO affirmed the prior DHO's order and granted claimant's request for wage loss compensation. The SHO concluded that claimant's evidence was sufficient:

> The injured worker admits that he has yet to earn any commissions. However, the injured worker states that he has worked diligently to increase his knowledge of the business and that he has complied with all the recommended measures so that he can in time earn commissions. The injured worker asserts that his current agency requires all of its agents to respond to all leads and monitors the agents to see that they respond to calls. If the agents do not respond to the calls they are no longer permitted to be affiliated with the agency.
>
> The Staff Hearing Officer finds that the injured worker has submitted sufficient information to establish his entitlement to working wage loss. The Staff Hearing Officer's decision is based on the fact that the employer herein authorized the injured worker to be retrained as a real estate agent through its authorized rehabilitation program. The injured worker complied with all the requirements to become a real estate agent in a timely manner. The injured worker's payment of fees was delayed when his claim became contested and he was unable to secure the funds. This situation is unlike the situation in [*State ex rel. Ooten v. Siegel Interior Specialists Co.* (1998), 84 Ohio St.3d 255] where the injured worker embarked upon his own business venture without first trying to find alternative employment. The business venture did not go well and the injured worker sought payment of working wage loss. The wage loss payments were denied in Ooten because the injured worker had not put himself in the labor market long enough to determine that he was unable to find

> a job within his physical restrictions; and therefore, attempting his own business might be a viable option.
>
> Here[,] several options were explored through the vocational rehabilitation plan with the injured worker. After some investigation[,] the employer agreed to fund the injured worker's schooling so that he could become a real estate agent. Presently, the injured worker has given credible testimony to support his contention that he is making a good faith effort to earn commissions. The evidence showed that the injured worker has only been working in the field a little over eight weeks. With such little time in such a competitive field the Staff Hearing Officer finds that it is too early to say that the injured worker's lack of commissions is due to his failure to make a good faith effort to eliminate his wage loss.
>
> Accordingly, it is the order of the Staff Hearing Officer that non-working wage loss is to be paid from 01/19/2008 through 03/25/2008 and continuing based upon submission of medical proof showing an ongoing wage loss as a result of the allowed conditions in this claim.

{¶24} 9. Relator's request for reconsideration was granted by the commission.

{¶25} 10. Following a hearing on August 21, 2008, the commission modified the prior SHO's order by finding that nonworking wage loss compensation was to be paid for the closed period of January 19 through February 5, 2008, and that working wage loss compensation was to be paid for the closed period of February 6 through March 25, 2008. The commission specifically refrained from addressing the issue of wage loss compensation for any period after March 25, 2008. The commission relied on the following evidence:

> Regarding the payment of non-working wage loss compensation for the requested closed period of 01/19/2008 through 02/05/2008, the Commission relies upon the 11/17/2007 report of David M. Rosenberg, M.D. * * * In addition, the transcript of the Staff Hearing Officer hearing dated 05/21/2008 persuasively establishes that the Injured Worker sought employment within his claim-related work

> restrictions from the 01/18/2008 date that the Self-Insuring Employer ceased paying non-working wage loss compensation until the 02/06/-2008 date that the Injured Worker began work with Cutler Real Estate. Since the Injured Worker was able to successfully obtain his new position after only approximately three weeks of search, the Commission concludes that the Injured Worker has met his burden of establishing entitlement to payment of non-working wage loss compensation for the above closed period.
>
> Regarding the payment of working wage loss compensation for the requested closed period of 02/06/2008 through 03/25/2008, the Commission again relies upon the 11/17/2007 report of Dr. Rosenberg[.] * * * In addition, the transcript of the Staff Hearing Officer hearing dated 05/21/2008 persuasively establishes that the Injured Worker worked approximately forty hours or more per week attempting to generate successful business as a realtor. The Injured Worker generated no wages during the period of 02/06/2008 through 03/25/2008. The Commission recognizes that it takes a period of time to build success as a realtor, particularly in the current real estate market. Based on the above, the Commission finds it is reasonable to order payment of working wage loss compensation for the above closed period.

{¶26} 11. Thereafter, relator filed the instant mandamus action in this court.

Conclusions of Law:

{¶27} In order for this court to issue a writ of mandamus as a remedy from a determination of the commission, relator must show a clear legal right to the relief sought and that the commission has a clear legal duty to provide such relief. *State ex rel. Pressley v. Indus. Comm.* (1967), 11 Ohio St.2d 141. A clear legal right to a writ of mandamus exists where the relator shows that the commission abused its discretion by entering an order which is not supported by any evidence in the record. *State ex rel. Elliott v. Indus. Comm.* (1986), 26 Ohio St.3d 76. On the other hand, where the record

contains some evidence to support the commission's findings, there has been no abuse of discretion and mandamus is not appropriate. *State ex rel. Lewis v. Diamond Foundry Co.* (1987), 29 Ohio St.3d 56. Furthermore, questions of credibility and the weight to be given evidence are clearly within the discretion of the commission as fact finder. *State ex rel. Teece v. Indus. Comm.* (1981), 68 Ohio St.2d 165.

{¶28} Entitlement to wage loss compensation is governed by R.C. 4123.56(B) which provides that when a claimant suffers a wage loss as a result of either returning to employment other than the claimant's former position of employment or being unable to find employment consistent with the claimant's disability resulting from the claimant's injury or occupational disease, the claimant shall receive compensation at 66 and two-thirds percent of the difference between the claimant's average weekly wage and the claimant's present earnings not to exceed the statewide average weekly wage. The payments may continue for up to a maximum of 200 weeks.

{¶29} In order to receive workers' compensation, a claimant must show not only that a work-related injury arose out of and in the course of employment, but, also, that a direct and proximate causal relationship exists between the injury and the harm or disability. *State ex rel. Waddle v. Indus. Comm.* (1993), 67 Ohio St.3d 452. This principle is equally applicable to claims for wage loss compensation. *State ex rel. The Andersons v. Indus. Comm*. (1992), 64 Ohio St.3d 539. As noted by the court in *State ex rel. Watts v. Schottenstein Stores Corp.* (1993), 68 Ohio St.3d 118, a wage loss claim has two components: a reduction in wages and a causal relationship between the allowed condition and the wage loss.

{¶30} A claimant seeking wage loss for the earning differential between their former position of employment and subsequent employment may find the latter subject to scrutiny, particularly where the subsequent job is not a "traditional" full-time job. See *State ex rel. Pepsi-Cola Bottling Co. v. Morse* (1995), 72 Ohio St.3d 210. The additional scrutiny ensures that the requisite causal relationship exists—a claimant's job choice must be motivated by an injury-induced unavailability of other work and not simply a lifestyle choice.

{¶31} A single issue is presented here: Did the commission abuse its discretion in granting wage loss compensation to claimant based almost exclusively on claimant's testimony?

{¶32} In the present case, it is undisputed that claimant is unable to return to his former position of employment. Further, the record indicates that the real estate training which claimant received, while challenged by relator, was approved by the commission. Further, it is undisputed that claimant is currently working out of the offices of Cutler Real Estate. Although relator argues that claimant is, in reality, self-employed, and claimant argues that Cutler Real Estate places enough requirements on him that he is not truly self-employed, the resolution of that issue is not necessary to resolve this issue. Instead, whether claimant is self-employed or not, the issue is whether the evidence he submitted in combination with his testimony constitutes some evidence upon which the commission could rely in granting him wage loss compensation.

{¶33} In the commission's December 18, 2007 order, the SHO had determined that claimant was enrolled in a real estate program from October 30 through December 12, 2007. Thereafter, claimant submitted his certificate to his real estate

sponsor and enrolled in a program to prepare him for the real estate examination. Claimant testified further that he had submitted all the necessary paperwork to take the exam to obtain his real estate license. As such, the commission awarded wage loss compensation through January 18, 2008, and indicated that further wage loss payments would be considered by the self-insured employer.

{¶34} In this mandamus action, relator is only challenging wage loss compensation paid after January 18, 2008 (nonworking from January 19 to February 5, 2008 and working from February 6, 2008 on).

{¶35} In awarding compensation beyond January 18, 2008, the commission relied primarily on claimant's testimony. First, the commission found credible claimant's testimony that his inability to procure his real estate license immediately after he passed the test in January was occasioned by relator's refusal to pay him any further living maintenance compensation. Claimant argued that he needed $700 for his license before he could begin work as a real estate agent. The commission specifically noted that relator began paying living maintenance compensation to claimant after the DHO's order of March 25, 2008. Claimant testified that, as soon as he received the compensation, he paid his fees to obtain his license. Further, the commission accepted claimant's testimony that he sought employment thereafter until he obtained a job with Cutler Real Estate on February 6, 2008.

{¶36} In awarding claimant wage loss compensation from January 19 through February 5, 2008, the commission relied upon claimant's testimony that he sought employment and that the only reason he was not working was because of his inability to pay the necessary fees. Based upon claimant's testimony, the commission appears to

have determined that, but for relator's refusal to pay claimant living maintenance benefits and claimant's failure to specifically request that his employer pay this $700 fee, the fee would have been paid and claimant would have begun work sooner. While it is unusual for the commission to rely almost exclusively on testimony to award wage loss compensation, the magistrate cannot say that it was an abuse of discretion.

{¶37} Relator appears to argue, in part, that claimant should have sought other employment between January 19 and March 25, 2008, because of his continuing duty to make a good-faith effort to secure suitable employment which is comparably paying work.

{¶38} In *State ex rel. Timken Co. v. Kovach*, 99 Ohio St.3d 21, 2003-Ohio-2450, the employer had argued that a job search is mandatory. Citing *State ex rel. Ooten v. Siegel Interior Specialists Co.* (1998), 84 Ohio St.3d 255, the Supreme Court of Ohio repeated that a job search is not universally required and may, in certain circumstances, be excused. In *Ooten*, the court excused the claimant's lack of a job search when he had secured part-time lucrative employment with a realistic possibility that his job would change to a full-time position. The court stated further:

> In determining whether to excuse a claimant's failure to search for another job, we use a broad-based analysis that looks beyond mere wage loss. This approach was triggered by our recognition that "[w]age-loss compensation is not forever. It ends after two hundred weeks. R.C. 4123.56(B). Thus, when a claimant seeks new post-injury employment, contemplation must extend beyond the short term. The job that a claimant takes may have to support that claimant for the rest of his or her life—long after wage-loss compensation has expired." *Brinkman*, 87 Ohio St.3d at 174, 718 N.E.2d 897.

Id. at ¶25.

{¶39} In the present case, claimant began employment with Cutler Real Estate as of February 6, 2008. He testified regarding his responsibilities with Cutler Real Estate. He explained that he was responsible for responding to certain on-line information within a prescribed time period. Specifically, he testified that he has ten minutes in order to respond. (Stip. 63.) Claimant explained that he needed to be available during call center hours of 9:00 a.m. to 9:00 p.m., seven days a week. Id. Further, claimant testified that he was required to attend bi-monthly meetings. (Stip. 64.) Claimant testified further that he must respond to phone calls or he can be placed on probation. (Stip. 65.) Claimant also testified concerning the number of showings which he has had as well as the lengths he goes to in order to present a new client with as many potential home buying opportunities as possible. (Stip. 70-75, 81-90.)

{¶40} In the present case, the commission accepted claimant's testimony that he was responsible for being available to clients everyday and that he was held accountable to Cutler Real Estate. The commission also accepted as credible claimant's testimony regarding the amount of time and effort involved in providing prospective clients with updated lists of potential opportunities. While the SHO had informed claimant that he should be keeping more detailed records regarding his extensive efforts to sell homes and make commissions, the SHO excused him from that requirement based upon his testimony.

{¶41} Claimant's testimony does constitute some evidence upon which the commission may rely to determine that he was entitled to wage loss compensation. Claimants are not required to give up a good thing, even if it is not immediately financially rewarding, for some lesser paying job without advancement opportunities to

meet the requirement of making a good-faith effort to seek suitable employment which is comparably paying work. Here, the commission weighed the long-term benefits of claimant's job against the wage differential and determined that it was his industrial injury, rather than a lifestyle choice, which caused his wage loss. Recently, in *State ex rel. Bishop v. Indus. Comm.*, Franklin App. No. 04AP-747, 2005-Ohio-4548, this court concluded that the commission had abused its discretion when it denied wage loss compensation based solely upon the claimant's failure to conduct a job search while he was employed as a full-time car salesman and ordered the commission to pay wage loss compensation.

{¶42} In the present case, the SHO had questioned claimant extensively during the hearing and elicited testimony concerning claimant's efforts to generate commissions. Upon review, the magistrate cannot say that the commission abused its discretion.

{¶43} Relator also contends that the commission abused its discretion by granting claimant wage loss compensation in the absence of contemporaneous medical evidence that claimant continued to be disabled from his former position of employment. The Ohio Administrative Code does require claimants to submit medical evidence of their continuing disability every 90 days if the restrictions are temporary, or every 180 days if the restrictions are permanent, after their initial application in order to meet their burden of proof that their medical restrictions are causally related to the allowed conditions. The magistrate finds that the commission did not abuse its discretion here. The commission relied on the November 17, 2007 addendum report prepared by David M. Rosenberg, M.D., reaffirming his earlier opinion that claimant needed to avoid

exposure to bakery and flour dust. Dr. Rosenberg concluded that claimant had occupational asthma related to flour dust and that he needed to avoid exposure to same. Dr. Rosenberg opined that claimant's asthma did not require him to avoid climate/weather changes in addition to flour dust.

{¶44} Relator contends that the November 17, 2007 report cannot constitute some medical evidence of claimant's ongoing restrictions because Dr. Rosenberg did not specifically set forth those restrictions in his report.

{¶45} Dr. Rosenberg's November 17, 2007 report is an addendum to an earlier report he prepared. Upon review of the stipulation of evidence, the magistrate was unable to find a copy of the earlier report which may have specifically outlined claimant's restrictions. This November 17, 2007 report, however, does indicate that his opinion has not changed. As such, the magistrate finds that the commission did not abuse its discretion in relying on this report authored within 90-180 days from January 19, 2008.

{¶46} Based on the foregoing, it is this magistrate's conclusion that relator has not demonstrated that the commission abused its discretion in awarding claimant wage loss compensation and this court should deny relator's request for a writ of mandamus.

/s/Stephanie Bisca Brooks
STEPHANIE BISCA BROOKS
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).