

[Cite as *Moore v. Ohio Dept. of Rehab. & Corr.*, 2004-Ohio-7299.]

IN THE COURT OF CLAIMS OF OHIO

ROBERT LEE MOORE :  
:  
Plaintiff : CASE NO. 2002-03651  
Judge Joseph T. Clark  
v. : Magistrate Steven A. Larson  
  
OHIO DEPARTMENT OF : JUDGMENT ENTRY  
REHABILITATION AND CORRECTION :  
Defendant :  
:  
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{¶ 1} This case was tried to a magistrate of the court. On October 25, 2004, the magistrate issued a decision recommending judgment for defendant.

{¶ 2} Civ.R. 53(E)(3)(a) states: "[a] party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, regardless of whether the court has adopted the decision pursuant to Civ.R. 53(E)(4)(c). \*\*\*" Plaintiff timely filed his objections. Defendant filed a response.

{¶ 3} In the decision, the magistrate found that plaintiff had failed to prove that defendant was responsible for the loss of his personal property. Although plaintiff's objections were not set forth with particularity as required by Civ.R. 53(E)(3)(b), plaintiff argues that the magistrate's decision was improperly based on distinguishable case law and that it was against the manifest weight of the evidence.

{¶ 4} Plaintiff takes issue with the magistrate's finding that plaintiff does not know what happened to his property. However, plaintiff has failed to file a copy of the transcript for court

review. Civ.R. 53(E)(3)(c) states in relevant part that "\*\*\* [a]ny 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." The reviewing court does not err in overruling objections, if a party objects to a referee's report on the basis of weight of the evidence without providing the reviewing court with a copy of the transcript. *Zacek v. Zacek* (1983), 11 Ohio App.3d 91.

{¶ 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. When reviewing the decision of a magistrate, "\*\*\* [w]ithout the entire transcript, the trial judge could not, under Civ.R. 53, modify or delete findings of fact." *Ohio Edison Co. v. Gilmore*, at 11.

{¶ 6} For the reason stated above, the objections are OVERRULED. Furthermore, upon review, the court determines that there is no error of law or other defect on the face of the magistrate's decision and the court adopts the magistrate's decision and recommendation as its own, including the findings of fact and conclusions of law contained therein.

{¶ 7} 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.

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JOSEPH T. CLARK  
Judge

Entry cc:

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