

# Court of Claims of Ohio

The Ohio Judicial Center  
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DENNIS AUSTIN

Plaintiff

v.

OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES

Defendant

Case No. 2007-05202

Judge J. Craig Wright  
Magistrate Lee Hogan

## JUDGMENT ENTRY

{¶ 1} On December 3, 2008, the magistrate issued a decision recommending that judgment be rendered in favor of defendant.

{¶ 2} Civ.R. 53(D)(3)(b)(i) states in part: “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).” On December 17, 2008, plaintiff filed objections. On December 24, 2008, defendant filed a response.

{¶ 3} In his first objection, plaintiff, an African American, asserts that the evidence presented at trial demonstrates that defendant treated him differently than it treated a Caucasian co-worker in regard to discipline for alleged harassment. In his second objection, plaintiff asserts that the reasons that defendant articulated for disciplining him and terminating his employment were a pretext for discrimination.

{¶ 4} Civ.R. 53(D)(3)(b)(iii) states:

{¶ 5} “An objection to a factual finding whether or not specifically designated as a finding of fact under Civ.R. 53(D)(3)(a)(ii), shall be supported by a transcript of all evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. \* \* \* The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement his objections.”

{¶ 6} Inasmuch as plaintiff’s objections pertain to factual findings made by the magistrate, plaintiff was required to support his objections with a trial transcript or affidavit. Plaintiff did not file either. “If a transcript is not provided, the trial court cannot make a credibility determination regarding the evidence presented to the magistrate, and is therefore required to accept the findings of fact and consider only whether the evidence supported the magistrate’s findings.” *Martin v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 07AP-1006, 2008-Ohio-3166, ¶ 10.

{¶ 7} Plaintiff’s failure to file a transcript or affidavit leaves the court unable to review the alleged error raised in his objections. Therefore, plaintiff’s objections are OVERRULED. The court determines that there is no error of law or other defect evident on the face of the magistrate’s decision. Therefore, the court adopts the magistrate’s decision and recommendation as its own, including 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.

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J. CRAIG WRIGHT  
Judge

cc:

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CJT/HTS/cmd  
Filed March 23, 2009/To S.C. reporter March 31, 2009