

[Cite as *Pond v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-1797.]

IN THE COURT OF CLAIMS OF OHIO

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ROBERT POND :
Plaintiff : CASE NO. 2004-05686
v. : Judge Joseph T. Clark
Magistrate Anderson M. Renick
DEPARTMENT OF REHABILITATION : JUDGMENT ENTRY
AND CORRECTION :
Defendant :
: : : : : : : : : : : : : : : :

{¶ 1} This case was tried to a magistrate of the court. On January 6, 2006, the magistrate issued a decision recommending judgment in favor of defendant.

{¶ 2} Civ.R. 53 provides in relevant part: "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 ***." Plaintiff timely filed objections on January 20, 2006, and defendant responded on January 23, 2006.

{¶ 3} In the decision, the magistrate found that plaintiff had failed to satisfy his prima facie case for medical negligence.

{¶ 4} Plaintiff's primary objection is that he did not receive a fair trial because two physicians he intended to call as witnesses did not appear for trial. However, the record in this case indicates a failure of service of the subpoena issued to Dr. Roberts and that plaintiff was so notified on June 1, 2005. The record does not reflect any request by plaintiff for the issuance of a subpoena to Dr. Sciball. Accordingly, plaintiff's objection is OVERRULED.

{¶ 5} In his remaining objections, plaintiff argues that the magistrate's decision was against the manifest weight of the

evidence and contrary to law. Plaintiff, however, 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.

{¶ 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.*, at 11. Accordingly, plaintiff's remaining objections are OVERRULED.

{¶ 7} Furthermore, upon review of the record and the magistrate's decision, the court finds that the magistrate correctly analyzed the issues and applied the law to the facts. Therefore, plaintiff's objections are OVERRULED 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 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.

JOSEPH T. CLARK
Judge

Entry cc:

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