

[Cite as *Griffin v. Ohio Dept. of Rehab. & Corr.*, 2005-Ohio-4466.]

IN THE COURT OF CLAIMS OF OHIO
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MARK GRIFFIN :

Plaintiff : CASE NO. 2004-05007
Judge J. Craig Wright
v. : Magistrate Steven A. Larson

DEPARTMENT OF REHABILITATION : JUDGMENT ENTRY
AND CORRECTIONS, et al. :
Defendants :
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This case was tried to a magistrate of the court. On June 6, 2005, the magistrate issued a decision recommending judgment for defendants. The magistrate also recommended that the court issue a determination that Donald Seymour is entitled to civil immunity pursuant to R.C. 9.86 and 2743.02(F) and that the courts of common pleas do not have jurisdiction over any civil actions that may be filed against him based upon the allegations in this case.

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). ***"

Plaintiff has timely filed his objections, however plaintiff failed to file a transcript supporting his objections as required by Civ.R. 53(E)(3)(c).

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* (1995), 106 Ohio App.3d 6, 11. Accordingly, to the extent that plaintiff objects to the factual findings of the magistrate, those objections are OVERRULED.

However, plaintiff also raises several objections based on the magistrate's application of law. Specifically, plaintiff objects to: (1) the magistrate's decision that a violation of R.C. 4511.21 requires a showing that a driver collided with an object; (2) the magistrate's finding that plaintiff must prove a specific injury in order to prevail; and (3) the magistrate's finding that in order to prevail on a negligence claim, plaintiff must prove by a preponderance of the evidence that defendants owed him a duty, and that defendants breached that duty. As to these objections, the court finds that the correct legal standards have been applied.

Additionally, plaintiff objects to the Office of Risk Management (ORM) "fail[ing] to make an appearance before the trial court on the day of the trial." The record, however, establishes that on July 19, 2004, the court issued an entry granting defendant's motion to add ORM as an additional defendant, to waive service, and to incorporate defendant's, Department of Rehabilitation and Correction, answer as ORM's answer. As a state entity, ORM was thereafter represented by the Ohio Attorney General's office and, thus, "appeared" in this case.

Plaintiff also objects to the magistrate's failure to apply the Ohio seatbelt laws. However, the court notes that the magistrate's decision contains no discussion of seatbelts, and in the absence of a transcript of the evidence, the court is unable to determine whether the seatbelt law is applicable in this case. Therefore, plaintiff's objection is OVERRULED.

Upon review of the record, the magistrate's decision, and the objections, the court finds that the magistrate correctly analyzed the issues and applied the law to the facts. Therefore, the 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. Judgment is rendered in favor of defendants. Additionally, the court determines that Donald Seymour is entitled to civil immunity pursuant to R.C. 9.86 and 2743.02(F) and that the courts of common pleas do not have jurisdiction over any civil actions that may be filed against him based upon the allegations in this case. 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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