

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Darrell Kelly,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 11AP-477
v.	:	(C.C. No. 2009-02723)
	:	
Ohio Department of Rehabilitation and	:	(REGULAR CALENDAR)
Corrections et al.,	:	
	:	
Defendants-Appellees.	:	
	:	

D E C I S I O N

Rendered on February 2, 2012

Byron D. Corley, for appellant.

Michael DeWine, Attorney General, *Eric A. Walker* and *Jennifer A. Adair*, for appellees.

APPEAL from the Court of Claims of Ohio

KLATT, J.

{¶1} Plaintiff-appellant, Darrell Kelly, appeals from a judgment of the Court of Claims of Ohio granting judgment to defendant-appellee, the Ohio Department of Rehabilitation and Corrections ("ODRC"). For the following reasons, we must affirm that judgment.

Factual and Procedural Background

{¶2} Appellant, at all relevant times a corrections officer employed by ODRC at the Richland Correctional Institute, filed a complaint in the trial court against the ODRC. In that complaint, he alleged that a co-worker filed a harassment complaint against him

that was later dismissed as meritless by his employers. Subsequently, the ODRC allowed the co-worker to return to work with appellant. Appellant requested and received a leave of absence on the next day because of the above events. Appellant alleged that he had been seeking counseling since the co-worker filed the complaint against him. As a result of these allegations, appellant asserted claims for hostile work environment, negligent supervision, and intentional infliction of emotional distress ("IIED"). The basis of his IIED claim was that the ODRC should have known that making him work with the co-worker would result in serious emotional distress.

{¶3} Before trial, the trial court granted summary judgment in favor of ODRC on appellant's claims for hostile work environment and negligent supervision. Ultimately, the trial court held a liability trial for the IIED claim. The trial court concluded that appellant failed to prove his claim by a preponderance of the evidence and, accordingly, entered judgment in favor of the ODRC.

{¶4} Appellant appeals and assigns the following error:

THE TRIAL COURT FAILED TO GRANT KELLY HIS CLAIM
OF INTENTIONAL INFLICTION OF EMOTIONAL
DISTRESS.

Assignment of Error – Intentional Infliction of Emotional Distress

{¶5} Appellant disagrees with the trial court's conclusion that he failed to prove a claim for intentional infliction of emotional distress. In essence, he claims that the trial court's judgment is not supported by the manifest weight of the evidence.

{¶6} Resolution of this assignment of error requires a review of the evidence presented at trial. Appellant, however, has not filed a transcript of the trial in support of his assignment of error. The duty to provide a transcript for appellate review falls upon the appellant because the appellant bears the burden of showing error by reference to

matters in the record. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199. "When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm." *Id.*; *Daughtry v. Daughtry*, 10th Dist. No. 11AP-59, 2011-Ohio-4210, ¶7. In the absence of a transcript, we are unable to meaningfully review a claim that the trial court's judgment was against the manifest weight of the evidence. *Id.*; *Hartt v. Munobe*, 67 Ohio St.3d 3, 7, 1993-Ohio-177 ("When the alleged error is that the trial court judgment was against the weight of the evidence or unsupported by the evidence, the appellant must include in the record all portions of the transcript relevant to the contested issues."). Because we lack a transcript to review, we must presume that the evidence supports the trial court's judgment. *Williams v. Hill*, 10th Dist. No. 10AP-69, 2010-Ohio-4189, ¶7. Accordingly, we overrule appellant's assignment of error.

{¶7} Having overruled appellant's lone assignment of error, we affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

TYACK and DORRIAN, JJ., concur.
