

[Cite as *Sanders v. Blue*, 2015-Ohio-4376.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102447

REGINALD SANDERS

PLAINTIFF-APPELLANT

vs.

MAURICE L. BLUE

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cleveland Municipal Court
Case No. 2012 CVI 020635

BEFORE: Kilbane, P.J., Stewart, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: October 22, 2015

APPELLANT

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APPELLEE

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MARY EILEEN KILBANE, P.J.:

{¶1} Plaintiff-appellant, Reginald Sanders (“Sanders”), pro se, appeals from the trial court judgment in favor of pro se defendant-appellee, Maurice Blue (“Blue”), d.b.a. Inner Vision Tattoos (“Inner Vision”), in Sanders’s small claims action for damages resulting from a tattoo. Having reviewed the record and the controlling case law, we find no error and affirm.

{¶2} On December 29, 2011, Sanders, who resides in Arizona, contacted Blue concerning the design of a large tattoo for his right shoulder and arm. The parties met on January 5, 2012, agreed on a design, and then Blue completed the tattoo. Several days later, Sanders sent a text message to Blue about a misshapen portion of the tattoo and the color of the tattoo.

{¶3} On December 13, 2012, Sanders filed a small claims complaint against Blue, alleging that the tattoo was not properly drawn, and resulted in major scarring. Sanders sought \$1,500 for reimbursement of medical expenses, revisions to the tattoo by another tattoo artist, return trips to Cleveland, and other costs. Blue denied liability.

{¶4} The matter was set for a hearing on October 1, 2013. Blue failed to appear, and on October 18, 2013, judgment was awarded to Sanders. Blue later objected that he did not have notice of this hearing, and the judgment was vacated. A second hearing was held before a magistrate on July 3, 2014.

{¶5} A partial transcript of the July 3, 2014 hearing has been provided on appeal.

According to the partial transcript, Sanders testified that Blue had completed a tattoo for Sanders's girlfriend. While planning a visit to Cleveland, he sent Blue a copy of a tattoo that he wanted on his shoulder, which was to partially cover an existing scar on Sanders's right shoulder. After Sanders arrived in town, the two men worked out the details of the design. Blue completed the tattoo and charged Sanders \$280. The next day, Sanders experienced swelling at the tattoo site. After the swelling subsided, Sanders wanted the tattoo to be a bit darker. Blue informed Sanders that revisions could not be completed until the tattoo had healed for one month, or scarring would occur. He requested a refund of \$75 off his purchase price, but Blue refused.

{¶6} Sanders presented medical records from dermatologist Dr. Xuan Nguyen, M.D. ("Nguyen") that provided:

39 y/o man with trauma (2007) on right shoulder from deep cut resulting in hypertrophic scar. Pt was then treated with kenalog injection, responded well. Pt then had tattoo to cover scar (1/20/12), the method of tattooing that the tattoo artist in Ohio used was too deep creating hypertrophic scars within the shoulder and arm of the pt. Pt then had tattoo retouched in Arizona to hide new scars. New tattoo artist tattooed entire area without incident of hypertrophic or keloid damage.

{¶7} Sanders also submitted letters from other tattoo artists who stated that the scarring and design issues were the result of improper depth of Blue's design, and the use of improper type of ink. Revisions of the tattoo were completed in Arizona in April and May of 2012, at a cost of \$200.

{¶8} For the defense, Blue testified that he is a licensed artist. He originally met with Sanders in 2010 regarding the design. Sanders paid him \$60 to draw the design, but after two hours of drawing, Sanders was still not satisfied, and Blue refunded the payment. The following year, Sanders contacted him again. They agreed to a design, and Blue completed the tattoo. Blue asserted that Sanders signed a release of liability, but he had no record of such document. Shortly afterward, Sanders complained that the tattoo looked faded, but did not mention scarring. Blue said that he would revise the tattoo when Sanders returned to Cleveland. Blue maintained that scarring subsides as the area heals, and that keloids, or raised scars, may sometimes result, depending upon the individual's skin type.

{¶9} On September 9, 2014, the magistrate issued a three-page decision in favor of Blue. In relevant part, the magistrate found:

[Sanders] has not met his burden of proof. There is no evidence that the parties discussed * * * any problems * * * other than fading of the tattoo and straight lines on some parts of the tattoo. [Blue] offered to cure the problem. Moreover, there were no complaints from the plaintiff regarding any scarring associated with [Blue's] work. Although [Sanders] has submitted various kinds of evidence to the court, this evidence is neither sufficient nor creditable to support his claim.

{¶10} Sanders filed objections to the magistrate's report on November 1, 2014. Sanders asserted that Blue presented false and unauthenticated evidence during the

hearing, and complained that the magistrate disregarded his evidence pertaining to hypertrophic scarring and costs of treating the scarring and additional tattoos to correct the tattoo. On January 5, 2015, the trial court overruled the objections and entered judgment in favor of Blue. On April 16, 2015, Sanders filed a partial verbatim transcript with the lower court.

{¶11} Sanders now appeals, pro se, and assigns ten errors for our review. Where appropriate, we will address the assignments of error together and out of order.

Vacation of October 18, 2013 Judgment Against Blue

{¶12} In the first assignment of error, Sanders complains that the trial court erroneously vacated the default judgment awarded to him after Blue failed to appear at the hearing on October 1, 2013.

{¶13} The decision of a trial court regarding a motion to vacate a judgment will not be overturned on appeal absent an abuse of discretion. *Corley v. Sullivan-Busman*, 8th Dist. Cuyahoga No. 99420, 2013-Ohio-3153, ¶ 8.

{¶14} Ohio courts have traditionally held that some form of notice of a trial date is required to satisfy due process. *Ohio Valley Radiology Assocs., Inc. v. Ohio Valley Hosp. Assn.*, 28 Ohio St.3d 118, 125, 502 N.E.2d 599 (1986).

{¶15} In this matter, Blue objected to the decision rendered in his absence following the October 1, 2013 hearing, and complained that he “was not sent or given service notification of the trial date.” This statement is uncontradicted in the record. The summary of the docket entries provided on appeal indicates that on July 25, 2013,

notice of the October 1, 2013 hearing was issued, but the entry itself and further additional records as to the mailing of notice of this hearing have not been provided on appeal and are not part of the record presented by Sanders. Therefore, we presume regularity in the lower court's conclusion that proper advance notice of the October 1, 2013 hearing was not provided. Accordingly, we are unable to conclude that the trial court abused its discretion when it vacated the October 2013 judgment.

{¶16} The first assignment of error is without merit.

Blue's Claim of Waiver of Liability

{¶17} In his second assignment of error, Sanders complains that the trial court erred in permitting Blue to testify to the waiver of liability, which was not provided in evidence. The trial court's written decision clearly demonstrates that the court did not rely upon Blue's claim of waiver. This assignment of error therefore lacks support in the record and is overruled. *L.A. & D., Inc. v. Bd. of Lake Cty. Commrs.*, 67 Ohio St.2d 384, 388, 423 N.E.2d 1109 (1981).

Blue's Text Messages

{¶18} In his fifth assignment of error, Sanders complains that the trial court erred in admitting Blue's unauthenticated text messages to and from Sanders about the tattoo.

{¶19} The admission or exclusion of evidence is within the discretion of the trial court and will ordinarily be reviewed for an abuse of discretion. *Wilson v. Whitmore*, 8th Dist. Cuyahoga No. 94720, 2010-Ohio-5489, ¶ 13.

{¶20} In this matter, Sanders and Blue both acknowledged the text messages, including their content, in their respective testimony to the court. Sanders also submitted the text messages to the court in his case-in-chief. We therefore find no abuse of discretion.

{¶21} The fifth assignment of error is without merit.

Claimed Refusal to Consider Sanders's Evidence

{¶22} In his sixth, seventh, and ninth assignments of error, Sanders claims that the trial court refused to consider certain evidence. In the sixth and the ninth assignments of error, he complains that the trial court erred in refusing to admit his evidence regarding his consultation with a dermatologist, his medical bills, and the opinions of the Arizona tattoo artists who revised the tattoo.

{¶23} The partial transcript submitted on appeal indicates that the magistrate accepted all of the documentation provided by Sanders. (Tr. 16-17.) Therefore, to the extent that Sanders claims that this evidence was not admitted, this claim lacks support in the record and is overruled. *Id.* To the extent that Sanders claims that the court erred in not crediting this evidence, we note that none of the offered opinions were within a “reasonable degree of certainty or reasonable degree of certainty within the particular knowledge of his professional experience,” as required under Evid.R. 702. *State v. Nemeth*, 82 Ohio St.3d 202, 211, 1998-Ohio-376, 694 N.E.2d 1332.

{¶24} In the seventh assignment of error, Sanders asserts that the court erred in refusing to consider his claim that Blue used an improper ink for the tattoo. We note

however, that Sanders did not present sufficient evidence to demonstrate that the ink used was improper. This claim therefore lacks merit.

{¶25} In accordance with the foregoing, the sixth, seventh, and ninth assignments of error are without merit.

Failure to Award Judgment to Sanders

{¶26} In the remaining assignments of error (the third, fourth, eighth, and tenth assignments of error), Sanders argues that the lower court erred in refusing to enter judgment for him on his various claims for relief, including breach of contract, negligence, wanton and wilful injury, and lack of informed consent. He therefore argues that the trial court deprived him of his right to a fair trial.

{¶27} Pursuant to Civ.R. 53(D), objections to a magistrate's factual finding "shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available." Civ.R. 53(D)(3)(b)(iii). In the absence of a transcript, the trial court must accept the magistrate's findings of fact and may only examine the legal conclusions drawn from those facts. *Wells Fargo Bank v. Rennert*, 8th Dist. Cuyahoga No. 101454, 2014-Ohio-5292, ¶ 13. Appellate review of a trial court's adoption of a magistrate's finding of fact is also determined by whether the trial court's adoption of that finding constituted an abuse of discretion. *Id.* at ¶ 14.

{¶28} "When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to

those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm." *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980).

{¶29} In this matter, the record indicates that on April 16, 2015, or several months after the lower court overruled Sanders's objections to the magistrate's report, Sanders filed a partial verbatim transcript with the lower court. From that time line of events, we are unable to conclude that the trial court abused its discretion in awarding judgment to Blue. In any event, Sanders acknowledges that the transcript is not a complete verbatim transcription of the hearing, but is instead only a partial transcript. In the absence of a complete record, this court must presume regularity in the trial court's proceedings.

{¶30} Therefore, the third, fourth, eighth, and tenth assignments of error are without merit.

{¶31} Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cleveland Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

MELODY J. STEWART, J., and
ANITA LASTER MAYS, J., CONCUR