

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

DEMOND HILL,

Plaintiff, : Case No. 3:08 cv 195

-vs-

AIRTRAN AIRWAYS, INC.,

Defendant. : Magistrate Judge Michael R. Merz

ORDER CONSTRUING OBJECTIONS AS A MOTION TO AMEND THE JUDGMENT

This case is before the Court on Plaintiff's Objections to the Magistrate's 6.19.09 Decision and Order (Doc. No. 36). For relief, Plaintiff requests the "trial judge to review this matter de novo, reject the Magistrate's 'Decision and Order', and deny summary judgment on Plaintiff's retaliation claim." At both the beginning and end of the document, Plaintiff's counsel evinces his understanding that Plaintiff is entitled to review of the Decision and Order by some "trial judge" other than the Magistrate Judge.¹

The parties did not initially consent to plenary magistrate judge jurisdiction when the case was filed or when they filed their Fed. R. Civ. P. 26(f) Report (See Doc. No. 11). However, when the parties were unable to complete discovery within the time set by District Judge Rose, they were invited to reconsider that decision (See Doc. No. 19). They did so and advised Courtroom Deputy

¹Plaintiff's counsel refers throughout the document to the undersigned judicial officer as "magistrate." The proper title for persons holding office under 28 U.S.C. §§ 631, et seq., is "magistrate judge." Amendment of the title from "magistrate" was adopted in § 321 of Publ. L. 101-650, effective December 1, 1990.

Gayle Hays unanimous consent; Judge Rose referred the case on that basis on December 12, 2008 (Doc. No. 22).

When a case has been referred to a magistrate judge under 28 U.S.C. § 636(c), that judicial officer has authority to “conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case.” § 636(c)(1). Review is by appeal to “the appropriate United States court of appeals.” § 636(c)(3). Therefore Plaintiff is not entitled to review of the Decision and Order by another judge of this Court.

However, judgment in this case was entered on June 19, 2009 (Doc. No. 35). Under Fed. R. Civ. P. 59(e), a party may file a motion to alter or amend a judgment within ten days after its entry. In this case, that time would not expire until July 8, 2009. In the Objections, Plaintiff makes a number of claims of legal error by the Magistrate Judge of types which are appropriate for consideration on a Rule 59(e) motion. See Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d* §2810.1. The Court has the authority to construe a filing otherwise labeled to be a motion to amend the judgment, provided it is filed within the required time. *McConocha v. Blue Cross & Blue Shield Mut.*, 930 F. Supp. 1182, 1184 (N.D. Ohio 1996), citing *Moody v. Pepsi-Cola Metropolitan Bottling Co.*, 915 F.2d 201, 206 (6th Cir. 1990).

Therefore, Plaintiff’s Objections will be considered as a motion to amend the judgment under Fed. R. Civ. P. 59(e). Defendant’s memorandum in opposition is due under S. D. Ohio Civ. R. 7.2 not later than July 20, 2009. Plaintiff may file a reply memorandum within the further time allowed by Rule 7.2.

June 25, 2009.

s/ **Michael R. Merz**
United States Magistrate Judge