

IN THE COURT OF CLAIMS OF OHIO

MARCH SOUTH

Plaintiff

v.

CLEVELAND STATE UNIVERSITY

Defendant

Case No. 2021-00096JD

Judge Patrick E. Sheeran
Magistrate Scott Sheets

JUDGMENT ENTRY

{¶1} Plaintiff March South brought this action alleging that she was injured on March 24, 2017 when a seat broke under her as she was attending a show at Defendant’s Wolstein Center. The case was tried before a Magistrate. On July 25, 2022, the Magistrate issued a Decision, in which he recommended judgment in favor of Defendant. On August 8, 2022, Plaintiff filed an Objection to the Magistrate’s Decision, which is now before the Court for consideration. For the reasons set forth below, the Court will overrule Plaintiff’s Objection and adopt the Magistrate’s Decision.

Standard of Review

{¶2} “A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision * * *.” Civ.R. 53(D)(3)(b)(i). Objections “shall be specific and state with particularity all grounds for objection.” Civ.R. 53(D)(3)(b)(ii). “An objection to a factual finding, whether or not specifically designated as a finding of fact * * *, shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding * * *.” Civ.R. 53(D)(3)(b)(iii).

{¶3} The court “shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law.” Civ.R. 53(D)(4)(d). In reviewing the objections, the court does not act as an appellate court but rather conducts “a de novo review of the facts and

conclusions in the magistrate's decision." *Ramsey v. Ramsey*, 10th Dist. Franklin No. 13AP-840, 2014-Ohio-1921, ¶ 16-17. However, "[i]f an objecting party fails to submit a transcript or affidavit, the trial court must accept the magistrate's factual findings and limit its review to the magistrate's legal conclusions." *Triplett v. Warren Corr. Inst.*, 10th Dist. Franklin No. 12AP-728, 2013-Ohio-2743, ¶ 13. "Whether or not objections are timely filed, a court may adopt or reject a magistrate's decision in whole or in part, with or without modification." Civ.R. 53(D)(4)(b).

Plaintiff's Objection

{¶4} Plaintiff's Objection does not clearly state or enumerate her objections. Though it appears from the title that Plaintiff only has one objection, Plaintiff articulates two distinct reasons why the Magistrate's Decision is incorrect.

{¶5} In what the Court construes as Plaintiff's first objection, she argues that the Magistrate was incorrect in finding that a visual inspection of the seats in the Center was sufficient because there was no evidence presented showing that a visual inspection was actually conducted. However, Plaintiff did not file a transcript of the trial before the Magistrate. Accordingly, the Court accepts the facts as found by the Magistrate and limits its review to the Magistrate's legal conclusions. *Triplett* at ¶ 13. Whether or not an inspection was conducted is a matter of fact, not law. Indeed, the Magistrate wrote in the Findings of Fact section of his Decision that "before and in between events, staff members, including ushers, walk around the arena including the seating area and visually inspect areas to look for deficiencies or issues that need to be addressed or corrected." Without a transcript, Plaintiff cannot challenge this factual finding by the Magistrate. Therefore, Plaintiff's first objection is OVERRULED.

{¶6} In what the Court construes as Plaintiff's second objection, she argues that the Magistrate erred in concluding that Defendant's routine visual inspections of the seating area was reasonable. The Magistrate based that conclusion in part on the testimony by Gus Kanakis and Melanie Snodell, the Center's Operations Manager and the Center's Events Manager, respectively, that visual inspections like the ones conducted at the Center are standard practice for the industry. Kanakis further testified

that in order to inspect the part of the seat that broke, the seat would have to be taken apart.

{¶7} Plaintiff does not challenge either witness's testimony. Instead, Plaintiff argues that the "standard practice then is not satisfactory and does not protect patrons like plaintiff." (Objections, 1.) Plaintiff argues that, in order to keep patrons safe, the Defendant should have conducted an individual inspection of each seat. Plaintiff does not cite any authority in support of this assertion. The Tenth District Court of Appeals, in a similar case, held that "a rational trier of fact could conclude that a routine visual inspection was all that ordinary care required and that defendant did not breach its duty to conduct reasonable inspections by failing to dismantle and inspect some five thousand lighting fixtures when there was no other indication that they were defective." *Tarkany v. Bd. of Trustees of Ohio State Univ.*, 10th Dist. Franklin No. 90AP-1398, 1991 Ohio App. LEXIS 2648, 6 (June 4, 1991). It would be unreasonable for the standard of care to require Defendant to take all 14,000 stadium seats in the Center apart on a regular basis to inspect the internal part that failed and caused Plaintiff to fall. Instead, the Court concludes that a routine visual inspection is sufficient to fulfill Defendant's duty to conduct reasonable inspections. Therefore, Plaintiff's second objection is OVERRULED.

Conclusion

{¶8} Plaintiff did not file a transcript of the trial before the Magistrate in support of her Objections. Accordingly, the Court accepts the facts as found by the Magistrate and limits its review to the Magistrate's legal conclusions. Upon an independent review of the Magistrate's Decision and Plaintiff's Objections, the Court finds that the Magistrate appropriately applied the law to the factual findings. *See also Parks v. K. Schuster Mkts.*, Mich.App. No. 182087, 1996 Mich. App. LEXIS 1968 (Sept. 27, 1996). Therefore, Plaintiff's Objections are OVERRULED, and the Court adopts the Magistrate's Decision and recommendation as its own, including the findings of fact and conclusions of law contained therein. Judgment is rendered in favor of Defendant. 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.

PATRICK E. SHEERAN
Judge

Filed November 9, 2022
Sent to S.C. Reporter 12/12/22