



has failed to prove this allegation by a preponderance of the evidence. Accordingly, plaintiff's second objection is OVERRULED.

{¶4} In plaintiff's third objection, plaintiff alleges that "[t]he magistrate erred in ignoring plaintiff's testimony concerning the impact which caused the chair to fall, catapulting plaintiff to the ground and in finding it simply tipped over because of Sturgill's position." Upon review, the court finds that the magistrate considered plaintiff's testimony on this issue and found that the testimony was not credible. The finder of fact is charged with the responsibility of evaluating the credibility of each witness including plaintiff. Unfortunately, many witnesses do not tell the truth under oath. This dilemma arises in nearly every case tried to the court. The court agrees with the magistrate's finding after considering the totality of the evidence. Accordingly, plaintiff's third objection is OVERRULED.

{¶5} In plaintiff's fourth objection, plaintiff contends that "[t]he magistrate erred and abused his discretion in limiting the time to obtain the testimony of former inmate Edwards who was the only eyewitness to the entire incident." Upon review, the court concludes that the magistrate acted reasonably in allowing plaintiff a 30-day extension to find inmate Edwards. Plaintiff's fourth objection is OVERRULED.

{¶6} In plaintiff's fifth objection, plaintiff claims that "[t]he magistrate erred and abused his discretion in accepting the denial of Travis and Greer that nothing happened, including a simple tipping over of Sturgill's chair." Upon review, the court disagrees with plaintiff's characterization of the testimony. Officers Travis and Greer testified that they did not recall the incident described by plaintiff. They did not testify that nothing happened. Accordingly, plaintiff's fifth objection is OVERRULED.

{¶7} In short, based upon the totality of the evidence, the court agrees with the magistrate's conclusion that plaintiff did not prove by a preponderance of the evidence that defendant was negligent.

{¶8} Having overruled each of plaintiff's objections, the court adopts the magistrate's decision and recommendation as its own including the findings of fact and conclusions of law contained therein. Judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

FRED J. SHOEMAKER  
Judge

Entry cc:

Richard F. Swope  
6504 East Main Street  
Reynoldsburg, Ohio 43068

Attorney for Plaintiff

Peter E. DeMarco  
Assistant Attorney General  
65 East State St., 16th Fl.  
Columbus, Ohio 43215

Attorney for Defendant

FJS/cmd  
Filed 3-3-2003  
Jr. Vol. 734, Pgs. 151-153  
To S.C. reporter 3-4-2003