

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

CHILDREN'S HOSPITAL OF AKRON

C.A. No. 27557

Appellee

v.

WILLIAM PALUCH

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
BARBERTON MUNICIPAL COURT
COUNTY OF SUMMIT, OHIO
CASE No. 13 CVF 1343

DECISION AND JOURNAL ENTRY

Dated: June 17, 2015

HENSAL, Presiding Judge.

{¶1} William Paluch appeals a judgment of the Barberton Municipal Court ordering him to pay Children's Hospital of Akron \$512.80. For the following reasons, this Court affirms.

I.

{¶2} On April 6, 2008, Mr. Paluch went to Children's Hospital seeking treatment for burns he had suffered. According to Mr. Paluch, when he told a nurse that he would not accept treatment if he was required to pay for it, the nurse told him that the hospital would treat him regardless of whether he guaranteed payment. Mr. Paluch, therefore, went ahead with the treatment. The hospital subsequently sought payment for its services. When Mr. Paluch refused to pay, it brought this action against him.

{¶3} The case proceeded to trial before a magistrate. In her decision, the magistrate wrote that it was Mr. Paluch's son who received treatment at the hospital, not Mr. Paluch. She found that Mr. Paluch's testimony about his conversation with the nurse was not credible and

recommended that the court enter judgment against him. Mr. Paluch objected to the magistrate's decision, noting that it was he, not his son, who had received treatment from the hospital. The municipal court agreed that the magistrate was mistaken about who received treatment from the hospital but determined, nevertheless, that Mr. Paluch was liable to the hospital under the theory of quantum meruit or implied contract. Mr. Paluch has appealed the municipal court's decision, assigning two errors, which this Court will address together.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED BY FAILING TO CONSIDER THE MANIFEST WEIGHT OF THE EVIDENCE AS REFLECTED IN THE RECORD.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED BY FAILING TO COMPEL PLAINTIFF TO ANSWER INTERROGATORIES AND PROVIDE A MATERIAL WITNESS REQUESTED BY DEFENDANT.

{¶4} Mr. Paluch argues that the municipal court erred when it rejected his testimony, noting that he was the only witness to testify about his conversation with the nurse. He also argues that the magistrate should have compelled the hospital to disclose the identity and whereabouts of the nurse so that he could have called her as a witness to corroborate his testimony.

{¶5} Civil Rule 53(D)(3)(b)(i) provides that a party may file written objections to a magistrate's decision within 14 days of the filing of the decision. The objection "shall be specific and state with particularity all grounds for objection." Civ.R. 53(D)(3)(b)(ii). The rule also provides that, except for a claim of plain error, a party may not assign an issue as error on appeal, "unless the party has objected to [it] as required by Civ.R. 53(D)(3)(b)." Civ.R. 53(D)(3)(b)(iv).

{¶6} In his objection to the magistrate’s decision, Mr. Paluch raised only one issue, which was the magistrate’s misunderstanding about who had received treatment at the hospital. He did not contest the fact that the magistrate rejected his testimony that the hospital agreed to provide treatment without payment. He also did not contest the magistrate’s denial of his motion to compel. We, therefore, conclude that Mr. Paluch has forfeited those arguments. *Bass-Fineberg Leasing, Inc. v. Modern Auto Sales, Inc.*, 9th Dist. Medina No. 13CA0098-M, 2015-Ohio-46, ¶ 24. Although forfeiture does not extinguish a claim of plain error, Mr. Paluch has not argued plain error in his brief, and this Court will not construct such an argument for him. *In re G.M.*, 9th Dist. Wayne Nos. 14AP0040, 14AP0041, 2015-Ohio-582, ¶ 27. Mr. Paluch’s assignments of error are overruled.

III.

{¶7} Mr. Paluch did not preserve his assignments of error for appeal. The judgment of the Barberton Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Barberton Municipal Court, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JENNIFER HENSAL
FOR THE COURT

WHITMORE, J.
SCHAFFER, J.
CONCUR.

APPEARANCES:

WILLIAM PALUCH, pro se, Appellant.

DAVID A. SED, Attorney at Law, for Appellee.