

[Cite as *Haynes v. Straub*, 2010-Ohio-4089.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Richard Haynes,	:	
	:	
Plaintiff-Appellant,	:	No. 09AP-1009
v.	:	(M.C. No. 2009 CVI 29115)
Paul Straub et al.,	:	(REGULAR CALENDAR)
	:	
Defendants-Appellees.	:	

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D E C I S I O N

Rendered on August 31, 2010

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*Richard Haynes, pro se.*

*Kegler, Brown, Hill & Ritter, and Larry J. McClatchey, for appellee Paul Straub.*

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APPEAL from the Franklin County Municipal Court.

BRYANT, J.

{¶1} Plaintiff-appellant, Richard Haynes, appeals from a judgment of the Franklin County Municipal Court in favor of defendant-appellee, Paul Straub, on plaintiff's complaint alleging defendant failed to properly execute plaintiff's insurance requests.

Plaintiff assigns a single error:

The trial court erred in finding for the defendant because the defendant was not represented.

Because plaintiff failed to file with his objections to the magistrate's decision a transcript of the proceedings before the trial court's magistrate, we affirm.

## I. Procedural History

{¶2} On July 2, 2009, plaintiff filed a complaint naming as defendant:

Paul Straub  
Horizon Insurance  
5151 Reed Road, Suite 201A  
Columbus, OH 43220-0349

Plaintiff alleged that Paul Straub, of Horizon Insurance Services, Inc., assisted plaintiff in purchasing commercial property insurance, but his manner of subsequently handling the account resulted in additional costs to plaintiff.

{¶3} The complaint was served on Paul Straub and on Horizon Insurance; Paul Straub signed the certified mail receipt for both. The matter was heard before a magistrate of the municipal court on August 10, 2009. The magistrate's decision, filed August 31, 2009, found "plaintiff has failed to prove by a preponderance of the evidence a right to recover against the defendant." As a result, the magistrate determined plaintiff's case should be dismissed. In a September 2, 2009 judgment entry, a judge of the Franklin County Municipal Court adopted the magistrate's decision and entered judgment for defendant on the complaint, dismissing plaintiff's complaint with prejudice at plaintiff's cost.

{¶4} On September 8, 2009, plaintiff filed objections to the magistrate's decision, disputing two aspects of the decision. The magistrate's decision stated that "[a]t the trial, the plaintiff indicated that the sole defendant in this case is Paul Straub." The magistrate noted that although plaintiff "named Horizon Insurance, he simply named that as the entity to which service should be made, but it was not his intention to name Horizon Insurance as a party to this case." Accordingly, the magistrate tried the case as involving two parties: Richard Haynes as plaintiff and Paul Straub as defendant. In his objections,

plaintiff states "it was his intent to list both Paul Straub and Horizon Insurance as Defendants as clearly shown in the filing." (Objections, 1.)

{¶5} Plaintiff also objected to the magistrate's conclusion that plaintiff failed to prove by a preponderance of the evidence his right to recover against defendant. In his objections, plaintiff "disputes the Referee's decision on facts," asserting the documents he submitted at the hearing reflect that defendant's initial mistake "was the basis for financial loss by Plaintiff Richard Haynes." (Objections, 2.) According to plaintiff, "[h]ad Mr. Straub performed his duties properly, the Plaintiff would not have incurred any losses and would have obtained the proper insurance coverage without delay." (Objections, 2.) Defendant responded with a letter dated September 14, 2009 explaining his view of the dispute.

{¶6} By entry filed October 8, 2009, the trial court overruled plaintiff's objections to the magistrate's decision and again made the magistrate's decision the court's order.

## **II. Assignment of Error**

{¶7} Plaintiff's single assignment of error contends the trial court erred in entering judgment for defendant. According to plaintiff, Paul Straub was at the hearing before the magistrate representing only himself; Horizon Insurance was not represented. As a result, plaintiff contends he is entitled to a default judgment against Horizon Insurance. See R.C. 1925.05 (requiring notice of filing to include language that "[i]f you do not appear at trial, judgment may be entered against you").

{¶8} At issue is whether plaintiff intended to maintain an action against Horizon Insurance. The magistrate's decision indicates the magistrate specifically inquired of plaintiff regarding his intent, and plaintiff in turn stated he intended only to sue Straub. Plaintiff now contests that conclusion and in support submits a transcript of the hearing

before the magistrate. Plaintiff, however, failed to present with his objections in the trial court a transcript of the hearing that would allow the trial court to determine whether the magistrate erred in that respect.

{¶9} Civ.R. 53(D)(3)(b)(i) provides that "[a] party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i)." If a party objects to a factual finding, "whether or not specifically designated as a finding of fact under Civ.R. 53(D)(3)(a)(ii)," the objection "shall be supported by 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). In the absence of a transcript or an affidavit, the trial court is required to accept the magistrate's findings of fact and may only determine the legal conclusions drawn from those facts. *Forth v. Gerth*, 10th Dist. No. 05AP-576, 2005-Ohio-6619, ¶19, quoting *Carter v. Le*, 10th Dist. No. 05AP-173, 2005-Ohio-6209, ¶11.

{¶10} Because plaintiff failed to file a transcript of the hearing with the trial court, our review is limited to whether the trial court correctly applied the law to the facts set forth in the magistrate's decision. *Id.*, citing *Compton v. Bontrager*, 10th Dist. No. 03AP-1169, 2004-Ohio-3695, ¶6. As a result, even though plaintiff filed in the appellate court the transcript of the proceedings before the magistrate, we are precluded from considering it, as the trial court did not have the opportunity to review it before determining whether to adopt the magistrate's decision. *Id.* at ¶8, citing *State ex rel. Duncan v. Chippewa Twp. Trustees* (1995), 73 Ohio St.3d 728.

{¶11} Here, the magistrate's decision factually states that plaintiff stated he intended to sue only Straub; Horizon Insurance was included only as the entity where service could be made. Plaintiff failed to submit a transcript that would have allowed the trial court to determine whether the magistrate's decision accurately reflected plaintiff's statements to the magistrate. The trial court thus had no alternative but to accept the magistrate's findings and, applying them, conclude plaintiff's case was confined to allegations against Straub. Because the trial court acted properly in the absence of a transcript, plaintiff's contentions are unpersuasive.

{¶12} Moreover, even if Horizon Insurance were a defendant in the case, plaintiff's complaint alleges the same conduct against Straub and Horizon Insurance, leaving plaintiff with a claim of liability against Horizon based on the actions of Straub. Because plaintiff failed to prove his case against Straub, he necessarily failed to prove the same allegations against Horizon Insurance, whose liability was premised on Straub's liability to plaintiff. Although R.C. 1925.05 allows the trial court to enter default judgment against a defendant who fails to appear in a case pending in small claims court, the trial court appropriately could decline to enter default judgment against Horizon Insurance in view of plaintiff's inability to prove his allegations against Straub. Accordingly, plaintiff's single assignment of error is overruled, and the judgment of the trial court is affirmed.

*Judgment affirmed.*

TYACK, P.J., and FRENCH, J., concur.

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