

[Cite as *Lincoln v. Callos Mgt. Co.*, 2010-Ohio-4921.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

LYMAN LINCOLN

:

Plaintiff-Appellant

:
C.A. CASE NO.
23848

v.

: T.C. NO.
09CVI3566

CALLOS MANAGEMENT CO.

:

(Civil appeal from
Municipal Court)

Defendant-Appellee

:

:

.....

OPINION

Rendered on the 8th day of October, 2010.

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LYMAN LINCOLN, 5160 Lemoyne Drive, Huber Heights, Ohio 45424

Plaintiff-Appellant

SAMUEL E. DOWSE, Atty. Reg. No. 0082593, 1900 Kettering Tower, 40 N. Main Street,
Dayton, Ohio 45423

Attorney for Defendant-Appellee

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DONOVAN, P.J.

{¶ 1} Plaintiff-appellant Lyman W. Lincoln appeals a decision of the Kettering Municipal Court overruling his objections and affirming the decision of the magistrate. The judgment affirming the decision of the magistrate was issued by the trial court on December

30, 2009.

I

{¶ 2} On October 22, 2009, Lincoln filed a small claims action in Kettering Municipal Court in which he alleged that Callos Management Company made unauthorized deductions from his paychecks between January of 2009 and April of 2009. The case was referred to a magistrate who held a hearing on November 24, 2009, wherein both Lincoln and a representative from Callos testified.

{¶ 3} On December 17, 2009, the magistrate rendered a decision in favor of Callos finding that the evidence adduced at the hearing established that the deductions subtracted from Lincoln's paychecks were made to cover advances for moving violations, overweight limits, damage repairs, and other fines incurred by Lincoln during the course of his employment. The magistrate also found that the evidence demonstrated that Lincoln acquiesced to the deductions made by Callos at the time that they were originally incurred. Further, Lincoln did not dispute that he was responsible for the moving violations, tickets, and fines which were levied against him.

{¶ 4} On December 29, 2009, Lincoln filed objections to the magistrate's decision. He did not attach a copy of the transcript of the hearing before the magistrate to his objections, and on December 30, 2009, the trial court affirmed the magistrate's decision and overruled Lincoln's objections. In its decision, the trial court relied upon the fact that Lincoln failed to provide a transcript of the hearing or a supporting affidavit pursuant to "Ohio Civ. R. 53(E)(3)(b)."¹

¹The correct section of the statute which mandates the providing of a hearing transcript along with objections to the magistrate's decision is Civ. R.

II

{¶ 5} In accordance with Civ. R. 53, the trial court must conduct an independent review of the facts and conclusions contained in the magistrate's report and enter its own judgment. *Dayton v. Whiting* (1996), 110 Ohio App.3d 115, 118. Thus, the trial court's standard of review of a magistrate's decision is de novo.

{¶ 6} An "abuse of discretion" standard, however, is the appellate standard of review when reviewing a trial court's adoption of a magistrate's decision. Claims of trial court error must be based on the actions taken by the trial court, itself, rather than the magistrate's findings or proposed decision. When an appellate court reviews a trial court's adoption of a magistrate's report for an abuse of discretion, such a determination will only be reversed where it appears that the trial court's actions were arbitrary or unreasonable. *Proctor v. Proctor* (1988), 48 Ohio App.3d 55, 60-61. Presumptions of validity and deference to a trial court as an independent fact-finder are embodied in the abuse of discretion standard. *Whiting*, supra.

{¶ 7} "'Abuse of discretion' has been defined as an attitude that is unreasonable, arbitrary, or unconscionable. *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 87. It is to be expected that most instances of abuse of discretion will result in decisions that are simply unreasonable, rather than decisions that are unconscionable or arbitrary.

{¶ 8} "A decision is unreasonable if there is no sound reasoning process that would support that decision. It is not enough that the reviewing court, were it deciding the issue de novo, would not have found that reasoning process to be persuasive, perhaps in view of

53(D)(3)(b)(iii) rather than "Ohio Civ. R.53(E)(3)(b)" as incorrectly noted by the trial court.

countervailing reasoning processes that would support a contrary result.” *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161.

{¶ 9} Pursuant to Civ.R. 53(D)(3)(b)(iii), “[a]n objection to a factual finding *** 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.” The Supreme Court of Ohio has established the consequences on appeal of failing to supply the appropriate transcript or affidavit as (1) “appellate review of the court’s findings [being] limited to whether the trial court abused its discretion in adopting the referee’s report,” and (2) “the appellate court [being] precluded from considering the transcript of the hearing submitted with the appellate record.” *State ex rel. Duncan v. Chippewa Twp. Trustees* (1995), 73 Ohio St.3d 728, 730 (citations omitted).

{¶ 10} It is undisputed that Lincoln failed to provide a transcript of the hearing when he filed his objections to the magistrate’s decision on December 29, 2009. Pursuant to Civ. R. 53(D)(3)(b)(iii), however, the party objecting to a magistrate’s decision has thirty days from the filing of his or her objections in which to file the transcript of the hearing. Thus, Lincoln had thirty days from December 29, 2009, to file a transcript with the trial court. Instead of affording him the additional thirty days to file the transcript, the trial court issued a decision the following day on December 30, 2009, in which it overruled Lincoln’s objections for failure to file a transcript. Although this issue was not raised by either party in the instant appeal, it was plain error for the trial court to overrule Lincoln’s objections without first allowing him the requisite thirty days from the filing of his objections to file a transcript of the hearing before the magistrate.

III

{¶ 11} In light of the foregoing analysis, the judgment of the trial court is reversed, and this matter is remanded for proceedings consistent with this opinion.

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FAIN, J. and GRADY, J., concur.

Copies mailed to:

Lyman Lincoln
Samuel E. Dowse
Hon. Thomas M. Hanna