

objected, as a matter of law, to the damages award recommended by the Magistrate."

{¶ 4} However, Ohio law provides that the determination of the amount of damages is an issue of fact. *Galayda v. Lake Hosp. Sys.*, 71 Ohio St.3d 421, 1994-Ohio-64. In this case, the recommended damages award is based upon the magistrate's factual findings as to the extent to which plaintiff endured pain and suffering, disfigurement, physical impairment, and interference in his ability to perform usual activities.

{¶ 5} As stated above, defendant 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." See *Galewood v. Terry Lumber & Supply Co.*, Cuyahoga App. No. C.A. No. 20770, 2002-Ohio-947. 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.

{¶ 6} 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.

{¶7} For the reason stated above, defendant's objection is 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.

{¶8} Judgment is rendered for plaintiff in the amount of \$15,025, which includes the filing fee paid by plaintiff. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. CRAIG WRIGHT
Judge

Entry cc:

Richard F. Swope
6504 East Main Street
Reynoldsburg, Ohio 43068-2268

Attorney for Plaintiff

William C. Becker
Assistant Attorney General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

Attorney for Defendant

LM/cmd

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