

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

J. Christopher Parkerson,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-534
Dr. Shie-Ming Hwang,	:	(M.C. No. 2010 CVI 040240)
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on March 22, 2012

Dr. Shie-Ming Hwang, pro se.

APPEAL from the Franklin County Municipal Court

CONNOR, J.

{¶ 1} Appearing pro se, defendant-appellant, Dr. Shie-Ming Hwang ("appellant"), appeals a judgment rendered by the Franklin County Municipal Court, in favor of plaintiff-appellee, J. Christopher Parkerson ("appellee"). For the reasons that follow, we affirm.

{¶ 2} In November 2009, appellant borrowed 28 "Mike Swain" judo mats from appellee. Appellant borrowed 4 more mats from appellee in January 2010. The parties had an agreement, whereby 1 mat per month would become the permanent property of appellant in exchange for appellee's receipt of relaxation and stretching classes from appellant. In accordance with this agreement, 2 mats undisputedly became appellant's permanent property. The dispute in this matter therefore concerns the remaining 30 mats.

{¶ 3} As background, appellee purchased the mats in July 2003, at a rate of \$124.83 per mat. Each mat had an approximate useful life of 14 years if properly

maintained. Therefore, the mats were approximately halfway through their useful life when appellant borrowed them.

{¶ 4} In July 2010, appellee notified appellant of his intent to retrieve the mats. Appellant gave appellee permission to retrieve them at appellant's studio. When appellee arrived at the studio, he discovered that the mats had suffered extensive water damage and were covered in mold. As a result, in October 2010, appellee filed suit to recover half of the purchase price of the 30 mats. Appellant answered appellee's complaint and denied having caused any damage to the mats.

{¶ 5} The matter presented before a magistrate for a hearing. Thereafter, both appellee and appellant attempted to submit supplemental evidence. In his decision, the magistrate noted that this procedure was improper and, consequently, refused to consider additional evidence submitted after the hearing. Ultimately, the magistrate concluded that appellee was entitled to recover \$1,872.45 from appellant.¹ Appellant filed timely objections to the magistrate's decision. In his objections, appellant requested an oral hearing, which occurred before the trial court on May 19, 2011. The next day, the trial court filed an entry overruling appellant's objections and adopting the magistrate's decision as its own. Appellant has timely appealed and presents the following assignment of error:

1. The Magistrate failed to recognize that there were "good" mats on 09/17/10 when the Appellee and his friend Shawn (witness) came to pick up the 10 mats.
2. The Magistrate ignored the Appellant's ANSWER TO THE COMPLAINT and REQUEST FOR RESPONSE TO INTERROGEE [sic] filed on 11/5/10 (Pleading 5).
3. The Magistrate did not call the witnesses to testify under oath at the hearing on 01/12/11.
4. The Magistrate was not aware that the mats were purchased as "used" by the Appellee on 06/09/03.

{¶ 6} Because all of appellant's assignments of error relate to the factual findings of the magistrate, we will address them together.

¹ To reach this amount, the magistrate multiplied 50 percent of the useful life remaining for each mat by the \$124.83 purchase price for each mat by the 30 individual mats that were disputed amongst the parties.

{¶ 7} When reviewing a trial court's adoption of a magistrate's decision, the standard of review is an abuse of discretion. *DeFrank-Jenne v. Pruitt*, 11th Dist. No. 2008-L-156, 2009-Ohio-1438, ¶ 9, citing *Wade v. Wade*, 113 Ohio App.3d 414, 419 (11th Dist.1996); *see also Levine v. Brown*, 8th Dist. No. 92862, 2009-Ohio-5012, ¶ 16. Indeed, this court has previously held that "the civil rules vest trial courts with broad discretion concerning magisterial procedures." *Yoder v. Hurst*, 10th Dist. No. 07AP-121, 2007-Ohio-4861, ¶ 3, citing Civ.R. 53(D)(4)(b). Therefore, when presented with issues regarding magisterial procedures, we will not reverse a trial court's decision absent an abuse of discretion. "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983), quoting *State v. Adams*, 62 Ohio St.2d 151, 157 (1980), citing *Steiner v. Custer*, 137 Ohio St. 448 (1940); *Conner v. Conner*, 170 Ohio St. 85 (1959); *Chester Twp. v. Geauga Co. Budget Comm.*, 48 Ohio St. 2d 372 (1976).

{¶ 8} Objections to a magistrate's factual findings must be supported by either a transcript of the magistrate's hearing or an affidavit summarizing that evidence if a transcript is unavailable. *See* Civ.R. 53(D)(3)(b)(iii). The objecting party has 30 days from the date of his objections to fulfill this obligation, unless the court grants an extension in writing for good cause shown. Civ.R. 53(D)(3)(b)(iii). If a party fails to meet this obligation, then an appellate court cannot consider a transcript submitted with the appellate record. *Ameritech Publishing, Inc. v. Mayfield*, 7th Dist. No. 10 MA 27, 2011-Ohio-2971, ¶ 11, citing *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 730 (1995). If an appellate court cannot consider a transcript of the magistrate's hearing, then appellate review is limited to determining whether the trial court abused its discretion in applying the law to the facts determined by the magistrate. *Id.*; *see also Livingston v. Graham*, 7th Dist. No. 09 JE 16, 2010-Ohio-1091, ¶ 14-15 (if a transcript is not provided to the trial court, both the trial court and the appellate court are bound by the magistrate's factual findings).

{¶ 9} In the instant matter, the hearing before the magistrate occurred on January 12, 2011. The magistrate rendered his decision on March 24, 2011. Appellant filed his objections on April 6, 2011. However, no transcript supported his objections.

Nor was there an affidavit summarizing the evidence presented during the hearing before the magistrate. Rather, appellant sought to introduce new evidence and present new arguments along with his objections.

{¶ 10} In appellant's four assignments of error, he argues exclusively about the magistrate's findings of fact. Indeed, according to appellant, some of the mats were still in good condition when appellee requested them back. Appellant challenges the magistrate's generalized factual finding to the contrary. He also asks for this court to appoint a team of inspectors to physically inspect the existing mats and verify the extent of the damage. Next, appellant argues that the mats were "used" when appellee purchased them in 2003, and the magistrate consequently erred when he assigned a value of \$62,415 for each mat. Further, appellant contends that appellee lied during the hearing before the magistrate. According to appellant, the magistrate should have detected appellee's lies.

{¶ 11} As is clear, in this appeal, appellant solely challenges the findings of facts reached by the magistrate. Indeed, appellant concedes that "there was no mistake of law made by the Magistrate." Appellant's brief, at 18. Appellant submitted new evidence following the conclusion of the hearing before the magistrate. And now, he asserts error on the part of the magistrate based upon this newly submitted evidence. In other words, appellant argues that the magistrate erred by failing to reach factual findings based upon evidence nowhere before him. Appellant offered no explanation as to why this evidence was not presented during the hearing before the magistrate. If he wished to present additional evidence, he should have requested that opportunity from the trial court. *See* Civ.R. 53(D)(4)(b). As is clear, appellant merely wishes for a second chance to prove his defenses. However, we refuse to permit him to do so because such a procedure would render the proceedings before the magistrate a nullity. *See Gold Craft Co. v. Ebert's Contracting & Remodeling, LLC*, 10th Dist. No. 09AP-448, 2010-Ohio-3741, ¶ 32 (generally finding no abuse of discretion in refusing to allow an appellant a second chance at proving claims).

{¶ 12} Because appellant failed to file a transcript or affidavit in accordance with Civ.R. 53(D)(3)(b)(iii), we are bound to follow the magistrate's factual findings.² See *Livingston* at ¶ 14-15. Because this appeal solely challenges the magistrate's factual findings, which we must accept as true, we reject each and every argument supporting appellant's four assignments of error.

{¶ 13} Based upon the foregoing, we overrule appellant's four assignments of error and affirm the judgment rendered by the Franklin County Municipal Court.

Judgment affirmed.

BRYANT and SADLER, JJ., concur.

² A transcript of the hearing was filed during the pendency of this appeal, which was well beyond the 30-day time limit imposed by Civ.R. 53(D)(3)(b)(iii).