

[Cite as *Wallace v. Grafton Corr. Inst.*, 2011-Ohio-5661.]

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Ronnie Lee Wallace,	:	
Plaintiff-Appellant,	:	
v.	:	No. 11AP-304 (C.C. No. 2009-07024)
Grafton Correctional Institution,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

---

D E C I S I O N

Rendered on November 3, 2011

---

*Ronnie Lee Wallace, pro se.*

*Michael DeWine, Attorney General, Stephanie D. Pestello-Sharf and Ashley L. Oliker, for appellee.*

---

APPEAL from the Court of Claims of Ohio

KLATT, J.

{¶1} Plaintiff-appellant, Ronnie Lee Wallace, appeals from a judgment of the Court of Claims of Ohio entering judgment in favor of defendant-appellee, Grafton Correctional Institution (hereinafter, "GCI"). For the following reasons, we affirm that judgment.

**Factual and Procedural Background**

{¶2} Appellant, an inmate at GCI, filed a complaint in the trial court alleging that GCI negligently failed to provide him with timely dental care. After a trial on the issue of

liability, the magistrate determined that GCI timely scheduled appellant's dental treatments based on dentists' instructions and, accordingly, appellant failed to prove that GCI acted negligently in this regard. To the extent that appellant also claimed that one of his teeth had been wrongly extracted, the magistrate noted that appellant did not present expert testimony to support such a claim for dental malpractice. The magistrate recommended judgment in favor of GCI. Appellant timely filed objections to the magistrate's decision but did not file a transcript. The trial court overruled appellant's objections, adopted the magistrate's decision, and entered judgment in favor of GCI.

{¶3} Appellant appeals and assigns the following errors:

[1.] THE COURT OF CLAIMS JUDGE ERRED TO THE PREJUDICE OF THE APPELLANT WHEN THEY FAILED TO REVIEW OR ADHERE TO THE STIPULATED SETTLEMENT AGREEMENT THAT THE INSTITUTION IS UNDER PURSUANT TO FUSSEL V. WILKINSON, CASE NO. C-1-CV-03-704, WHICH MANDATES THE REQUIREMENT TO SUPPLY THE APPELLANT WITH URGENT DENTAL NEED AND TREATMENT IN A PROMPT MANNER.

[2.] THE COURT OF CLAIMS JUDGE ERRED TO THE PREJUDICE OF THE APPELLANT WHEN HE TOOK A BLANKET APPROACH TO ADOPTING THE MAGISTRATE[']S DECISION WITHOUT WEIGHING THE MERITS OF THE APPELLANT[']S CASE AND A FEDERALLY PROTECTED RIGHT, BY VIOLATING THE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION, CREATING DELIBERATE INDIFFERENCE TO APPELLANT[']S MEDICAL NEEDS.

### **Standard of Review**

{¶4} Initially, we note that Civ.R. 53(D)(3)(b) governs the procedure for filing objections to a magistrate's decision with the trial court. Pursuant to Civ.R. 53(D)(3)(b)(iii), an objecting party must support any objections to a magistrate's factual

findings with a transcript of the proceedings before the magistrate or an affidavit of the evidence. The objecting party must file the transcript or affidavit with the trial court "within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause." *Id.* Appellant did not submit a transcript of the proceedings before the magistrate or an affidavit of the evidence with the trial court.

{¶5} 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. *Ross v. Cockburn*, 10th Dist. No. 07AP-967, 2008-Ohio-3522, ¶5; *Farmers Mkt. Drive-In Shopping Ctrs., Inc. v. Magana*, 10th Dist. No. 06AP-532, 2007-Ohio-2653, ¶¶27-28. On appeal of a judgment rendered without the benefit of a transcript or affidavit, an appellate court only considers whether the trial court correctly applied the law to the magistrate's factual findings. *Gill v. Grafton Correctional Inst.*, 10th Dist. No. 10AP-1094, 2011-Ohio-4251, ¶21; *Ross* at ¶6. Moreover, an appellate court will not expand the scope of its review even if the objecting party supplements the record on appeal with a transcript. The objecting party's failure to timely submit a transcript to the trial court precludes any consideration of the transcript on appeal. *Ross*; *Baddour v. Rehab. Servs. Comm.*, 10th Dist. No. 04AP-1090, 2005-Ohio-5698, ¶25. Therefore, even though appellant filed a transcript of the hearing before the magistrate as part of this appeal, 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.

**First Assignment of Error—Negligence**

{¶6} Appellant argues in this assignment of error that GCI was negligent because it did not timely schedule his dental care. We disagree. To prevail on a negligence claim, a plaintiff must establish that: (1) defendant owed him a duty; (2) defendant breached that duty; and (3) the breach proximately caused his injuries. *Gumins v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 10AP-941, 2011-Ohio-3314, ¶19 (citing *Chambers v. St. Mary's School*, 82 Ohio St.3d 563, 565, 1998-Ohio-184). Here, the magistrate factually determined that GCI timely scheduled appellant's dental treatment based upon dentists' instructions and, therefore, did not breach its duty of care. Based on this factual finding, the trial court entered judgment in favor of GCI as to appellant's negligence claim. Absent a transcript, we only consider whether the trial court properly applied the law to that factual finding. *Gill*. The trial court properly applied the law to the magistrate's factual finding. Accordingly, we overrule appellant's first assignment of error.

**Second Assignment of Error—Trial Court's Adoption of the Magistrate's Decision**

{¶7} Appellant first argues in this assignment of error that the trial court did not properly review the facts and conclusions contained in the magistrate's decision. We disagree. The trial court's entry states: "[u]pon review of the record, the magistrate's decision and the objections, the court finds that the magistrate has properly determined the factual issues and appropriately applied the law." Because appellant did not file a transcript with his objections, the trial court could not review the basis for the magistrate's factual findings. *Ross* at ¶5. The trial court could only review the magistrate's application

of the law to the factual findings. Accordingly, the trial court properly reviewed the magistrate's decision.

{¶8} Second, to the extent that appellant argues that the extraction of his tooth amounted to cruel and unusual punishment in violation of his rights under the Eighth Amendment to the United States Constitution, the Court of Claims of Ohio does not have jurisdiction to hear Eighth Amendment claims. *Rankin v. Ohio Reformatory for Women*, 10th Dist. No. 09AP-524, 2009-Ohio-6575, ¶20-21.

{¶9} For these reasons, we overrule appellant's second assignment of error.

{¶10} Having overruled appellant's assignments of error, we affirm the judgment of the Court of Claims of Ohio.

*Judgment affirmed.*

BROWN and DORRIAN, JJ., concur.

---