

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
MAHONING COUNTY

J. GRENGA,

Plaintiff-Appellant,

v.

RANDY WARE,

Defendant-Appellee.

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**OPINION AND JUDGMENT ENTRY**  
**Case No. 21 MA 0015**

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Civil Appeal from the  
Youngstown Municipal Court of Mahoning County, Ohio  
Case No. 19CVI03228Y

**BEFORE:**

Carol Ann Robb, Judge. Larry A. Jones and Anita Laster Mays, Judges of the  
Eighth District Court of Appeals, Sitting by Assignment.

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**JUDGMENT:**

Affirmed.

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*Joseph Robert Grenga, pro se*, 56 Wayne Avenue, Youngstown, Ohio 44502, for Plaintiff-Appellant and

*Randy Ware, pro se*, 906 South Avenue, Youngstown, Ohio, 44502 for Defendant-Appellee. No Brief Filed.

Dated: September 28, 2021

**Robb, J.**

{¶1} Plaintiff-Appellant Joseph Grenga appeals the resolution of his small claims matter in Youngstown Municipal Court. As explained below, the issues raised in the appeal were not preserved pursuant to Civ.R. 53 and accordingly are waived. The decision of the small claims court is affirmed.

Statement of the Case

{¶2} This is the appeal of a small claims matter. Grenga filed a complaint in July 2019 seeking the money owed on unpaid invoices from Defendant-Appellee Randy Ware. Grenga requested \$4,045.95 in damages and multiple invoices were attached to the complaint. Ware filed a counterclaim for unpaid invoices in the amount of \$1,730.00. No invoices were attached to the counterclaim.

{¶3} The case proceeded to a hearing before the magistrate. The magistrate heard testimony and entered judgment for Grenga in an amount lower than requested. The magistrate's entry stated:

Upon the evidence of testimony of both parties, the Court finds Plaintiff proved invoices to Defendant in the sum of \$1,233.27. Defendant proved invoices to Plaintiff in the sum of \$630.00. Wherefore, net judgment to Plaintiff in the sum of \$603.27. Each party shall bear their own court costs.

12/18/20 Magistrate's Decision.

{¶4} The magistrate's decision contains the mandatory Civ.R. 53 notice that objections to factual findings or legal conclusions are required to preserve issues for appeal.

{¶5} Grenga filed a request for findings of fact and conclusions of law on January 14, 2021, which was clearly untimely. It was filed beyond the seven-day time limit authorized by Civ.R. 53(D)(3)(a)(ii). The following day the magistrate denied the request as untimely. 1/15/21 Magistrate's Decision. On January 28, 2021, the Municipal Court

adopted the decision to deny the request for findings of fact and conclusions of law stating it was filed beyond the seven-day time limit. 1/28/21 J.E.

{¶6} The Municipal Court adopted the magistrate's December 18, 2020 decision. However, that judgment entry did not set forth the judgment. 12/29/20 J.E. Likewise, the Municipal Court's adoption of the magistrate's decision to deny the request for findings of fact and conclusions of law dated January 15, 2021 also did not enter a judgment regarding the amount of damages. Thus, there was no final appealable order issued.

{¶7} Grenga filed a notice of appeal on February 16, 2021.

{¶8} Due to the lack of a final appealable order, this court found the appeal to be premature and remanded the matter for the limited purpose of entering a final appealable order stating the rights and obligation of the parties. 6/24/21 J.E. The Municipal Court issued an order complying with our judgment on July 23, 2021 stating:

Upon the evidence of testimony of both parties, the Court finds Plaintiff proved invoices to Defendant in the amount of \$1,233.27. Defendant proved invoices to plaintiff in the sum of \$630.00. Wherefore, net judgment to Plaintiff in the amount of \$603.27. Each party shall bear their own court costs. This is a final order of this court.

7/23/21 J.E.

{¶9} Grenga filed a brief on April 6, 2021 raising four assignments of error.

First Assignment of Error

"The Magistrate erred to the prejudice of the Appellant by overstepping by enlarging their authority under Ohio Civ.R. 53 in altering a mutually written contract without the consent of the parties."

{¶10} Grenga argues the magistrate exceeded his authority by altering the contracts between the parties. Grenga contends his invoices indicated Ware owed him \$4,045.59 and the magistrate changed that amount to \$1,233.27 and then reduced it by another \$630.00. This meant he was only awarded \$600.00. He contends this decision altered the contract.

{¶11} Grenga's argument is without merit and is not preserved for appeal. This matter was a trial on a small claims complaint and counterclaim before a magistrate.

Civ.R. 53(C)(1)(b) authorizes a magistrate to preside over a trial that will not be tried to the jury. The magistrate heard the evidence and found Grenga only proved he was owed \$1,233.27. The magistrate also found Ware proved Grenga owed him \$630.00. These are factual determinations made by the magistrate based on the evidence.

{¶12} Civ.R. 53(D)(3)(b)(iv) states, “[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b).” Written objections to the magistrate’s decision were required to be filed within 14 days of the magistrate’s filing of the decision regardless of whether the court adopted the decision. Civ.R. 53(D)(3)(b)(i). Admittedly, “[i]f a party makes a **timely** request for findings of fact and conclusions of law, the time for filing objections begins to run when the magistrate files a decision that includes findings of fact and conclusions of law.” (Emphasis added.) Civ.R. 53(D)(3)(b)(i). A timely request for findings of fact and conclusions of law is made either before the entry of the magistrate’s decision or within 7 days after the filing of the magistrate’s decision. Civ.R. 53(D)(3)(a)(ii).

{¶13} The magistrate’s December 18, 2020 decision contained the Civ.R. 53(D)(3)(b)(iv) waiver notification as is required by Civ.R. 53(D)(3)(a)(iii). While there was a request for findings of fact and conclusions of law, that request was not timely; it was filed 27 days after the filing of the magistrate’s decision. Therefore, the time for filing objections was not extended. Regardless, Grenga did not file objections. Consequently, the magistrate’s factual determinations were not preserved for appeal and is waived.

{¶14} The first assignment of error is meritless.

#### Second Assignment of Error

“The court abused their discretion by the unorthodox manner in conduction of the hearing.”

{¶15} Grenga asserts in this assignment of error, the hearing was not conducted in accordance with the Ohio Civil Rules. This assignment of error appears to specifically address the counterclaim and the evidence (or lack thereof) Ware offered in support of his claim. He appears to find fault with the evidence Ware used to substantiate the claim.

Essentially, Grenga disagrees with the magistrate's conclusion that Ware proved Grenga owed him \$630.00.

{¶16} As stated above, the magistrate made factual conclusions based on the evidence presented. To preserve his disagreement with those issues for appeal Grenga was required to file objections. He did not and thus, this issue is not preserved for appeal.

{¶17} It is noted that in the brief, Grenga does state the court overruled his "written objections concerning the conduct of the trial." The docket and file in this case contain no written objections to the magistrate's December 18, 2020 decision. Grenga did file a written objection to an earlier decision by the court rejecting/reversing the magistrate's grant of default judgment to Grenga because Ware failed to appear for the first trial. 9/4/2020 Objections. These objections primarily focus on reversing/rejecting the default judgment, however they do additionally indicate Grenga finds fault with the quality of evidence Ware used to support his counterclaim. The objection was overruled. 9/17/20 J.E.

{¶18} Any issues with the evidence used at trial to prove the counterclaim was not preserved for appeal; the earlier September 2020 objection did not preserve that issue. Grenga's complaint that evidence submitted at trial was not in conformity with Civil or Evidence rules required Grenga to object to the magistrate's December 18, 2020 decision specifically determining what the evidence submitted at trial proved. Since there was no objection from the December 18, 2020 decision, the issue raised in this assignment was not preserved for appeal. Furthermore, it is noted that some of his argument may concern the evidence rules. Generally, the rules of evidence do not apply to proceedings in the small claims division of a municipal court. *Sheridan v. Davila*, 5th Dist. Stark No. 2013 CA 00203, 2014-Ohio-3196, ¶ 35, citing Evid.R. 101(C)(8).

{¶19} In conclusion, this assignment of error lacks merit because the arguments were not preserved for appeal and are waived.

#### Third Assignment of Error

"The trial court committed plain error by altering twelve (12) mutually written contracts made between Appellant and Appellee, without consent of the parties therein."

{¶20} This assignment of error is similar to the first assignment of error. However, instead of arguing the magistrate erred, Grenga now argues the trial court committed

plain error by adopting the magistrate's December 18, 2020 decision, which according to him constituted an alteration of the contracts.

{¶21} Civ.R. 53 does indicate that plain error is the only issue reviewable on appeal when no objections are filed. However, the arguments Grenga asserts are not plain error arguments. As stated above, this matter was a trial on a small claims complaint and counterclaim before a magistrate. Evidence was heard and the magistrate determined what was proven. The alleged errors Grenga asserts concern findings and conclusions the magistrate made based on the evidence presented. The trial court adopted those findings and conclusions. Grenga was required to file objections to the magistrate's findings and conclusions in order to preserve the issue for appeal. Furthermore, it is noted that the magistrate's findings and conclusions may have required a transcript for the trial court to review any objections filed. Civ.R. 53(D)(3)(b)(iii) ("An objection to a factual finding, whether or not specifically designated as a finding of fact under Civ.R. 53(D)(3)(a)(ii), 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. With leave of court, alternative technology or manner of reviewing the relevant evidence may be considered. The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections.").

{¶22} This assignment, as with the above assignments, was not preserved for appeal and is deemed waived. This assignment of error is meritless.

#### Fourth Assignment of Error

"The trial court abused their discretion by using Appellee's undocumented counterclaim as evidence as a set-off of the amount of the Invoices."

{¶23} It is noted the text of the assignment states the trial court abused its discretion; however, in the body of the brief he asserts plain error. As stated above, plain error is the only issue that can be raised when objections were not filed.

{¶24} This assignment of error is similar to the second assignment of error. However, instead of arguing the magistrate erred in regards to the counterclaim, Grenga

now argues the trial court committed plain error by adopting the magistrate's decision concerning the counterclaim. Genga asserts, once again, the evidence supporting the counterclaim was only the allegations in the counterclaim and could not be considered credible evidence.

{¶25} It is not clear what evidence was presented at trial because there were no objections and no transcript filed. However, what is clear is the arguments Genga is asserting are ones that required objections to preserve them for appeal. His own statement about credibility demonstrates that it was a credibility question of whether to believe Genga or Ware concerning what money was owed. This is the situation where objections are required and a transcript (or an equivalent) are required.

{¶26} As there were no objections, the issues raised in this assignment of error were not preserved for appeal and are deemed waived. This assignment of error is meritless.

#### Conclusion

{¶27} The arguments raised in the four assignments of error were not preserved for appeal and are deemed waived. All assignments of error are meritless and the small claims decision is affirmed.

Jones, J., concurs.

Laster Mays, J., concurs.

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For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Youngstown Municipal Court of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**