

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Skydive Columbus Ohio, LLC et al., :
 :
 Plaintiffs-Appellants, :
 :
 v. : No. 09AP-563
 : (C.P.C. No. 06CVH-05-6102)
 Nathanael Litter, :
 : (REGULAR CALENDAR)
 Defendant-Appellee. :

D E C I S I O N

Rendered on July 15, 2010

Peterson, Ellis, Fergus & MacDowell LLP, and Robert L. Ellis,
for appellants.

Spetnagel and McMahon, and Paige J. McMahon, for
appellee.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶1} Appellants, Skydive Columbus Ohio, LLC and Jump Planes Etc., LLC ("appellants"), appeal the judgment granted by the Franklin County Court of Common Pleas in favor of appellee, Nathanael Litter ("appellee"). For the following reasons, we affirm the judgment of the trial court.

{¶2} This appeal results from a contract dispute between the parties. The facts of this matter are largely undisputed. Appellants owned an aircraft that they used in connection with a skydiving business. Appellee was a commercial pilot who wished to

obtain more flying time. To that end, appellee and appellants entered an agreement under which appellants permitted appellee to use their aircraft, so long as appellee agreed to hold them harmless for damages incurred while appellee operated it. The parties entered this agreement on July 23, 2005. On August 20, 2005, appellee was attempting to land the aircraft when it was involved in an accident that caused damages. As a result, appellants filed suit against appellee and presented claims for negligence and breach of contract.

{¶3} On December 12, 2008, the parties filed an agreed judgment entry, in which they stipulated to facts, waived the jury demand, and agreed to dismiss the appellants' negligence claim without prejudice. As a result, the matter now only concerns appellants' breach of contract claims against appellee.

{¶4} The trial court referred the matter to a magistrate, who presided over the jury waived trial on April 6, 2009. On April 14, 2009, the magistrate rendered a decision in favor of appellee. On May 12, 2009, the trial court adopted the magistrate's decision as its own and rendered judgment in favor of appellee. Appellants timely appealed and raise the following assignments of error:

1. THE CLERK'S FAILURE TO NOTIFY PLAINTIFFS-APPELLANTS OF THE MAGISTRATE'S DECISION, AS REQUIRED BY CIVIL RULE 53(D)(3)(a)(iii), DEPRIVED PLAINTIFFS-APPELLANTS OF THEIR DUE PROCESS RIGHTS AND CONSTITUTES REVERSIBLE ERROR.
2. THE MAGISTRATE'S DECISION IS SO FLAWED AS TO CONSTITUTE PLAIN ERROR.

{¶5} In their first assignment of error, appellants argue that the clerk of courts never served a copy of the April 14, 2009 magistrate's decision upon them in accordance with Civ.R. 53(D)(3)(a)(iii). That rule provides:

A magistrate's decision shall be in writing, identified as a magistrate's decision in the caption, signed by the magistrate, filed with the clerk, and served by the clerk on all parties or their attorneys no later than three days after the decision is filed. A magistrate's decision shall indicate conspicuously that 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 timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

{¶6} "A trial court's failure to comply with Civ.R. 53 constitutes grounds for reversal only if the appellant shows the alleged error has merit and the error worked to the prejudice of the appellant." *In re Estate of Hughes* (1994), 94 Ohio App.3d 551, 554, citing *Erb v. Erb* (1989), 65 Ohio App.3d 507, 510. To determine the issue of prejudice in regards to Civ.R. 53, courts often consider: "(1) whether the violation prevented the appellant the opportunity of filing objections to the magistrate's decision; and (2) whether the trial court was able to conduct an independent analysis of the magistrate's decision." *Ulrich v. Mercedes-Benz USA, L.L.C.*, 9th Dist. No. 23550, 2007-Ohio-5034, ¶13, citing *Ford v. Gooden*, 9th Dist. No. 22764, 2006-Ohio-1907, ¶13, quoting *Performance Constr., Inc. v. Carter Lumber Co.*, 3d Dist. No. 5-04-28, 2005-Ohio-151, ¶15. Although Civ.R. 53 has been amended time and time again, the main purpose for the procedures set forth in Civ.R. 53 is to afford litigants with a meaningful opportunity to file objections to a magistrate's decision. *Pinkerson v. Pinkerson* (1982), 7 Ohio App.3d 319, syllabus.

{¶7} Our court has previously held:

In the unusual circumstance that service of a magistrate's decision is not made, or is served in an untimely manner, Civ.R. 53(D)(5) provides that either party may, "for good cause shown," move the trial court to set aside the magistrate's decision or to extend the time for filing objections to the report. See Staff Notes to Civ.R. 53(D)(5) (" 'Good

cause' would include the failure of a party to receive timely service of the magistrate's order or decision").

Watley v. Dept. of Rehab. and Corr., 10th Dist. No. 06AP-1128, 2007-Ohio-1841, ¶10.

{¶8} In the instant matter, the record indicates that the clerk did not serve the parties with copies of the magistrate's April 14, 2009 decision. The magistrate's decision, however, indicates that copies were sent to counsel by mail and email. Regardless, appellants concede that they became aware of the outcome of the case when they received a proposed judgment entry from appellee's counsel on April 22, 2009. Appellants further concede that they obtained a copy of the magistrate's decision on April 23, 2009. As a result, appellants acknowledge that they received the magistrate's decision five days before the 14-day period for filing objections expired. Nevertheless, appellants' counsel indicates that he did not file objections or a request for an extension of time to file objections because he believed the trial court had already adopted the magistrate's decision. Counsel held this belief because he had received a copy of appellee's proposed judgment entry. Therefore, appellants' counsel held this belief in spite of the fact that he received the entry from opposing counsel rather than the court, the entry was not signed by the trial judge, and the entry was not time-stamped as having been filed. Based upon counsel's belief, appellants further assumed their only option was to file a direct appeal, which they did not file until June 10, 2009.

{¶9} A trial court may adopt a magistrate's decision and enter judgment either before or after the 14-day period for filing objections expires. See Civ.R. 53(D)(4)(e)(i). If the court adopts the decision before the period expires, however, the parties still have the right to file objections. In such a scenario, timely filed objections operate as an automatic stay to any execution on the judgment until the trial court "disposes of those objections

and vacates, modifies, or adheres to the judgment previously entered." Civ.R. 53(D)(4)(e)(i).

{¶10} Therefore, whether counsel held the mistaken belief that the trial court had already adopted the magistrate's decision is immaterial to the analysis. Counsel's mistaken belief had no bearing on appellants' right to file objections within 14 days of the decision. It similarly had no effect on appellants' right to seek additional time to file objections under Civ.R. 53(D)(5).

{¶11} Accordingly, based upon the circumstances of this case, we do not find that the service issues prevented appellants from filing objections. Indeed, the trial court's final judgment entry was not filed until May 12, 2009, which was more than two weeks after appellants received a copy of the magistrate's decision. As a result, we find that appellants had a meaningful opportunity to file objections to the magistrate's decision. See *Pinkerson* at syllabus. They failed to use the opportunity because counsel held mistaken beliefs and false assumptions about the confines of Civ.R. 53. We also find that the issues with service had no bearing on the trial court's ability to conduct an independent analysis of the magistrate's decision. After reaching these findings, we hold that the error in service did not prejudice appellants. See *In re Estate of Hughes* at 554. We therefore overrule appellants' first assignment of error.

{¶12} Having failed to file objections despite having the meaningful opportunity to do so, appellants have waived any alleged errors except those constituting plain error. See Civ.R. 53(D)(3)(b)(iv). As a result, in their second assignment of error, appellants argue that the magistrate's decision constitutes plain error.

{¶13} In civil cases, appellate courts must proceed with caution and find plain error only in " 'extremely rare circumstances' where the error seriously affects the basic fairness, integrity, or public reputation of the judicial process itself." *Unifund CCR Partners v. Hall*, 10th Dist. No. 09AP-37, 2009-Ohio-4215, ¶22, quoting *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121, 1997-Ohio-401. Indeed, the plain error doctrine implicates errors in the judicial process where the error is clearly apparent on the face of the record and is prejudicial to the appellant. *Reichert v. Ingersoll* (1985), 18 Ohio St.3d 220, 223; see also *Allegro Realty Advisors, Ltd. v. Orion Assoc., Ltd.*, 8th Dist. No. 87004, 2006-Ohio-4588, ¶56, citing *Goldfuss* (referring to errors "challenging the legitimacy of the underlying judicial process itself.").

{¶14} Rather than raising arguments pertaining to the fairness, legitimacy, or reputation of the judicial process, appellants present the same substantive arguments they have consistently advanced through these proceedings. Appellants essentially seek a de novo review of the contract at issue in this case. Such a position is contrary to the applicable plain error analysis in civil cases.

{¶15} In the trial court's proceedings, each side presented its respective position on how the contract should be interpreted. They presented their positions in summary judgment motions in addition to presenting the same positions during trial. After reviewing the contract and the parties' competing positions, the magistrate agreed with appellee's interpretation of the contract. After conducting its review of the magistrate's decision, the trial court adopted the magistrate's decision and entered judgment. Appellants have not challenged any portion of this process. Indeed, the only purported error in the judicial process came in the way of the clerk's failure to serve appellants with

the magistrate's decision. However, based upon our resolution of assignment of error number one, we find that this error did not amount to plain error because there was no prejudice. The inaction of appellants' counsel may have caused prejudice, but the clerk's service did not. As a result, we do not believe this case presents the extremely rare circumstances that seriously affect "the basic fairness, integrity, or public reputation of the judicial process itself." *Unifund* at ¶22, quoting *Goldfuss* at 121. We therefore overrule appellants' second assignment of error.

{¶16} Having overruled each of appellants' two assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

KLATT and McGRATH, JJ., concur.
