

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

SuperMedia, LLC,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 12AP-620
v.	:	(C.P.C. No. 10CV-01-1058)
	:	
Blue + Blue, L.L.C., Attorneys at Law,	:	(REGULAR CALENDAR)
f/k/a Blue Wilson & Blue, LLC,	:	
	:	
Defendant-Appellant.	:	
	:	

D E C I S I O N

Rendered on March 29, 2013

Luper Neidenthal & Logan, Melissa A. Izenson and Luther L. Liggett, Jr., for appellee.

Blue + Blue, L.L.C., and Douglas J. Blue, for appellant.

APPEAL from the Franklin County Court of Common Pleas

KLATT, P.J.

{¶ 1} Defendant-appellant, Blue + Blue, L.L.C., appeals a judgment of the Franklin County Court of Common Pleas in favor of plaintiff-appellee, SuperMedia, LLC. For the following reasons, we affirm.

{¶ 2} SuperMedia is the official publisher of the Verizon *Yellow Pages* and *White Pages* telephone directories and Superpages.com. Blue + Blue is a law firm. Beginning in 2000, Blue + Blue began ordering advertising from SuperMedia. The parties entered into a contract whereby Blue + Blue agreed to pay SuperMedia a monthly rate for the publication of advertisements in telephone directories servicing certain areas in Ohio. Blue + Blue authorized the publication of the advertisements through a series of signed

documents entitled "Application for Directory Advertising." SuperMedia published all of the advertising that Blue + Blue contracted for.

{¶ 3} SuperMedia invoiced Blue + Blue for the advertising after it was published. Blue + Blue, however, did not fully pay the invoices. Blue + Blue owes SuperMedia \$101,612.05 for advertising.

{¶ 4} On January 22, 2010, SuperMedia filed suit against Blue + Blue, asserting a claim on an account, as well as claims for breach of contract and quantum meruit. The parties tried their case before a magistrate. At trial, Blue + Blue argued that it should not have to pay for advertising that it did not authorize. According to Blue + Blue, neither Mark Wilson, a former member of Blue + Blue, nor Sue Carroll, the office manager for Blue + Blue, had authority to sign applications for advertising with SuperMedia. Thus, Blue + Blue asserted that it was not liable for the charges associated with the advertising ordered in the applications executed by Wilson or Carroll.

{¶ 5} Based on the evidence adduced during trial, the magistrate found that both Wilson and Carroll had the authority to bind Blue + Blue. The magistrate concluded that Wilson had express authority and that Carroll had apparent and implied authority. Additionally, the magistrate found that Blue + Blue was obligated to pay the amount owed because it ratified Wilson's and Carroll's actions. The magistrate recommended that the trial court enter judgment in SuperMedia's favor in the amount of \$101,612.05, plus attorney fees in the amount of \$29,391.50 and costs in the amount of \$1,476.24.¹

{¶ 6} Blue + Blue objected to the magistrate's decision, but it did not file a transcript or affidavit of evidence. In a decision and entry dated June 21, 2012, the trial court overruled all of Blue + Blue's objections and adopted the magistrate's decision.

{¶ 7} Blue + Blue now appeals from the June 21, 2012 judgment, and it assigns the following errors:

1. THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING JUDGMENT IN FAVOR OF PLAINTIFF BY HOLDING THAT DEFENDANT'S OFFICE MANAGER HAD APPARENT AND IMPLIED AUTHORITY TO CONTRACT WITH PLAINTIFF.

¹ The parties' contracts entitled the party who prevailed in an action on the contracts to recover all costs, including attorney fees.

2. THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING JUDGMENT IN FAVOR OF PLAINTIFF BY HOLDING THAT DEFENDANT RATIFIED THE SUBJECT CONTRACTS BY DEFENDANT'S PAYING OF ITS BILLS/INVOICES.

[3.] THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING JUDGMENT IN FAVOR OF PLAINTIFF BY HOLDING THAT IT MAY CONSIDER THE DEALINGS BETWEEN PLAINTIFF AND DEFENDANT AS A SINGLE CONTRACT AND NOT CORRELATE WHICH CHARGES ON THE SUBJECT ACCOUNTS WERE DUE UNDER WHICH CONTRACT.

{¶ 8} By its first assignment of error, Blue + Blue argues that the trial court erred in finding that Carroll had the apparent and implied authority to sign the applications for advertising. We disagree with this argument to the extent that it challenges the finding that Carroll had apparent authority.

{¶ 9} Before considering the merits of this assignment of error, we must address the implications of Blue + Blue's failure to file a transcript or affidavit of evidence. A party challenging a magistrate's factual finding is required to provide the trial court with "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." Civ.R. 53(D)(3)(b)(iii). If 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. *Character-Ragins v. Dains*, 10th Dist. No. 12AP-124, 2012-Ohio-5089, ¶ 8; *Wallace v. Grafton Corr. Inst.*, 10th Dist. No. 11AP-304, 2011-Ohio-5661, ¶ 5. On an appeal of a judgment rendered without the benefit of a transcript or affidavit, an appellate court will only consider whether the trial court correctly applied the law to the magistrate's factual findings. *Id.*

{¶ 10} In its first assignment of error, Blue + Blue challenges the trial court's finding that Carroll was an agent with the authority to bind Blue + Blue to contracts with SuperMedia. Whether an agency relationship exists is a question of fact, rather than a question of law. *Damon's Missouri, Inc. v. Davis*, 63 Ohio St.3d 605, 612 (1992); *Bobb Chevrolet v. Calhoun*, 10th Dist. No. 03AP-816, 2004-Ohio-1006, ¶ 8. Thus, we restrict our review of Blue + Blue's argument to whether the magistrate's factual findings support

the conclusion that Carroll was Blue + Blue's agent for the purpose of ordering advertising from SuperMedia.

{¶ 11} Under the theory of apparent authority, an agent's acts will bind the principal if: (1) "the principal held the agent out to the public as possessing sufficient authority to embrace the particular act in question, or knowingly permitted him to act as having such authority," and (2) "the person dealing with the agent knew of those facts and acting in good faith had reason to believe and did believe that the agent possessed the necessary authority." *Master Consol. Corp. v. BancOhio Natl. Bank*, 61 Ohio St.3d 570 (1991), syllabus. Here, the magistrate found that Carroll was Blue + Blue's "contact person" with SuperMedia and that she, under Wilson's direction, telephoned SuperMedia to tell SuperMedia what advertising Blue + Blue wanted. William Roush, a SuperMedia sales representative, sent proposed advertising to Carroll, and Carroll would respond back to Roush. Because Carroll had the authority to order advertising by telephone, Roush had no reason to question Carroll's authority to sign the applications for advertising. Based on this pattern of dealing, which resulted in Blue + Blue's paying for the requested advertising, the magistrate concluded that Blue + Blue had held Carroll out as its agent and that SuperMedia had reason to believe and did believe that Carroll had the necessary authority to order advertising. We find that the trial court properly applied the law to these factual findings to conclude that Carroll possessed apparent authority to contract with SuperMedia.

{¶ 12} Blue + Blue does not contest this conclusion. Rather, it only argues that the magistrate misinterpreted the evidence. Blue + Blue characterizes Carroll as a mere intermediary between Blue + Blue and SuperMedia, not a "contact person." Blue + Blue also contends that SuperMedia could not reasonably believe that an office manager would have the authority to enter contracts obligating Blue + Blue to pay thousands of dollars. Given Blue + Blue's failure to provide the trial court with a transcript or affidavit of evidence, it cannot pursue either of these arguments on appeal. *Character-Ragins* at ¶ 7 ("[I]f a complaining party fails to support his or her factual objections pursuant to Civ.R. 53, he or she is precluded from arguing factual determinations on appeal."). Accordingly, we overrule Blue + Blue's first assignment of error to the extent that it argues that the trial court erred in finding apparent authority.

{¶ 13} Because the trial court did not err in concluding that Carroll had apparent authority to order advertising from SuperMedia, the trial court also did not err in entering judgment in SuperMedia's favor. An agency relationship may arise under multiple different legal theories, including actual agency (which includes implied authority), apparent agency or agency by estoppel, and ratification. *Bobb Chevrolet* at ¶ 8. To succeed on its claims, SuperMedia had to prove only one theory. Consequently, the remainder of Blue + Blue's first assignment of error and its second assignment of error are rendered moot.

{¶ 14} By Blue + Blue's third assignment of error, it argues that the trial court erred in not determining the amount of money owed for advertising ordered by Wilson, as opposed to the advertising ordered by Carroll. In its judgment, the trial court did not correlate specific amounts owed with each application for advertising submitted. Rather, the trial court concluded that Blue + Blue owed \$101,612.05, the entirety of the amount outstanding on Blue + Blue's account with SuperMedia. Blue + Blue argues that if this court would determine that Carroll did not have authority to sign applications for advertising, then this court could not determine the amount of damages owed for the advertising Blue + Blue actually authorized. Our rejection of Blue + Blue's contention that Carroll lacked authority renders the third assignment error moot.

{¶ 15} For the foregoing reasons, we overrule in part Blue + Blue's first assignment of error. The remainder of Blue + Blue's first assignment of error, as well as the second and third assignment of errors, are rendered moot. We affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK and DORRIAN, JJ., concur.
