**[Cite as *Sanders v. WAMCO, Inc.*, 2011-Ohio-1336.]**

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

| | | |
|---|---|---|
| Wanda Sanders, | : | |
| Plaintiff-Appellant, | : | |
| v. | : | No. 10AP-548 (M.C. No. 2009 CVI 52102) |
| WAMCO, Inc. dba Arlington Children's Center et al., | : | (REGULAR CALENDAR) |
| Defendants-Appellees. | : | |

D E C I S I O N

Rendered on March 22, 2011

*Wanda Sanders,* pro se.

*Terise Fusco Ryan,* for appellees.

APPEAL from the Franklin County Municipal Court.

BRYANT, P.J.

**{¶1}** Plaintiff-appellant, Wanda Sanders, appeals from a judgment of the Franklin County Municipal Court in favor of defendants-appellees, Shannon Rothwell and Arlington Children's Center. Plaintiff assigns a single error:

> Appellee's conviction is against the Magistrate's ruling that the case be dismissed with out prejudice at plaintiff's costs without consideration of the weight of the evidence as it pertains to contract law and therefore constitutes a denial of due process.

Because the magistrate's findings of fact support the conclusions of law in the magistrate's decision, we affirm.

**I. Facts and Procedural History**

**{¶2}** On December 7, 2009, plaintiff filed a complaint in the Small Claims Division of the Franklin County Municipal Court against defendants, Shannon Rothwell and Arlington Children's Center. Plaintiff alleged she met with Rothwell to enroll plaintiff's three children at Arlington Children's Center's summer camp, giving defendants a check for $585 for the session beginning August 26. According to the complaint, plaintiff did not hear from defendants all summer, so she called them on August 24 and was told Rothwell was not in the office. Plaintiff alleged Rothwell did not return her call, so plaintiff called the following Tuesday and spoke to Rothwell, who refused either to provide any camp service or to refund plaintiff's money.

**{¶3}** After a hearing before a magistrate of the Small Claims Division, the magistrate filed a decision on January 19, 2010 stating the "[c]ase was dismissed without prejudice at plaintiff's costs." On the same day, the trial court adopted the magistrate's decision and entered judgment "for defendant on the complaint; case dismissed with prejudice at plaintiff's costs." In response, plaintiff on February 11, 2010 filed a letter requesting findings of fact and conclusions of law. Plaintiff's request ultimately was forwarded to the original magistrate.

**{¶4}** The magistrate noted plaintiff's request was untimely filed, observing Civ.R. 53(D)(3)(a)(ii) requires a request for findings of fact and conclusions of law be filed within seven days after the magistrate's decision is filed. The magistrate further pointed out that even if plaintiff's request could be deemed objections to the magistrate's decision, they

too were untimely under Civ.R. 53(D)(3)(b)(i), which requires objections be filed within 14 days after the magistrate's decision is filed.

**{¶5}** The magistrate nevertheless issued a new decision, with the requested findings of fact and conclusions of law, concluding plaintiff enrolled her children for camp beginning on Monday, July 27, 2009, forgot summer camp would begin on that date, and failed to present her children for camp. Because plaintiff's agreement with defendant specified the registration fees would not be refunded if the children did not begin camp on the agreed date, the magistrate concluded defendants were not liable to return the registration fees. The magistrate's decision, filed March 17, 2010, thus again recommended judgment for defendants and dismissed plaintiff's complaint. On the same day, the trial court adopted the magistrate's decision, entered judgment for defendants on the complaint, and dismissed the case with prejudice at plaintiff's costs.

**{¶6}** On March 30, 2010, plaintiff filed an objection to the magistrate's decision, contending the magistrate's findings of fact and conclusions of law were subjective and failed to provide legal precedent for his decision. The trial court overruled the objection, noting plaintiff failed to file with her objection either a transcript or an agreed statement of facts. Plaintiff appealed.

**II. Assignment of Error**

**{¶7}** Plaintiff's single assignment of error asserts the judgment of the trial court is against the manifest weight of the evidence.

**{¶8}** According to Civ.R. 53(D)(3)(b)(i), a plaintiff may file written objections to a magistrate's decision "within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R.

53(D)(4)(e)(i)." In objecting to a factual finding, a party must support the objections with "a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available." Civ.R. 53(D)(3)(b)(iii).

**{¶9}** In resolving plaintiff's March 30 objections, the trial court noted plaintiff failed to provide a transcript or affidavit of facts from the proceedings before the magistrate to support her objection to the magistrate's factual findings. In the absence of a transcript or affidavit, or the court's taking evidence, the trial court was required to accept the magistrate's findings of fact and could only examine the legal conclusions drawn from those facts. *Harris v. Mapp,* 10th Dist. No. 05AP-1347, 2006-Ohio-5515, ¶7; *Carter v. Le,* 10th Dist. No. 05AP-173, 2005-Ohio-6209, ¶11 (stating same).

**{¶10}** Even though plaintiff supplemented the record on appeal with a transcript of the proceedings before the magistrate, we are precluded from considering it when the trial court did not have the opportunity to review it before determining the objection and deciding whether to adopt the magistrate's decision. *Forth v. Gerth,* 10th Dist. No. 05AP-576, 2005-Ohio-6619, ¶8, citing *State ex rel. Duncan v. Chippewa Twp. Trustees* (1995), 73 Ohio St.3d 728 (stating that when a party fails to file a transcript of the proceedings before the magistrate with the trial court, the appellate court is "precluded from considering the transcript of the hearing submitted with the appellate record"). Because we cannot review the transcript of the hearing before the magistrate, we are unable to determine whether plaintiff is correct in contending the magistrate failed to properly recognize the pertinent evidence that favored her. See *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199; *Ratchford v. Proprietors' Ins. Co.* (1995), 103 Ohio

App.3d 192, 198, discretionary appeal not allowed, (1995), 74 Ohio St.3d 1462; *Kowalik v. Kowalik* (1997), 118 Ohio App.3d 141, 144, 145.

**{¶11}** As a result, even though plaintiff disputes the magistrate's factual finding that plaintiff was to bring her children to the camp in July, asserts she was to bring them in August, and contends defendants failed to allow her to do so, we have no basis to so conclude in light of the magistrate's factual findings that plaintiff failed to present her children to the camp on the agreed upon date. Instead, our review of plaintiff's assignment of error is limited to whether the trial court correctly applied "the law to the magistrate's findings of fact." *Compton v. Bontrager,* 10th Dist. No. 03AP-1169, 2004-Ohio-3695, ¶6, citing *H.L.S. Bonding Co. v. Fox,* 10th Dist. No. 03AP-150, 2004-Ohio-547; *Carter* at ¶11. Accepting the magistrate's findings of fact as true, as we must, the legal conclusions that necessarily follow from those factual findings are adverse to plaintiff. Accordingly, the magistrate did not err in entering judgment for defendants and dismissing plaintiff's case with prejudice.

**{¶12}** Plaintiff's single assignment of error is overruled.

**III. Motions**

**{¶13}** Defendants filed two motions. The first asks that we supplement the evidence from the trial court; the second seeks that we modify the trial court's judgment. Because we determined the transcript of evidence from the trial court's magistrate is not properly considered on appeal, defendants' request to supplement the record is moot. Defendants' second motion seeks to modify the trial court's judgment to clarify that the complaint was dismissed against both defendants.

**{¶14}** Defendants correctly point out the trial court's judgment speaks of a singular defendant, but the court used a preprinted form reflecting all parties in the singular. Although the trial court entered judgment for "defendant," it dismissed plaintiff's case, thus indicating it rendered judgment adversely to plaintiff as to all defendants. Moreover, to the extent defendants actually seek to modify the trial court's judgment, they were required to file a notice of cross-appeal. Defendants having failed to do so, we lack jurisdiction to modify the trial court's judgment. *Ware v. King,* 187 Ohio App.3d 291, 2010-Ohio-1637, ¶19 (citing App.R. 3(C)(1) and stating "[i]t is well established that a party seeking to defend the trial court's judgment, yet asking to modify its terms, must do so via filing a notice of cross-appeal," so that in the absence of a cross-appeal an argument to modify judgment will not be considered).

**{¶15}** Accordingly, both motions are denied.

**{¶16}** Having overruled plaintiff's single assignment of error, we affirm the judgment of the trial court.

*Motions denied;*
*judgment affirmed.*

KLATT and FRENCH, JJ., concur.

_____