

[Cite as *Steiskal v. Dundee*, 2001-Ohio-3402.]

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

A. ROBERT STEISKAL)
)
) PLAINTIFF-APPELLEE)
)
) VS.) O P I N I O N
)
) DONALD J. DUNDEE)
)
) DEFENDANT-APPELLANT)

CHARACTER OF PROCEEDINGS: Civil Appeal from Mahoning
County Area Court No. 4 of
Mahoning County, Ohio
Case No. 99CVI00484

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellee: Atty. A. Robert Steiskal
4431 Mahoning Avenue
Youngstown, Ohio 44515-1602

For Defendant-Appellant: Donald J. Dundee, Pro se
805 East Florida Avenue
Youngstown, Ohio 44502

JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Joseph J. Vukovich

Dated: September 24, 2001

WAITE, J.

{¶1} This timely appeal arises from the trial court's judgment

adopting a magistrate's decision ordering Appellant, Donald J. Dundee, to pay Appellee, Attorney A. Robert Steiskal, \$1,000.00 for legal work. For the following reasons, we hereby affirm the judgment of the trial court.

{¶2} Appellant hired Appellee to perform legal work for collection of disability benefits. After Appellant received his benefits, Appellee billed Appellant for his services. Appellant refused to pay Appellee, claiming that he did all the work himself and that Appellee did not do any substantial work.

{¶3} Appellee filed a small claims complaint against Appellant in Mahoning County Area Court No. 4 in Austintown seeking payment of \$2,004.00. On July 28, 1999, a magistrate's hearing was held. On August 11, 1999, the magistrate filed his decision finding for Appellee in the amount of \$1,000.00 plus interest and court costs.

On August 13, 1999, Appellant filed what can be construed as a notice of intent to file objections to the magistrate's decision. Appellant did not subsequently file any specific objections to the magistrate's decision. On November 7, 1999, the trial court adopted the magistrate's decision. Appellant filed his notice of appeal on November 22, 1999.

{¶4} While there is no assignment of error contained anywhere in Appellant's filings, it appears as if he is alleging that the magistrate's decision was arbitrary, unconscionable or unreasonable.

{¶5} A *pro se* appellant is bound by the same rules and procedures as those litigants who retain counsel. *Myers v. First Nat. Bank of Cincinnati* (1981), 3 Ohio App.3d 209, 210. We do traditionally grant a modest amount of procedural latitude to parties who are unrepresented by counsel. Nevertheless, we cannot disregard Appellant's complete failure to set forth an assignment of error as required by App.R. 16 or his failure to provide this Court with a transcript of the trial court proceedings or an acceptable alternative to a transcript as described in App.R. 9. Although Appellant attempted to create a "statement of proceedings," he did not serve this on Appellee as required by App.R. 9(C).

{¶6} Furthermore, the record reflects that both parties were present at the September 28, 1999, magistrate's hearing. After the magistrate filed his decision on August 11, 1999, Appellant failed to specifically object to the decision. Civ.R. 53(E)(4) allows a trial court to adopt the magistrate's decision when objections are not made and there is no error of law or other defects in the proceedings. Because Appellant did not make proper objections to the magistrate's decision, the trial court was permitted to adopt the decision.

{¶7} "Pursuant to Civ.R. 53(E)(3)(b), a party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law unless the party has objected to that finding or conclusion under this rule. Civ.R. 53(E) imposes an affirmative duty on the parties to make timely specific objections in writing

to the trial court, identifying any error of fact or law in the magistrate's decision. Therefore on appeal, a party may not assign as error an abuse of discretion of the trial court as an alternative to filing specific objections to the magistrate's decision."

{¶8} *Huffman v. Huffman* (June 21, 2000), Mahoning App. No. 98 CA 136, unreported, citing *Waltimire v. Waltimire* (1989), 55 Ohio App.3d 275.

{¶9} Appellant has highlighted no evidence in the record to contradict the trial court's findings or to support his allegation that the magistrate abused its discretion. Indeed, Appellant's failure to provide a transcript of the trial court's proceedings prevents this Court from examining the evidence supporting the trial court's judgment in that regard. We are left with no choice but to presume the regularity and correctness of the proceedings below. *Robbins v. Bennett* (Sept. 26, 1997), Mahoning App. No. 96 CA 77, unreported, citing, *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199.

{¶10} Appellant's assignment of error is overruled and we hereby affirm the judgment of the trial court.

{¶11} Donofrio, J., concurs.

ikovich, P.J., concurs.