

Court of Claims of Ohio

The Ohio Judicial Center
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DAVID GUMINS

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2006-06132

Judge J. Craig Wright
Magistrate Steven A. Larson

JUDGMENT ENTRY

{¶ 1} On July 28, 2009, the magistrate issued a decision recommending judgment for defendant.

{¶ 2} Civ.R. 53(D)(3)(b)(i) states, in part: “A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i).” Plaintiff timely filed his objections.

{¶ 3} Civ.R. 53(D)(3)(b)(iii) provides, in part:

{¶ 4} “An objection to a factual finding, whether or not specifically designated as a finding of fact under Civ. R. 53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available.”

{¶ 5} Plaintiff filed a sworn “statement of proceedings” in support of his objections in lieu of a transcript of the proceedings. Plaintiff states that he cannot afford to order a copy of said transcript. However, Civ.R. 53 “does not provide the objecting

party with an option to file either a transcript or an affidavit. An affidavit may be employed only where a transcript of the proceedings is not available. A transcript is not unavailable merely because the original stenographic notes have not been transcribed or because a party elects not to order a transcript of the proceedings. Where a transcript can be produced, the transcript is available and must be provided to the trial court in support of objections to a magistrate's decision." *Gladden v. Grafton Correctional Inst.*, Franklin App. No. 05AP-567, 2005-Ohio-6476. Therefore, plaintiff's statement will not be considered by the court in ruling on his objections. Furthermore, inasmuch as plaintiff's objections challenge the magistrate's factual findings, the objections are OVERRULED.

{¶ 6} Upon review of the record, the magistrate's decision and the objections, the court finds that the magistrate has properly determined the factual issues and appropriately applied the law. Therefore, the objections are OVERRULED and the court adopts the magistrate's decision and recommendation as its own, including 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.

J. CRAIG WRIGHT
Judge

cc:

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- 3 -

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Magistrate Steven A. Larson

MR/cmd
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