

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Steven L. Snider,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 11AP-965
v.	:	(C.C. No. 2010-02731)
	:	
Ohio Department of Rehabilitation and	:	(REGULAR CALENDAR)
Correction,	:	
	:	
Defendant-Appellee.	:	
	:	

D E C I S I O N

Rendered on April 12, 2012

Steven L. Snider, pro se.

Michael DeWine, Attorney General, Daniel R. Forsythe, and Ashley L. Oliker, for appellee.

APPEAL from the Court of Claims of Ohio.

SADLER, J.

{¶ 1} Plaintiff-appellant, Steven L. Snider, appeals from the judgment of the Court of Claims of Ohio in favor of defendant-appellee, Ohio Department of Rehabilitation and Correction, on appellant's personal injury complaint. For the reasons that follow, we affirm the judgment of the trial court.

{¶ 2} Appellant, an inmate housed at Mansfield Correctional Institution, initiated this action on February 12, 2010 by filing a complaint alleging negligence and negligent supervision and seeking compensatory damages for injuries allegedly sustained while

picking up trash. The issues of liability and damages were bifurcated, and on February 24, 2011, the issue of liability was tried before a magistrate. According to the magistrate's decision, testimony was elicited from appellant, Corrections Sergeant Ernest Cappadonna, Corrections Officer Marrinetta Scott, and inmates Tracy Clagg and Wiley Davis, Jr.

{¶ 3} According to the magistrate's decision that summarizes the witnesses' testimony, the following facts were adduced at trial. On December 11, 2008, Sergeant Cappadonna requested volunteers to pick up trash outside of the housing units. Upon receiving no volunteers, Sergeant Cappadonna selected several people, including appellant, to perform the task. Appellant testified that though he was given a latex glove, the glove broke and he was denied a replacement. Appellant also testified that when he picked up a crumpled piece of paper, he cut the small finger of his right hand on a razor blade that was hidden within the paper. Appellant stated that Sergeant Cappadonna told him to go inside and tell a corrections officer on duty about the injury. According to appellant, he told Corrections Officer Williams that he needed to go to the infirmary but she told him to sign up for "doctor sick call" instead so that he could get an appointment to see a doctor. Appellant saw a doctor approximately one month later and was then referred to a specialist. On December 2, 2009, the top joint of appellant's small finger of his right hand was amputated. According to appellant's complaint, his injuries resulted from appellee's negligence.

{¶ 4} Sergeant Cappadonna testified that he always has gloves and trash bags available for the inmates performing trash pickup. Similarly, Clagg testified rakes, latex gloves, and trash bags are given to the inmates for trash pickup. Clagg also testified that he remembered an instance where appellant cut his finger and was denied permission to see a nurse. Davis testified that after cleanup that day, appellant came to Davis's cell for a Band-Aid and was "bleeding profusely." (Magistrate's Decision, 4.) Scott testified that staff members are to use "common sense" when determining whether to call the infirmary, but "an open or actively bleeding wound requires a call to the infirmary." (Magistrate's Decision, 4.)

{¶ 5} The magistrate found that appellant's negligence claim failed because no special training was required for the task of picking up trash, appellant was provided with

adequate safety equipment, i.e., latex gloves, and after the injury, Sergeant Cappadonna acted reasonably in ordering appellant to report the injury to staff inside of the institution. The magistrate also found that appellant's claim for negligent supervision failed because appellant failed to present sufficient evidence establishing that a breach of duty proximately caused appellant's injury, i.e., the amputation, one year after the incident in question. In sum, the magistrate concluded: (1) the initial injury was not the result of a breach of duty, and (2) there was no evidence the amputation was proximately caused by a breach of duty. Accordingly, the magistrate recommended that judgment be granted in appellee's favor.

{¶ 6} Appellant filed objections to the magistrate's decision on July 29, 2011, but appellant did not support his objections with a copy of the transcript or an affidavit of the evidence as required by Civ.R. 53(D)(3)(b)(iii).¹ On October 24, 2011, the trial court, having no transcript or affidavit to review, overruled appellant's objections, adopted the magistrate's decision, and entered judgment in favor of appellee.

{¶ 7} Appellant timely appeals to this court and asserts the following four assignments of error for our review:

[1.] THE MAGISTRATE AND TRIAL COURT ERRED IN RULING INMATES RECEIVED ADEQUATE TRAINING BECAUSE OF PLAINTIFF-APPELLANT'S PRIOR SERVICE AS A UNIT PORTER.

[2.] THE MAGISTRATE AND TRIAL COURT ERRED IN FINDING PLAINTIFF-APPELLANT'S KNOWLEDGE OF POTENTIAL DANGERS WAS EVIDENCE OF PLAINTIFF-APPELLANT'S NEGLIGENCE, IN SPITE OF HIS STATUS AS AN INMATE AND THE REPERCUSSIONS STOPPING HIS ASSIGNMENT TO SPEAK WITH THE SUPERVISOR.

¹ The record reflects that on July 29, 2011, appellant filed objections to the magistrate's decision. Pursuant to Civ.R. 53(D)(3)(b)(iii), the objecting party shall file the transcript or affidavit of the evidence within 30 days of filing objections unless the court extends the time to do so in writing. Appellant filed, on October 19, 2011, a document entitled, "Affidavit of Evidence of Plaintiff Steven Snider As Permitted by Rule 53 Ohio Rules of Civil Procedure." Not only is this affidavit clearly untimely under Civ.R. 53, it is insufficient under that rule as it includes only portions of appellant's own testimony. *Gumins v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 10AP-941, 2011-Ohio-3314, ¶ 13, citing *Gill v. Grafton Corr. Inst.*, 10th Dist. No. 09AP-1019, 2010-Ohio-2977 ("An affidavit under [Civ.R. 53(D)(3)(b)(iii)] must contain a description of all the relevant evidence, not just the evidence deemed relevant by the party objecting to the magistrate's findings.").

[3.] THE TRIAL COURT AND MAGISTRATE ERRED IN NOT CONSIDERING DEFENDANT-APPELLANT'S FAILURE TO PROPERLY SUPERVISE, OBSERVE ONGOING WORK ACTIVITY AND BEING READILY AVAILABLE FOR WARNING OF DANGEROUS CONDITIONS AS EVIDENCE OF NEGLIGENCE.

[4.] THE TRIAL COURT AND MAGISTRATE'S RULINGS ARE NOT SUPPORTED BY THE EVIDENCE AND IS AGAINST THE WEIGHT OF THE EVIDENCE.

{¶ 8} As noted, appellant did not submit a transcript of the proceedings before the magistrate or an affidavit of the evidence with the trial court. If an objecting party fails to submit a transcript or affidavit, the trial court must accept the magistrate's factual findings and limit its review to the magistrate's legal conclusions. *Wallace v. Grafton Corr. Inst.*, 10th Dist. No. 11AP-304, 2011-Ohio-5661, ¶ 5, citing *Ross v. Cockburn*, 10th Dist. No. 07AP-967, 2008-Ohio-3522, ¶ 5; *Farmers Mkt. Drive-In Shopping Ctrs., Inc. v. Magana*, 10th Dist. No. 06AP-532, 2007-Ohio-2653, ¶ 27-28. On appeal of a judgment rendered without the benefit of a transcript or affidavit, an appellate court only considers whether the trial court correctly applied the law to the magistrate's factual findings. *Gill v. Grafton Corr. Inst.*, 10th Dist. No. 10AP-1094, 2011-Ohio-4251, ¶ 21; *Ross* at ¶ 6. Moreover, an appellate court will not expand the scope of its review even if the objecting party supplements the record on appeal with a transcript. The objecting party's failure to timely submit a transcript to the trial court precludes any consideration of the transcript on appeal. *Gill; Ross; Baddour v. Rehab. Servs. Comm.*, 10th Dist. No. 04AP-1090, 2005-Ohio-5698, ¶ 25.

{¶ 9} Because they are interrelated, we will address appellant's first and second assignments of error as one. Together, these assigned errors assert the trial court erred in concluding inmates' work as unit porters constituted adequate training and provided knowledge of the safety procedures associated with trash detail.

{¶ 10} Initially, we note that our review of the magistrate's decision reveals no such finding. The magistrate's decision concludes "while plaintiff did not receive specialized training in trash cleanup, none was required. Furthermore, the [trial] court concludes that plaintiff was provided adequate safety equipment, to wit, latex gloves, and that

additional gloves were available despite plaintiff's testimony to the contrary." (Magistrate's Decision, 4.) With respect to appellant's second claim, the magistrate concluded that while appellee breached its duty to send appellant to the infirmary for treatment, "plaintiff failed to present sufficient evidence to establish that such breach proximately caused him any injury, particularly the partial amputation of his right pinky finger almost one year later. As noted earlier in this decision, plaintiff's initial injury was not the result of any negligence on the part of defendant." (Magistrate's Decision, 5.)

{¶ 11} Notwithstanding appellant's mischaracterization of the trial court's findings, appellant's arguments underlying his assertion that appellee was negligent are based on facts allegedly adduced at trial, specifically, work and training associated with being a unit porter, statements appellant allegedly made to Sergeant Cappadonna, and the number of supervisors available to provide training to inmates. An inmate who is injured while working in prison may assert a cause of action for negligence. *McElfresh v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 04AP-177, 2004-Ohio-5545, ¶ 15. To prevail on a negligence claim, a plaintiff must establish that: (1) defendant owed him a duty, (2) defendant breached that duty, and (3) the breach proximately caused his injuries. *Gumins v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 10AP-941, 2011-Ohio-3314, ¶ 19, citing *Chambers v. St. Mary's School*, 82 Ohio St.3d 563, 565 (1998). Appellant, as the plaintiff, had the burden to prove each element of his negligence claim by a preponderance of the evidence. See *Parsons v. Washington State Community College*, 10th Dist. No. 05AP-1138, 2006-Ohio-2196, ¶ 24.

{¶ 12} It is undisputed that appellee owes prison inmates a duty of reasonable care and protection from unreasonable risks of physical harm. *McElfresh* at ¶ 16, citing *Woods v. Ohio Dept. of Rehab. & Corr.*, 130 Ohio App.3d 742, 745 (10th Dist.1998). Reasonable care is the "degree of caution and foresight an ordinarily prudent person would employ in similar circumstances." *Id.* Where an inmate provides labor for the state, the state's duty must be defined in the context of those additional factors that characterize the inmate's particular work. *McCoy v. Engle*, 42 Ohio App.3d 204, 208 (10th Dist.1987) (holding that the state had a duty to protect an inmate from unreasonable risks of harm associated with his duties as a farmhand on a prison farm). The state is not an insurer of inmate safety, but "once it becomes aware of a dangerous condition[,] it must take reasonable care to

prevent injury to the inmate.' " *Forester v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 11AP-366, 2011-Ohio-6296, ¶ 8, quoting *Briscoe v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 02AP-1109, 2003-Ohio-3533, ¶20, citing *Williams v. Ohio Dept. of Rehab. & Corr.*, 61 Ohio Misc.2d 699 (1991). An inmate is likewise required to use reasonable care to ensure his or her own safety. *Briscoe* at ¶ 20, citing *Macklin v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 01AP-293, 2002-Ohio-5069.

{¶ 13} Here, the magistrate factually determined that specialized training was not required for the tasks being performed and that proper safety equipment was provided. Therefore, the magistrate concluded appellee did not breach its duty of care. Based on such factual findings, the trial court entered judgment in favor of appellee as to appellant's negligence claim. *Wallace* (in the absence of a transcript or affidavit of evidence the trial court must accept the magistrate's factual findings and limit review to the magistrate's legal conclusions). Absent a transcript, we consider only whether the trial court properly applied the law to the magistrate's factual findings. *Gill; Wallace*. Upon review, we conclude the trial court properly applied the law to the magistrate's factual findings. Accordingly, we overrule appellant's first and second assignments of error.

{¶ 14} In his third assignment of error, appellant contends the trial court erred in failing to properly consider appellee's failure to supervise as evidence supporting his negligence claim. Here, appellant reiterates his arguments that though appellee was aware of dangers posed by trash discarded from cell windows, appellee nonetheless failed to ensure that proper safety equipment was provided to inmates engaged in trash pickup. For the reasons stated in our disposition of appellant's first and second assignments of error, we do not find appellant's arguments well-taken. Accordingly, we overrule appellant's third assignment of error.

{¶ 15} In his fourth assignment of error, appellant contends the trial court's judgment is against the manifest weight of the evidence. Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279 (1978), syllabus. When conducting a manifest-weight review, an appellate court must make all reasonable presumptions in favor of the trial

court's findings of fact and judgment. *Forester* at ¶ 24, citing *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19 (1988). This is so because the trier of fact is best able to observe the witnesses and use those observations in weighing the credibility of the testimony. *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984).

{¶ 16} "It is well established that an appellant has the burden of demonstrating from the record the errors he complains of." *Conway v. Ford Motor Co.*, 48 Ohio App.2d 233, 236 (8th Dist.1976). As in effect at the time appellant filed his complaint, App.R. 9(B) stated:

If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the weight of the evidence, the appellant shall include in the record a transcript of all evidence relevant to the findings or conclusion.

{¶ 17} Thus, if an appellant seeks to urge on appeal that a finding is unsupported by the evidence or is contrary to the weight of the evidence, " 'it is necessary for him to provide the court with either a complete or partial verbatim transcript of the testimony, as required by Appellate Rule 9(B), or a narrative statement, as provided for in Appellate Rule 9(C), or an agreed statement as provided for in Appellate Rule 9(D).' " *Knight v. Dept. of Rehab. & Corr.*, 10th Dist. No. 98AP-734 (Mar. 30, 1999), quoting *Conway* at 237. In the absence of a transcript or some other substitute statement, this court has no basis upon which to determine the sufficiency or manifest weight of the evidence. Under such circumstances, we must presume the validity of the lower court's proceedings and affirm. *Knight*, citing *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199 (1980). Therefore, because appellant failed to file a transcript with this court, his arguments challenging the weight of the evidence fail. Accordingly, we overrule appellant's fourth assignment of error.

{¶ 18} Having overruled appellant's four assignments of error, the judgment of the Court of Claims of Ohio is hereby affirmed.

Judgment affirmed.

TYACK and CONNOR, JJ., concur.
