

[Cite as *Israfil v. Warren Correctional Inst.*, 2011-Ohio-2546.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Mumin Israfil, :
 :
 Plaintiff-Appellant, :
 :
 v. : No. 10AP-901
 : (C.C. No. 2008-11605)
 Warren Correctional Institution, : (REGULAR CALENDAR)
 :
 Defendant-Appellee. :

D E C I S I O N

Rendered on May 26, 2011

Mumin Israfil, pro se.

Michael DeWine, Attorney General, *James P. Dinsmore*, and
Emily M. Simmons, for appellee.

APPEAL from the Court of Claims of Ohio.

SADLER, J.

{¶1} Appellant, Mumin Israfil, filed this appeal seeking reversal of a judgment by the Court of Claims of Ohio in favor of appellee, the Warren Correctional Institution ("WCI"). For the reasons that follow, we affirm.

{¶2} On August 6, 2008, appellant was an inmate in the custody and control of WCI. Appellant was walking to his work assignment when he was struck by a golf cart

and trailer driven by WCI employee Latonia Thomas. Appellant alleged that as a result of being struck, he suffered a number of injuries.

{¶3} Appellant filed a claim in the Court of Claims alleging a cause of action for negligence. In addition to compensatory damages, appellant sought an injunction directing WCI to provide him with proper medical care.

{¶4} The case was bifurcated on the issues of liability and damages. The case proceeded to trial on the issue of liability before a magistrate. After trial, the magistrate issued a decision finding in favor of WCI on the issue of liability, and further finding that appellant's claim seeking an injunction should be dismissed because the Court of Claims lacked subject-matter jurisdiction over that claim.

{¶5} In his decision, the magistrate cited testimony by appellant that he knew the golf cart was approaching him from behind, and that he had a duty to yield the road to vehicles. The magistrate further cited appellant's testimony that he chose to look away as the golf cart approached because he "did not see" and "did not want to see" the cart.

{¶6} The magistrate also cited testimony by Latonia Thomas, the driver of the golf cart. Thomas testified that she was driving the cart down the middle of the roadway, and did not know at the time that appellant had been struck, but was alerted to that fact by an inmate riding in the cart with her. Thomas further testified that she ordered appellant to go to the infirmary to seek medical care.

{¶7} The magistrate concluded that no evidence had been offered showing that Thomas operated the golf cart in a negligent manner. The magistrate also found that, based on appellant's testimony that he had not tried to get out of the cart's way,

appellant's own negligence outweighed any negligence on WCI's part. The magistrate further concluded that, to the extent appellant was seeking to assert claims that the medical care he received had been inadequate, appellant had not offered any evidence to support such claims.

{¶8} Appellant filed a motion seeking to have the transcript of the trial before the magistrate prepared for him at no cost, which the court denied. Appellant then filed objections to the magistrate's findings of fact and conclusions of law. Appellant did not file the transcript or any portion of the transcript to support his objections. Instead, appellant filed an affidavit outlining what appellant claimed was additional relevant evidence to support his claims.

{¶9} The trial court considered appellant's objections to the magistrate's decision. The court overruled the objections, adopted the magistrate's decision, and entered judgment in favor of WCI. Appellant then filed this appeal, and asserts two assignments of error:

- I. The court erred in its comparative negligence analysis of accident because the trash cart was not the intervening force that caused appellant harm and driver of trash cart knew that intervening force posed a risk of causing damage.
- II. The court erred when it failed to perform a last-clear-chance doctrine analysis comparison to magistrate's contributory negligence defense findings.

{¶10} In his first assignment of error, appellant argues that the trial court made an erroneous factual finding by concluding that appellant contributed to the accident by failing to yield to the golf cart. Appellant argues that the evidence showed that he must

have yielded to the golf cart because he was not hit by the golf cart, but rather by the trailer being pulled by the golf cart.

{¶11} We are unable to review the trial court's factual findings because appellant has failed to provide a transcript of the trial before the magistrate. Without the benefit of a transcript, an appellate court has no way to review any alleged errors arising from the trial and must therefore presume the validity of the proceedings and affirm the lower court's judgment. *State ex rel. Bardwell v. Cuyahoga Cty. Bd. of Commrs.*, 127 Ohio St.3d 202, 2010-Ohio-5073. See also *Miller v. Ohio Bd. of Regents*, 10th Dist. No. 01AP-998, 2002-Ohio-1968.

{¶12} Furthermore, even if appellant could show that the evidence established that he was hit by the trailer rather than the golf cart, we agree with the trial court's conclusion that this was not a dispositive fact in the case. It is clear from the magistrate's decision that appellant's comparative negligence occurred regardless of which specific vehicle – the cart or the trailer – he failed to adequately avoid.

{¶13} Finally, we note that, while the magistrate's decision is worded in terms of comparative negligence, the magistrate also concluded that appellant had failed to establish that WCI acted negligently in the operation of the golf cart and trailer, a conclusion with which appellant does not take issue on appeal. Even assuming that the magistrate incorrectly applied principles of comparative negligence to evaluate appellant's actions, the conclusion that appellant failed to establish that WCI acted negligently would dictate entry of judgment in favor of WCI.

{¶14} Consequently, appellant's first assignment of error is overruled.

{¶15} In his second assignment of error, appellant argues that the trial court erred when it failed to apply the last-clear-chance doctrine. Under the last-clear-chance doctrine, a contributorily negligent plaintiff can recover from the defendant if the defendant had the last opportunity to avoid the harm, but failed to take reasonable steps to do so. However, Ohio courts have recognized that, with the adoption of comparative negligence, the last-clear-chance doctrine is a nullity in this state. *Wikstrom v. Hilton*, 6th Dist. No. L-02-1256, 2003-Ohio-4725. *Mitchell v. Ross* (1984), 14 Ohio App.3d 75. Consequently, the trial court did not err in failing to apply the last-clear-chance doctrine in this case.

{¶16} Accordingly, appellant's second assignment of error is overruled.

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

Judgment affirmed.

BRYANT, P.J., and KLATT, J., concur.
