

[Cite as *Lewis v. Ohio State Univ. Med. Ctr.*, 2004-Ohio-5927.]

IN THE COURT OF CLAIMS OF OHIO

MARK LEWIS, Admr.	:	
	:	
Plaintiff	:	CASE NO. 2001-08153
	:	Judge Fred J. Shoemaker
v.	:	
	:	<u>JUDGMENT ENTRY</u>
OHIO STATE UNIVERSITY MEDICAL	:	
CENTER, et al.	:	
	:	
Defendants	:	
.....	:	

{¶ 1} This case was tried to a magistrate of the court. On August 31, 2004, the magistrate issued a decision recommending judgment for defendants.

{¶ 2} 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 timely filed his objections. Defendants filed a response.

{¶ 3} Although plaintiff has objected to several factual findings of the magistrate, plaintiff has failed to file a copy of the transcript. Civ.R. 53(E)(3)(c) states in relevant part that “\*\*\* [a]ny objection to a finding of fact shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that fact or an affidavit of that evidence if a transcript is not available.” The reviewing court does not err in overruling objections, if a party objects to a referee’s report on the basis of weight of the evidence without providing the reviewing court with a copy of the transcript. *Zacek v. Zacek* (1983), 11 Ohio App.3d 91.

{¶ 4} Here, however, plaintiff relies upon several exhibits admitted at trial and the deposition of Robert Gibson in support of his objections. Although the deposition was admitted into evidence in this case, it represents only a portion of the evidence presented to the magistrate. Absent a complete transcript of proceedings in this case, the court is unable to conduct an independent review

of all of the evidence in ruling upon the merits of plaintiff's objections. See *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 730, 1995-Ohio-272; *Wade v. Wade* (1996), 113 Ohio App.3d 414, 418-419; *Ohio Edison Co. v. Gilmore* (1995), 106 Ohio App.3d 6, 10-11. (“\*\*\* [w]ithout the entire transcript, the trial judge could not, under Civ.R. 53, modify or delete findings of fact.”)

{¶ 5} Moreover, plaintiff is not entitled to use an alternative method to support his objections before showing that a transcript is unavailable. *Layne v. Layne*, Franklin App. No. 03AP-1058, 2004-Ohio-3310. Because plaintiff did not show that the complete trial transcript was unavailable he may not rely on the exhibits and deposition in support of his objections. Id.

{¶ 6} For the reason stated above, the objections are OVERRULED. Furthermore, upon review, the court determines that there is no error of law or other defect on the face of the magistrate's decision and the court adopts the magistrate's decision and recommendation as its own, including the findings of fact and conclusions of law contained therein. Additionally, in fairness to plaintiff, the court has also reviewed the evidence cited by plaintiff. Upon review of the evidentiary material, the court finds that the decision of the magistrate is supported by the greater weight of the evidence and is not contrary to law.

Judgment is rendered in favor of defendants. 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.

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FRED J. SHOEMAKER  
Judge

Entry cc:

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Filed November 1, 2004  
To S.C. reporter November 5, 2004