

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

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| Ervin Triplett, Jr.,             | : |   |
| Plaintiff-Appellant,             | : |   |
| v.                               | : | No. 12AP-728<br>(Ct. of Cl. No. 2011-06889) |
| Warren Correctional Institution, | : | (REGULAR CALENDAR)                          |
| Defendant-Appellee.              | : |   |

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D E C I S I O N

Rendered on June 27, 2013

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*Ervin Triplett, Jr., pro se.*

*Michael DeWine, Attorney General, and Amy S. Brown, for appellee.*

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APPEAL from the Court of Claims of Ohio

KLATT, P.J.

{¶ 1} Plaintiff-appellant, Ervin Triplett, Jr., appeals from a judgment of the Court of Claims of Ohio adopting a magistrate's decision and entering judgment in favor of defendant-appellee, Warren Correctional Institution ("WCI"). For the following reasons, we affirm that judgment.

**I. Factual and Procedural Background**

{¶ 2} On May 4, 2011, appellant filed a complaint in the trial court asserting a number of claims against WCI arising out of his allegations that WCI officers mishandled and took some of his personal property when he was transferred from WCI to another corrections institution after he assaulted a WCI officer. Appellant also alleged that WCI officers assaulted him, defamed him, and retaliated against him after the assault.

{¶ 3} Before trial, the trial court granted WCI's motion for partial judgment on the pleadings. Specifically, the trial court granted WCI judgment on appellant's claims based upon WCI's alleged violations of internal rules and policies in their handling of appellant's personal property because violations of those rules do not support a cause of action. The trial court also dismissed appellant's retaliation claim for lack of subject-matter jurisdiction. The case proceeded on appellant's other claims.

{¶ 4} A magistrate of the trial court conducted a trial on the issue of liability. Based on the testimony and evidence presented at trial, the magistrate found appellant's assault claim without merit, concluding that the officers who used force against appellant were privileged to do so and that the force used against him was reasonable. In regards to appellant's defamation claims, the magistrate concluded that the alleged defamatory statements were never made, finding the testimony regarding the statements allegedly made by the officers not credible. Lastly, in regards to appellant's claims concerning his lost property, the magistrate concluded that the appellant failed to establish that WCI obtained possession of the property or established a bailment relationship at any time. Instead, the magistrate concluded that other inmates took appellant's property. Accordingly, the magistrate recommended judgment in favor of WCI.

{¶ 5} On July 23, 2012, the same day that the magistrate issued its decision, the trial court adopted that decision as its own and entered judgment in favor of WCI. On August 8, 2012, appellant filed objections to the magistrate's decision. However, pursuant to Civ.R.53(D)(3)(b)(i), the trial court disregarded those objections as untimely filed and affirmed its adoption of the magistrate's decision awarding judgment to WCI.

## **II. The Appeal**

{¶ 6} Appellant appeals and assigns the following errors:

1. The trial court committed reversible error by dismissing the plaintiff's claim for retaliation in contravention to precedent.
2. Administrative regulations issued pursuant to statutory authority have the force and effect of law, and WCI is bound by its own rules.
3. The trial court committed error by stating that WCI agents were privileged to assault the appellant.

4. The trial court committed error by ruling that the defamatory statements "were never uttered," contrary to the evidence presented on the record.
5. The appellees violate the bailment by its failure to protect, or recover the appellant's property when he was transferred to another institution for disciplinary reasons.

#### **A. First and Second Assignments of Error—Trial Court's Grant of Partial Judgment on the Pleadings**

{¶ 7} Because appellant's first and second assignments of error challenge the trial court's grant of partial judgment on the pleadings pursuant to Civ.R.12(C), we address those assignments of error together.

{¶ 8} A Civ.R. 12(C) motion can be characterized as a belated Civ.R. 12(B)(6) motion for failure to state a claim upon which relief may be granted. *Whaley v. Franklin Cty. Bd. of Commrs.*, 92 Ohio St.3d 574, 581 (2001). However, unlike Civ.R. 12(B)(6) motions, "Civ.R. 12(C) motions are specifically for resolving questions of law." *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570 (1996); *Friends of Ferguson v. Ohio Elections Comm.*, 117 Ohio App.3d 332, 334 (10th Dist.1997). Dismissal is appropriate under a Civ.R. 12(C) motion where, after construing all material allegations in the complaint in favor of the nonmoving party, a court "finds beyond doubt, that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief." *Midwest Pride IV, Inc.* at 570. Appellate courts review the grant of a Civ.R. 12(C) motion under the de novo standard. *Cuyahoga Cty. Veterans Services Comm. v. State*, 159 Ohio App.3d 276, 2004-Ohio-6124, ¶ 6 (10th Dist.); *Fontbank, Inc. v. CompuServe, Inc.*, 138 Ohio App.3d 801, 807 (10th Dist.2000).

{¶ 9} Appellant first claims that the trial court improperly dismissed his retaliation claim for lack of subject-matter jurisdiction. We disagree. This court has held that an inmate's claims regarding retaliatory conduct are properly classified as constitutional claims actionable under 42 U.S.C. 1983, which cannot be brought in the Court of Claims. *Guillroy v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 07AP-861, 2008-Ohio-2299, ¶ 12; *Troutman v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 03AP-1240, 2005-Ohio-334, ¶ 9. Accordingly, the trial court did not err by dismissing appellant's retaliation claim.

{¶ 10} Next, appellant claims the trial court improperly dismissed his claims that the WCI officers violated administrative rules and policies in handling his personal property. We disagree. Prison regulations of the nature cited by appellant are "primarily designed to guide correctional officials in prison administration rather than to confer rights on inmates." *See State ex rel. Larkins v. Wilkinson*, 79 Ohio St.3d 477, 479 (1997); *State ex rel. Shepherd v. Croft*, 10th Dist. No. 09AP-621, 2010-Ohio-258, ¶ 5. Thus, those violations will not support a cause of action by themselves, even though violations of internal rule and policies may be used to support a claim of negligence. *Horton v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 05AP-198, 2005-Ohio-4785, ¶ 29. The trial court properly granted judgment on the pleadings on these claims in favor of WCI.

{¶ 11} The trial court did not err when it granted WCI's motion for partial judgment on the pleadings. Accordingly, we overrule appellant's first and second assignments of error.

### **B. Third, Fourth and Fifth Assignments of Error—The Trial Court's Adoption of the Magistrate's Decision**

{¶ 12} These assignments of error challenge the trial court's adoption of the magistrate's decision recommending judgment in favor of WCI after the liability trial. Two facts limit this court's review of these assignments of error.

{¶ 13} First, appellant did not file a transcript of the proceedings below or an affidavit of the evidence with the trial court.<sup>1</sup> Pursuant to Civ.R. 53(D)(3)(b)(iii), an objecting party must support any objections to a magistrate's factual findings with a transcript of the proceedings before the magistrate or an affidavit of the evidence. If an objecting party fails to submit a transcript or affidavit, the trial court must accept the magistrate's factual findings and limit its review to the magistrate's legal conclusions. *Ross v. Cockburn*, 10th Dist. No. 07AP-967, 2008-Ohio-3522, ¶ 5; *Farmers Mkt. Drive-In Shopping Ctrs. v. Magana*, 10th Dist. No. 06AP-532, 2007-Ohio-2653, ¶ 27-28. On appeal of a judgment rendered without the benefit of a transcript or affidavit, an appellate court only considers whether the trial court correctly applied the law to the

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<sup>1</sup> At this point, we address WCI's motion to strike the purported "Statement of Evidence" appellant filed in the trial court in an attempt to comply with App.R. 9(C). We deny the motion, because we will not strike a document filed in another court. However, because appellant's filing does not comply with App.R. 9(C), we will not consider it in our decision.

magistrate's factual findings. *Gill v. Grafton Corr. Inst.*, 10th Dist. No. 10AP-1094, 2011-Ohio-4251, ¶ 21; *Ross* at ¶ 6.

{¶ 14} Second, and more significantly, appellant did not timely file objections to the magistrate's decision. Pursuant to Civ.R. 53(D)(3)(b), a party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law unless the party has objected to that finding or conclusion under this rule. *T.S. v. W.D.*, 10th Dist. No. 06AP-1183, 2007-Ohio-3795, ¶ 6, citing *Brown v. Zurich US*, 150 Ohio App.3d 105, 2002-Ohio-6099, ¶ 26 (10th Dist.). Thus, Civ.R. 53(D) imposes an affirmative duty on the parties to make timely, specific objections in writing to the trial court identifying any error of fact or law in the magistrate's decision. *State ex rel. Alston v. Indus. Comm.*, 10th Dist. No. 00AP-1379, 2002-Ohio-4720, ¶ 4. A party is barred from raising any error on appeal pertaining to a trial court's adoption of any finding of fact or conclusion of law by a magistrate unless that party timely objected to that finding or conclusion as required under the rule. Civ.R. 53(D)(3)(b); *State ex rel. Booher v. Honda of Am. Mfg., Inc.*, 88 Ohio St.3d 52, 53-54 (2000); *see also, State ex rel. Abate v. Indus. Comm.*, 96 Ohio St.3d 343, 2002-Ohio-4796.

{¶ 15} The failure to file objections to a magistrate's decision under Civ.R. 53(D)(3)(b) constitutes the waiver of the right to appellate review of all but plain error. *Buford v. Singleton*, 10th Dist. No. 04AP-904, 2005-Ohio-753, ¶ 6; *Peck v. Serio*, 155 Ohio App.3d 471, 2003-Ohio-6561, ¶ 22 (10th Dist.). In appeals of civil cases, the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error seriously affects the basic fairness, integrity, or public reputation of the judicial process itself. *Goldfuss v. Davidson*, 79 Ohio St.3d 116 (1997), syllabus.

{¶ 16} In light of this court's limited review of the trial court's decision, we must affirm. Not only did appellant fail to file a transcript of the trial, but he also failed to timely file objections to the magistrate's decision and has, therefore, waived appellate review of the trial court's adoption of the magistrate's decision but for plain error. *T.S.* at ¶ 9 (declining to review merits of case where appellant did not file objections or transcript). This case does not present exceptional circumstances that rise to the level of plain error. The magistrate properly applied the correct legal standards for each claim

appellant raised to the facts it found. Accordingly, we overrule appellant's third, fourth, and fifth assignments of error.

**III. Conclusion**

{¶ 17} Having overruled appellant's five assignments of error, we affirm the judgment of the Court of Claims of Ohio.

*Motion to strike denied; judgment affirmed.*

BROWN and SADLER, JJ., concur.

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