## IN THE COURT OF CLAIMS OF OHIO

www.cco.state.oh.us

JAMES D. SULLIVAN :

Plaintiff : CASE NO. 2003-02161 Judge J. Craig Wright

v. : Magistrate Steven A. Larson

OHIO DEPARTMENT OF : JUDGMENT ENTRY

REHABILITATION AND CORRECTION

:

Defendant

- $\{\P\ 1\}$  This case was tried to a magistrate of the court. On April 18, 2005, the magistrate issued a decision recommending judgment for defendant.
- $\{\P\ 2\}$  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). \*\*\*"
- $\{\P 3\}$  Plaintiff timely filed an objection stating that "[t]he Magistrate erred in omitting certain material facts leading up to the conduct which is the subject of this action for libel and defamation." Although plaintiff's objections were not set forth with particularity as required by Civ.R. 53(E)(3)(b), plaintiff is essentially arguing that the magistrate's decision was against the manifest weight of the evidence.
- $\{\P 4\}$  However, plaintiff 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.

- {¶5} 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." Ohio Edison Co. v. Gilmore, at 11.
- $\{\P 6\}$  For the reason stated above, plaintiff's objection is 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.
- $\{\P 7\}$  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.

J. CRAIG WRIGHT Judge

Entry cc:

James D. Sullivan Plaintiff, Pro se 931 Chelston Road South Euclid, Ohio 44121

Tracy M. Greuel Assistant Attorney General 150 East Gay Street, 23rd Floor Columbus, Ohio 43215-3130

Timothy C. Loughry Assistant Attorney General Executive Agencies Section 30 East Broad Street, 17th Floor Columbus, Ohio 43215

LM/cmd Filed May 20, 2005 To S.C. reporter June 14, 2005 Attorneys for Defendant