

[Cite as *Gladden v. Grafton Correctional Inst.*, 2005-Ohio-2542.]

IN THE COURT OF CLAIMS OF OHIO

FRED GLADDEN :
 :
 Plaintiff : CASE NO. 2003-12191
 : Judge J. Craig Wright
 v. : Magistrate Steven A. Larson
 :
 GRAFTON CORRECTIONAL : JUDGMENT ENTRY
 INSTITUTION :
 :
 Defendant
 ::::::::::::::

{¶ 1} This case was tried to a magistrate of the court. On December 20, 2004, the magistrate issued a decision recommending that the court enter judgment for defendant on the issue of liability and make a determination that Corrections Officer (CO) Smith is entitled to civil immunity pursuant to R.C. 9.86 and 2743.02(F). This case is hereby, sua sponte, reassigned to Judge J. Craig Wright for review.

{¶ 2} Civ.R. 53(E)(3)(a) states: “A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision, regardless of whether the court has adopted the decision pursuant to Civ.R. 53(E)(4)(c). ***”

{¶ 3} On January 10, 2005, plaintiff filed objections. Although not stated with particularity, the thrust of plaintiff’s objections is that the magistrate’s decision was against the weight of the evidence. On January 20, 2005, defendant filed a response wherein defendant noted that plaintiff had failed to file a transcript as required by Civ.R. 53(E)(3)(c). On February 2, 2005, plaintiff replied by filing what plaintiff referred to as an affidavit of evidence. On February 8, 2005, defendant filed a motion to strike plaintiff’s affidavit.

{¶ 4} Civ.R. 53 requires a party objecting to factual findings in a magistrate’s decision to file either a trial transcript or an affidavit of evidence if no transcript is available. An affidavit of evidence must recount all relevant evidence presented at trial, instead of just the evidence an

objecting party believes was disregarded. *Chaney v. East, d.b.a. All-Pro Transmission* (1994), 97 Ohio App.3d 431. See, also, *William D. Galewood v. Terry Lumber & Supply Co.* (Mar. 6, 2002), 9th Dist. No. 20770, 2002-Ohio-947.

{¶ 5} In this case, plaintiff's affidavit does not comply with the rule because it fails to describe all evidence presented at trial. Plaintiff's affidavit merely recites his belief that the evidence he presented at trial was "true and correct to the best of my knowledge and ability." Thus, upon review, defendant's motion to strike plaintiff's affidavit is GRANTED.

{¶ 6} Since plaintiff has failed to file a copy of the transcript or a proper affidavit of evidence for court review, 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." *Ohio Edison Co.*, at 11.

{¶ 7} For the reason stated above, the objections are OVERRULED. Furthermore, upon review, the court determines that there is no error of law or other defect on the face of the magistrate's decision 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. Additionally, the court determines that CO Smith is entitled to immunity pursuant to R.C. 9.86 and 2743.02(F) and that the courts of common pleas do not have jurisdiction over this matter. 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.

J. CRAIG WRIGHT
Judge

Entry cc:

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