

[Cite as *Norris v. N. Cent. Correctional Inst.*, 2005-Ohio-2120.]

IN THE COURT OF CLAIMS OF OHIO

ROBERT LEE NORRIS :  
:  
  
Plaintiff : CASE NO. 2004-03128  
Judge Joseph T. Clark  
v. : Magistrate Steven A. Larson  
  
NORTH CENTRAL CORRECTIONAL : JUDGMENT ENTRY  
INST.  
:  
Defendant  
: : : : : : : : : : : : : : : :

**{¶1}** This case was tried to a magistrate of the court. On March 10, 2005, 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 did not file a response.

{¶3} In his objections, plaintiff argues “that the magistrate’s findings are ‘clearly erroneous’ and simply not supported by the evidence, the credible testimony, or the record.” Although plaintiff’s objections were not set forth with particularity as required by Civ.R. 53(E)(3)(b), plaintiff is essentially arguing that the magistrate’s decision was against the manifest weight of the evidence.

{¶4} 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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JUDGMENT ENTRY

LM/cmd

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