

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

RONALD DUDAS,	:	PER CURIAM OPINION
Plaintiff-Appellant,	:	
- VS -	:	CASE NO. 2015-L-060
ROBERT HARMON,	:	
Defendant-Appellee.	:	

Civil Appeal from the Lake County Court of Common Pleas, Case No. 12 CV 000044.

Judgment: Affirmed.

Ronald Dudas, pro se, PID: A520-261, Grafton Correctional Institution, 2500 South Avon Belden Road, Grafton, OH 44044 (Plaintiff-Appellant).

Robert Harmon, pro se, PID: A654-238, Marion Correctional Institution, P.O. Box 57, 940 Marion-Williamsport Road, Marion, OH 43302 (Defendant-Appellee).

PER CURIAM

{¶1} Appellant, Ronald Dudas, acting pro se, appeals the judgment of the Lake County Court of Common Pleas against him and in favor of appellee, Robert Harmon, on appellant's complaint, seeking damages for the role Harmon played in a prior criminal prosecution against appellant. The principal issue is whether the trial court abused its discretion in holding a default hearing. For the reasons that follow, we affirm.

{¶2} In 2006, appellant was indicted by the Cuyahoga County Grand Jury and charged in a multi-count indictment with intimidation, retaliation, attempted murder, and

conspiracy to commit murder against Cuyahoga County Common Pleas Judge David T. Matia. He was also charged with intimidation of a police officer, North Olmsted Police Detective Simon Cesareo (“the murder conspiracy case”).

{¶3} Assistant Cuyahoga County Prosecutor Dan Kasaris testified at the default hearing that in 2005, Judge Matia sentenced appellant to a prison term on his conviction in a prior criminal case and appellant hired someone to kill the Judge.

{¶4} In 2005, after being sentenced by Judge Matia and while appellant was still in the Cuyahoga County Jail, he made telephone calls to his girlfriend, which were recorded, in which he made incriminating statements about his involvement in the murder conspiracy case.

{¶5} Mr. Kasaris said that in October 2005, appellant solicited his fellow jail inmate, Daniel Whitehead, to see if he knew someone who could “take care” of Judge Matia and Detective Cesareo. Whitehead declined.

{¶6} Detective Henry Veverka of the Cleveland Police Department testified at the default hearing that on October 24, 2005, appellant’s fellow jail inmate, Robert Harmon, contacted him and advised him that appellant had solicited him to kill Judge Matia and to injure Detective Cesareo. Detective Veverka passed this information along to the Cuyahoga County Sheriff’s Office and the North Olmsted Police Department.

{¶7} Detective Tim Sopkovich of the Cuyahoga County Sheriff’s Office testified that he interviewed Harmon, who was in the county jail with appellant at that time. Harmon reported that a threat of harm had been directed to Judge Matia. Harmon agreed to wear a recording device, which was provided by Detective Sopkovich, and conversations between Harmon and appellant were recorded. Appellant again

discussed the murder plot with Harmon. Appellant offered to pay Harmon \$500 now and \$5,000 upon completion of the job.

{¶8} Assistant Prosecutor Kasaris testified that appellant called an associate of his, Tom Platzer, and convinced him to go to a bank; withdraw \$500 on behalf of appellant; and give the money to Robert Harmon's brother, Fred Harmon. Appellant owed money to Platzer and told Platzer that if he would give him the \$500, he would turn it into more money and he would pay him what he owed him. Platzer had no knowledge there was any plot to harm anyone.

{¶9} Captain Don Michalosky of the Cuyahoga County Sheriff's Office testified that Robert Harmon was provided with a recording device, and he made a recording of a conversation he had with appellant. Harmon told Captain Michalosky that Platzer was going to provide his brother Fred with the money. Captain Michalosky decided to pose as Fred Harmon and make the contact with Platzer. Captain Michalosky testified he called Platzer, saying he was Fred Harmon, and arranged to meet with Platzer at a bank to collect the \$300 (sic) from him. Captain Michalosky said the money was to be a down payment to carry out appellant's request to cause grievous harm to Judge Matia and Detective Cesareo. The captain said he met Platzer at a bank posing as Fred Harmon and Platzer gave him a \$300 check, thinking the captain was Fred Harmon.

{¶10} Meanwhile, in September 2006, appellant was indicted by the Cuyahoga County Grand Jury for engaging in a pattern of corrupt activity regarding money and real estate ("the corrupt activity case").

{¶11} The two cases were assigned to Lake County Common Pleas Judge Eugene Lucci. Assistant Prosecutor Kasaris testified that he prosecuted both the

murder conspiracy case and the corrupt activity case against appellant. He said appellant had a history of prior criminal convictions going back to 2000. He said appellant also had violence in his past, but those crimes were mortgage fraud and pretending to be an attorney. He said that when the Ohio Supreme Court took action against appellant's former girlfriend, Patricia Boychuck, in the reported opinion taking her license, the Supreme Court stated that appellant beat her to the point that she became a battered woman.

{¶12} The jury trial in the murder conspiracy case began on October 17, 2006. During opening arguments, Assistant Prosecutor Kasaris played some of Harmon's recordings along with incriminating recorded telephone conversations between appellant and his girlfriend.

{¶13} The next day, appellant pled guilty in both cases, which were consolidated in the trial court. In "the murder conspiracy case," appellant pled guilty to intimidation of and retaliation against Judge Matia and intimidation of Detective Cesareo. In "the corrupt activity case," appellant pled guilty to engaging in a pattern of corrupt activity involving money and real estate.

{¶14} Following appellant's sentencing hearing in December 2006, the court sentenced appellant in both cases to a total prison term of 30 years.

{¶15} Appellant filed a direct appeal and this court affirmed his conviction in *State v. Dudas*, 11th Dist. Lake Nos. 2006-L-267 and 2006-L-268, 2007-Ohio-6739, *discretionary appeal denied at* 118 Ohio St.3d 1409, 2008-Ohio-2340.

{¶16} Appellant is now serving his sentences. He has made repeated efforts to vacate his guilty pleas and sentences at the trial court and at the appellate court level and each of his efforts has failed.

{¶17} In 2012, appellant filed a 24-count amended complaint in the present case, alleging various claims against Harmon arising out of the role he played in allegedly setting up appellant. When it was brought to the court's attention that Harmon, who is also serving time in prison, had not filed an answer to the complaint, the court set the case for a default hearing at which appellant was required to present evidence on every element of every cause of action appellant was pursuing, including damages. Appellant advised the court he was only pursuing five of his claims: defamation, negligent and intentional infliction of emotional distress, perjury, abuse of process, and negligence.

{¶18} The trial court referred the case to a magistrate. The magistrate held a default hearing for four days at which appellant testified and called two witnesses to testify on his behalf, Harmon and appellant's private investigator, Gary Phillips. Appellant also called the following witnesses to testify pursuant to subpoena: Tom Platzer; Asst. Prosecutor Kasaris; Detective Tim Sopkovich, Detective Edward Roman, and Captain Donald Michalosky of the Cuyahoga County Sheriff's Office; and Detective Henry Veverka of the Cleveland Police Department.

{¶19} At the default hearing, Harmon testified that when he was released from prison, he met with appellant's private investigator, Gary Phillips. They discussed Harmon's tape-recorded conversation with appellant in jail. Harmon told Phillips the taped conversation was fabricated; that it was a rehearsed conversation between

himself and another inmate, Daniel Whitehead, pretending to be appellant. Harmon told Phillips that it was not appellant's voice on the tape, but, rather, it was Whitehead and that appellant never implicated himself in a plot to harm Judge Matia or any police officer.

{¶20} Phillips summarized their conversation in a typed affidavit that Harmon signed but did not read. The affidavit states that the use of an imposter was discussed at a meeting with Harmon, Assistant Prosecutor Kasaris, Judge Matia, and various law enforcement officers. In contrast, Mr. Kasaris and the police testified that no such meeting ever took place.

{¶21} Harmon also stated in his affidavit that he, rather than Dudas, contacted a friend of Dudas' (Tom Platzer) and told him to give some money to an unidentified person, who turned out to be Captain Donald Michalosky of the Cuyahoga County Sheriff's Office posing as Harmon's brother, Fred Harmon, the intended recipient. Harmon contended he and Whitehead received favorable treatment as a result of their deception. Harmon said that appellant had no knowledge of any of this. Harmon denied knowing that the money was being used as payment for the hit contract on Judge Matia and the officer when he made the call for appellant. Harmon said in his affidavit that he is dying of cancer and wants to clear his conscience and correct an injustice.

{¶22} The court found that in his live testimony, Harmon reaffirmed parts of his affidavit statements, but recanted or altered other parts. He confirmed that Whitehead pretended to be appellant and that a meeting took place with law enforcement, Judge Matia, and a prosecutor where the plan to set up appellant was hatched. Harmon flip-

flopped from denying it is appellant's voice on the tape to saying he could not be sure whether or not it was. The court found this lack of consistency led it to question what part of Harmon's testimony was truthful and thus credible and what part was pure fabrication. The court also found the claims that appellant had no knowledge about what was going on lacked credibility. The court noted that testimony was presented that appellant's associate, Thomas Platzer, delivered the money to the "hit man" and that prior to this, Platzer had a three-way telephone conversation with appellant and his girlfriend. The court found it implausible that the real reason for the payment was never discussed during this call.

{¶23} As noted above, Captain Michalosky testified that he identified himself to Platzer as Fred Harmon and set up a meeting with him at which Platzer gave him \$300, which, according to appellant, was to be used as a down payment to carry out appellant's request that he cause serious harm to Judge Matia and Detective Cesareo.

{¶24} The court found that Lt. Sopkovich's testimony that Harmon was wired was credible and that Harmon's testimony that he was not wired was not credible. However, the court found that neither version supports appellant's entitlement to damages. This was because appellant entered a change of plea not based on anything Harmon said, but, rather, on what appellant himself said during telephone conversations the state recorded while he was in jail. The court found it was appellant's incriminating conversation on the recording with his girlfriend that persuaded him to enter a plea bargain. Thus, it was irrelevant whether Harmon recanted or not.

{¶25} The court found the inconsistencies in the various versions of how the Dudas tape was created call into question the veracity of Harmon's testimony recanting

his police statement. The court noted that none of the law enforcement agents present during any of the meetings with Harmon, where he agreed to be wired, confirmed Harmon's "imposter" story. The court said that not one unbiased witness corroborated one shred of the contradictory recanted accounts of Harmon and that the only corroboration came from appellant.

{¶26} The court found the idea that an assistant county prosecutor, a sitting judge, and law enforcement officers from numerous jurisdictions would concoct a plan to frame appellant with fabricated evidence with the assistance of a fellow jail inmate was "utterly unfathomable" and bordered on the absurd and that some unassailable corroboration from some witness other than Harmon and appellant was needed to provide credibility to their story. The court found that appellant provided none.

{¶27} The trial court correctly noted that recanted testimony, such as Harmon's affidavit statements and his in-court testimony, is "looked upon with the utmost suspicion and must be viewed with great scrutiny." *State v. Dudas*, 11th Dist. Lake Nos. 2013-L-048 and 2013-L-049, 2014-Ohio-4292, ¶57. "[A] witness recantation must do more than merely contradict his prior testimony; 'there must be some compelling reason to accept a recantation over testimony given at trial.' (citation omitted.)" *Id.*

{¶28} In the instant case, the court found there was no compelling reason to accept Harmon's recanted testimony. Harmon testified he recanted because he felt threatened by appellant. However, the court noted that Harmon did not feel threatened when he participated in this "plot" or when his role in it was announced. Moreover, the court noted that no mention of this fear was included in his original affidavit statement. Instead, Harmon wanted the court to believe he was a dying man who needed to right a

wrong to relieve his guilty conscious. However, the court found none of this was true because Harmon admitted at the default hearing that he does not have cancer and is not dying. The court found that without the ability to verify the truth of Harmon's and appellant's testimony, their testimony was not credible.

{¶29} The court found that appellant's civil claims against Harmon were predicated on the truthfulness of Harmon's recanted statements and no other evidence was offered to support appellant's claims. Thus, the court found appellant failed to prove he had been damaged by anything Harmon said or did.

{¶30} The court also found that, even if Harmon's recanted statements were truthful, appellant still failed to prove the elements of each of his claims. The court found that, although Harmon was in default of pleading, because appellant failed to prove he was entitled to any damages on any of his claims, the court awarded him nothing.

{¶31} Appellant appeals the trial court's judgment, asserting four assignments of error. For his first, he alleges:

{¶32} "The trial court erred as a matter of law by holding a hearing on anything other than damages after a default judgment had been granted."

{¶33} Civ.R. 55(A) provides in pertinent part:

{¶34} If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall when applicable accord a right of trial by jury to the parties.

{¶35} Pursuant to Civ.R. 55(A), a trial court has discretion to decide if a hearing is necessary. *Bank of New York Mellon v. Watkins*, 10th Dist. Franklin No. 11AP-539, 2012-Ohio-4410, ¶13. “When a court requires proof in an action against a defendant in default, it should enter the judgment required by such proof and when the proof discloses that the plaintiff has no cause of action, the plaintiff’s action should be dismissed at his cost.” *Streeton v. Roehm*, 83 Ohio App. 148 (1st Dist.1948), paragraph four of the syllabus. Appellant argues this rule does not apply here because the court had already entered default judgment. However, appellant does not reference the record as to where the court entered default judgment. Appellant appears to be referring to the court’s October 1, 2012 judgment, in which the court stated: “as defendant has not answered the complaint and pursuant to Civ.R. 55(A), plaintiff shall be required to establish by evidence the truth of any averment touching upon an element of any cause of action asserted in the amended complaint for which damages or relief is sought. Further, plaintiff will be required to present evidence as to any damages or relief sought in this case.”

{¶36} Even if the court had found Harmon to be in default, the court was free to hold a default hearing for the purposes stated in its October 1, 2012 judgment. Thus, the trial court did not abuse its discretion in holding a default hearing.

{¶37} Appellant’s first assignment of error is overruled.

{¶38} Since appellant’s second and third assigned errors are related, they are considered together. They allege:

{¶39} “[2.] The trial court erred in adopting erroneous fact-finding by the magistrate, over objection, where such assertions of fact are not supported by and are contradicted by the record.

{¶40} “[3.] The trial court’s legal conclusions rely solely upon erroneous factual determinations and, thus, are clearly erroneous.”

{¶41} Appellant lists 12 findings of fact, which, he argues, are not supported by the record and are “actively contradicted by” the record. However, appellant does not reference the record in support of any of these findings. Nor does he reference anything in the record contradicting these findings. “On appeal it is the appellant’s responsibility to support his argument by evidence in the record that supports his assigned errors.” *State v. Dudas*, 11th Dist. Lake No. 2007-L-169, 2008-Ohio-3261, ¶16. Further, App.R. 16(A)(7) requires the appellant to reference the record in support of his arguments. It is not this court’s function to comb the record in search of evidence to support the appellant’s arguments. Because appellant has failed to reference the transcript of the default hearing in these assignments of error, his arguments lack merit.

{¶42} We note, however, that the trial court overruled the objections based on its review of the entire record. The court also found the testimony of Detective Sopkovich to be credible and found appellant and Harmon’s testimony to lack credibility. “Witness credibility rests solely with the finder of fact.” *River Oaks Homes, Inc. v. Twin Vinyl, Inc.*, 11th Dist. Lake No. 2007-L-117, 2008-Ohio-4301, ¶27.

{¶43} Although appellant challenged 12 of the magistrate’s findings of fact, the trial court overruled them because it found it could not rely on Harmon as he was not credible.

{¶44} When reviewing an appeal from a trial court's decision to accept or reject a magistrate's decision, an appellate court must determine whether the trial court abused its discretion. *In re Ratliff*, 11th Dist. Portage Nos. 2001-P-0142 and 2001-P-0143, 2002-Ohio-6586, ¶14. Where the court's decision is supported by a substantial amount of competent and credible evidence, the decision will not be reversed absent an abuse of discretion. *Bates v. Bates*, 11th Dist. Ashtabula No. 2000-A-0058, 2001 Ohio App. LEXIS 5428, *8 (Dec. 7, 2001).

{¶45} Based on our review of the record, the court's judgment adopting the magistrate's decision was supported by competent, credible evidence and the trial court did not abuse its discretion in adopting the magistrate's decision.

{¶46} Further, since appellant has failed to demonstrate that any of the trial court's factual findings is erroneous, his contention that the court's legal conclusions are erroneous because they are based on erroneous factual findings lacks merit.

{¶47} Appellant's second and third assigned errors are overruled.

{¶48} For his fourth and final assignment of error, appellant alleges:

{¶49} "The assessment of costs to appellant by the trial court is clearly erroneous where appellant is the prevailing party."

{¶50} Appellant argues that because the trial court issued a default judgment in his favor, he was the prevailing party, and the court thus erred in assessing costs against him. However, as noted above, appellant has not referenced and we do not discern from the record that the court ever entered a default judgment. In any event, even if the court had found Harmon to be in default of his answer, that does not mean appellant was the prevailing party.

{¶51} Civ.R. 54(D) provides that “costs shall be allowed to the prevailing party unless the court otherwise directs.” “Prevailing party” for purposes of the rule awarding costs is one in whose favor a judgment is entered. *Hagemeyer v. Sadowski*, 86 Ohio App. 3d 563, 566 (6th Dist.1993). Here, appellant sought an award of damages in the amount of \$900,000 in compensatory damages and \$750,000 in punitive damages. Since appellant recovered \$0, he can hardly be considered the prevailing party.

{¶52} We therefore hold the trial court did not abuse its discretion in taxing costs to appellant.

{¶53} Appellant’s fourth assignment of error is overruled.

{¶54} For the reasons stated in this opinion, the assignments of error lack merit and are overruled. It is the order and judgment of this court that the judgment of the Lake County Court of Common Pleas is affirmed.

DIANE V. GRENDALL, J., CYNTHIA WESTCOTT RICE, J., THOMAS R. WRIGHT, J.,
concur.