

[Cite as Dale v. Ohio State Hwy. Patrol, 2004-Ohio-2754.]

IN THE COURT OF CLAIMS OF OHIO

DOUGLAS DALE :

Plaintiff : CASE NO. 99-13703
Judge Fred J. Shoemaker
v. : Holly True Shaver, Magistrate

OHIO STATE HIGHWAY PATROL : JUDGMENT ENTRY

Defendant :
: : : : : : : : : : : : : : : :

{¶1} This case was tried to a magistrate of the court. On April 8, 2004, the magistrate issued a decision recommending judgment for defendant.

{¶2} Civ.R. 53(E)(3)(a) provides, in relevant part: "A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision ***." Plaintiff timely filed objections. Defendant has not filed a response.

{¶3} In plaintiff's objections, plaintiff challenges several of the factual findings made by the magistrate in support of the recommendation. However, Civ.R. 53(E)(3)(c) reads, in pertinent part: "*** Any objection to a finding of fact shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that fact or an affidavit of that evidence if a transcript is not available. ***"

{¶4} Plaintiff has not filed a transcript of the proceedings in this case in support of the objections as required by Civ.R. 53(E)(3)(c). Rather, plaintiff has filed two depositions taken in his criminal case in common pleas court and the transcript of proceedings in that case. Although the depositions and transcript were admitted into evidence in this case, they represent only a portion of the evidence in this case.

{¶5} Absent a complete transcript of proceedings in this case, the court is unable to conduct an independent review of all of the evidence in ruling upon the merits of plaintiff's objections. See *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 730, 1995-Ohio-272; *Wade v. Wade* (1996), 113 Ohio App.3d 414, 418-419; *Ohio Edison Co. v. Gilmore* (1995), 106 Ohio App.3d 6, 10-11. Moreover, the court notes that plaintiff's acquittal of the criminal charges satisfies just one of the elements of his claim of malicious prosecution. As the magistrate correctly stated in the decision, the presence of malice in instituting or continuing a criminal prosecution and the lack of probable cause are also required elements of plaintiff's claim. *Mikes v. Kent State Univ.* (Mar. 8, 1990), Franklin App. No. 89AP-749. The magistrate found that plaintiff failed to satisfy his burden of proof on these two elements and the court agrees with the magistrate. Inasmuch as plaintiff has the burden under Civ.R. 53 of providing the court with evidentiary support for his objections, plaintiff's objections 1-4 are OVERRULED.

{¶6} Upon review of the record and the magistrate's decision, the court finds that the magistrate found the relevant facts, analyzed the issues, and applied the law to the facts. Therefore, plaintiff's remaining objections are OVERRULED and the court adopts the magistrate's decision and recommendation as its own, including

{¶7} the findings of fact and conclusions of law contained therein. Judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

FRED J. SHOEMAKER
Judge

Entry cc:

Douglas Dale
208 Bedford Avenue SW
Canton, Ohio 44710

Plaintiff, Pro se

John P. Reichley
David M. Geiger
Assistant Attorneys General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

Attorneys for Defendant

LP/cmd

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