

[Cite as *Orthopaedic Care, Inc. v. Trans Global Adjusting Corp.*,
2001-Ohio-1817.]

**COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT**

ORTHOPAEDIC CARE, INC.	:	JUDGES:
	:	Hon. William B. Hoffman, P. J.
	:	Hon. Sheila G. Farmer, J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	
-vs-	:	
	:	
TRANS GLOBAL ADJUSTING CORPORATION	:	Case No. 2001CA00215
	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil Appeal from the Canton Municipal Court, Case No. 2001CVI02497

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: November 19, 2001

APPEARANCES:

For Plaintiff-Appellee

**STANLEY R. RUBIN
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Canton, Ohio 44702**

For Defendant-Appellant

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Wise, J.

Appellant Trans Global Adjusting Corporation appeals the decision of the Canton Municipal Court, which ruled in favor of Appellee Orthopaedic Care, Inc., in appellee's small claims action involving an unpaid invoice for physician services. The relevant facts leading to this appeal are as follows.

Appellant Trans Global Adjusting Court is engaged in the business of handling workers compensation claims for various employers. On February 1, 2000, appellant sent a letter to the chief physician for Appellee Orthopaedic Care, Inc. requesting an independent medical evaluation and corresponding report regarding Jacqueline Marion, an employee of Omega Home Health Care, one of appellant's clients. The basis of the evaluation was Marion's claim of injury to her right shoulder and impingement tendinitis. The letter to the physician included a request to express an opinion on a number of questions, including the presence of pre-existing conditions and whether the present condition would become chronic. The letter ended with a request to send a copy of the completed medical report and fee bill directly to employer Omega, and to send the original report to Rebecca Sheets, an account representative for Appellant Trans Global. The letter, printed on appellant's letterhead, closed as follows: "Sincerely, TRANS GLOBAL ADJUSTING CORPORATION (Representing: Omega Home Health Care), Rebecca Sheets, Account Representative." The letter was signed by Sheets. Thereafter, the physician's services were completed by appellee and a report was prepared. On April 14, 2000, appellee faxed a copy of the report to Omega.

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On July 24, 2000, appellee sent its bill for services, in the amount of \$960, directly to the patient, Jacqueline Marion, listing Omega as guarantor.¹ The bill was returned to appellee, at which time appellee contacted appellant. Appellant informed appellee that Omega had gone out of business, but appellant declined to take responsibility to pay the aforesaid bill.

On April 12, 2001, appellee filed a small claims action in municipal court, seeking recovery from appellant for the \$960 worth of services. The matter was set for evidence before a magistrate on May 2, 2001, following which the magistrate found that Appellant Trans Global had acted as a disclosed agent for a disclosed principal, Omega, and therefore appellant did not have any responsibility to appellee for the unpaid invoice. On May 11, 2001, appellee filed an objection to the magistrate's decision. A municipal court judge reviewed the matter and sustained the objections, on the grounds that there was insufficient notice of an agency relationship between appellant and Omega. Thus, the magistrate's decision was overruled and judgment was therefore awarded to appellee in the amount of \$960, with court costs and interest.

Appellant timely appealed and herein raises the following sole Assignment of Error:

I. THE COURT ERRED IN SUSTAINING OBJECTIONS TO MAGISTRATE'S REPORT.

A trial court has great discretion in determining whether to sustain or overrule an objection to a magistrate's decision. *Remner v. Peshek* (Sept. 30, 1999),

¹ Appellee indicates that it also sent the bill to Omega.

Mahoning App.No. 97-CA-98, unreported. The decision to adopt, reject, or modify a magistrate's decision will not be reversed on appeal unless the decision was an abuse of discretion. *Wade v. Wade* (1996), 113 Ohio App.3d 414, 419. In order to find an abuse of discretion, we must determine that the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217.

Both the magistrate and the trial judge below applied the long-standing principle that non-disclosure of an agency relationship impacts the liability of an agent in its dealings with other parties. In *Dunn v. Westlake* (1991), 61 Ohio St.3d 102, the Ohio Supreme Court stated as follows:

It is well-settled in the law of agency that an agent who discloses neither the existence of the agency nor the identity of the principal is personally liable in his or her contractual dealings with third parties. See, e.g., 1 Mechem, *The Law of Agency* (2 Ed.1914) 1039-1041, Section 1410. See, generally, *Davis v. Harness* (1882), 38 Ohio St. 397; and *James G. Smith & Assoc., Inc. v. Everett* (1981), 1 Ohio App.3d 118, 120-121, 1 OBR 424, 427, 439 N.E.2d 932, 935 (where the existence of the agency and the identity of the principal are unknown to the third party, the dealing is held to be between the agent and the third party and the agent is liable). The reason for this rule is simple. The third party who deals with an agent while unaware of the existence of the principal and the agency relationship intends to deal with the agent, and relies upon the agent's ability to perform. ***.

Id. at 106

Thus, the issue presented is whether the trial court abused its discretion in overruling the magistrate's conclusion, and holding that insufficient disclosure was made of the principal-agency relationship between Omega and Appellant Trans

Global. The trial court specifically found as follows in its entry sustaining appellee's objection to the magistrate's decision:

The Court sustains the Objection to the Report of the Magistrate based on a mistake in law. The Court finds there was not sufficient notice of an agency relationship between defendant and Omega Home Health Care. The letter requesting the services performed by plaintiff was ambiguous as to this relationship. In addition, defendant requested that the original medical report be sent to itself and requested a copy be sent to Omega Home Health Care. Defendant, in its representation of the claim, intended to use plaintiff's report.

Judgment Entry at 2.

In *Mark Peterson Dental Laboratory, Inc. v. Kral* (1983), 9 Ohio App.3d 163, a dental laboratory brought an action against a dentist, Dr. Kral, to recover for work performed by the laboratory. Dr. Kral unsuccessfully argued that he had contracted with the lab as an agent for a corporate entity, Bruce M. Kral, D.D.S., Inc. The Ninth District Court of Appeals noted: "For Kral to avoid personal liability for the work done by the laboratory, he was required to convince the trial court that he acted in an agency capacity for Dr. Bruce M. Kral, D.D.S., Inc., and not in his individual capacity." *Id.* at 164. The Court concluded that there was insufficient evidence to find Kral affirmatively disclosed his agency status. *Id.*

Likewise, we hold that once Appellant Trans Global's letter in the case *sub judice* established the existence of a request to appellee for a medical review, the burden fell upon appellant to show the trial court that it had acted in an agency capacity for Omega. Here, despite the billing information and the aforesaid use of the term "representing" in the closing language of its letter, appellant simultaneously wrote,

inter alia: "Therefore, we are asking that you review the medical information attached, interview the claimant, and examine the claimant to give us your professional medical opinion." (Emphasis added.) Additionally, as the trial court specifically cited, appellant asked for the original report, and only directed that a copy of same go to Omega. In light of such ambiguities under these facts, we do not find that the trial court, in ruling on appellee's Civ.R. 53 objections, acted in an unreasonable, arbitrary or unconscionable fashion in determining that appellant did not sufficiently disclose its asserted agency status.

Appellant's sole Assignment of Error is overruled.

For the reasons stated in the foregoing opinion, the judgment of the Canton Municipal Court, Stark County, Ohio, is hereby affirmed.

By: Wise, J.

Farmer, J., concurs.

Hoffman, P. J., dissents.

JUDGES

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Hoffman, P.J., dissenting

I respectfully dissent from the majority opinion.

I am unpersuaded the appropriate standard of review to be applied by this Court is whether the trial court abused its discretion when it rejected and modified the magistrate's decision.

The majority cites two cases in support of application of the abuse of discretion standard. The first, *Remner v. Peshek*², is an unreported appellate opinion from the Seventh District. In *Remner*, the court applied an abuse of discretion standard when reviewing a trial court's decision to overrule an objection to a magistrate's decision because the appellant failed to provide the trial court with the transcript of the magistrate's hearing. *Remner* cited *Capital Equipment Enterprises Inc. v. Wilson Concepts*³, a reported appellate opinion from the Second District, as authority. *Capital Equipment* also involved the overruling of an objection to a referee's report because of a failure to provide the trial court a transcript of the referee's hearing.

²*Remner v. Peshek* (Sept. 30, 1999), Mahoning App. No. 97-CA-98, unreported.

³*Capital Equipment Enterprises Inc. v. Wilson Concepts* (1984), 19 Ohio App.3d 233.

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The second case cited by the majority is *Wade v. Wade*⁴, a reported appellate opinion from the Eleventh District. The court in *Wade* stated the appropriate standard of review of the trial court's decision to adopt, reject or modify a referee's report was abuse of discretion but omitted citations in support.⁵ *Wade* also involved the failure of the appellant to provide the trial court with an adequate transcript of the hearing before the referee.

I believe our standard of review of the trial court's decision depends on the type of error claimed and does not automatically become an abuse of discretion standard merely because the trial court made its decision after reviewing a magistrate's decision. If the trial court committed an error of law, whether by adopting, rejecting or modifying the magistrate's decision, why should the trial court's decision be shielded by an abuse of discretion standard of review, a standard which requires demonstration of more than an error of law by the trial court before it may be reversed by this Court? The fact the trial court reviewed a magistrate's decision should have no bearing on the otherwise applicable standard of review we would apply to the trial court's decision.

⁴*Wade v. Wade* (1996), 113 Ohio App.3d 414.

⁵*Id.* at 419.

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I believe the applicable standard to be applied in the case *sub judice* is whether the trial court erred as a matter of law in concluding “there was not sufficient notice of an agency relationship between defendant [appellant] and Omega Home Health Care.”⁶ There was no testimonial evidence presented at the hearing before the magistrate nor at the objection hearing before the trial court. The magistrate’s and trial court’s decisions were based solely upon documentary evidence. Unlike most cases, the trier of fact did not have to determine any credibility issue to which this court must defer. Instead, the trial court concluded the documentary exhibits were insufficient to demonstrate appellant was a disclosed agent. I find the letter from appellant to appellee (Exhibit A) discloses both the existence of the agency and the identity of the principal. Appellee’s notation Omega Home Health Care is guarantor on its itemized statement (Exhibit C) belies the conclusion there was ambiguity as to the agency relationship.

I would reverse the judgment of the trial court.

JUDGE WILLIAM B. HOFFMAN

⁶June 15, 2001 Judgment Entry at 2, unpaginated.

