

[Cite as *Likes v. Richland Correctional Inst.*, 2005-Ohio-2539.]

IN THE COURT OF CLAIMS OF OHIO

RONALD J. LIKES :
 :
 Plaintiff : CASE NO. 2004-03799
 : Judge Joseph T. Clark
 v. : Magistrate Steven A. Larson
 :
 RICHLAND CORRECTIONAL : JUDGMENT ENTRY
 INSTITUTION :
 :
 Defendant
 :
 ::::::::::::::

{¶ 1} This case was tried to a magistrate of the court. On March 21, 2005, the magistrate issued a decision recommending judgment in favor of defendant.

{¶ 2} Civ.R. 53 provides in relevant part: “A party may file written objections to the magistrate’s decision within 14 days of the filing of a decision ***.” Although plaintiff did not file his objections to the magistrate’s decision until April 6, 2005, more than 14 days after the magistrate’s decision was issued, defendant responded on April 13, 2005.

{¶ 3} In the decision, the magistrate found that plaintiff had failed to satisfy his prima facie case for medical negligence. The magistrate also found that Drs. Williams and Houser, nurses Cain and Walsh, and Deborah Wipert were entitled to civil immunity pursuant to R.C. 2743.02(F) and 9.86.

{¶ 4} Although plaintiff’s objections were not set forth with particularity as required by Civ.R. 53(E)(3)(b), plaintiff argues that the magistrate’s decision was against the manifest weight of the evidence and contrary to law.

{¶ 5} Plaintiff, however, has failed to file a copy of the transcript for court review. Civ.R. 53(E)(3)(c) states in relevant part that “*** [a]ny objection to a finding of fact shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that fact or an affidavit of that evidence if a transcript is not available.” The reviewing court does not err in overruling objections, if

a party objects to a referee's report on the basis of weight of the evidence without providing the reviewing court with a copy of the transcript. *Zacek v. Zacek* (1983), 11 Ohio App.3d 91.

{¶ 6} Absent a complete transcript of proceedings in this case, the court is unable to conduct an independent review of all of the evidence in ruling upon the merits of plaintiff's objections. See *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 730, 1995-Ohio-272; *Wade v. Wade* (1996), 113 Ohio App.3d 414, 418-419; *Ohio Edison Co. v. Gilmore* (1995), 106 Ohio App.3d 6, 10-11. When reviewing the decision of a magistrate, "**** [w]ithout the entire transcript, the trial judge could not, under Civ.R. 53, modify or delete findings of fact." *Id.* at 11.

{¶ 7} For the reason stated above, plaintiff's objections to the factual findings of the magistrate are OVERRULED. Furthermore, upon review of the record and the magistrate's decision, the court finds that the magistrate correctly analyzed the issues and applied the law to the facts. Therefore, the remainder of plaintiff's objections are OVERRULED and the court adopts the magistrate's decision and recommendation as its own, including the findings of fact and conclusions of law contained therein.

{¶ 8} 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.

JOSEPH T. CLARK
Judge

Entry cc:

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- 3 -

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