

FILED
LORAIN COUNTY
2018 FEB 27 PM 3:33
COURT OF COMMON PLEAS
TOM ORLANDO



To the Clerk: THIS IS A FINAL
APPEALABLE ORDER.
Please serve upon all parties not
in default for failure to appear;
Notice of the Judgment and its
date or entry upon the Journal

LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
JOURNAL ENTRY
Hon. D. Chris Cook, Judge

Date Feb. 27, 2018

Case No. 15CV187521

BRIAN E. STANLEY
Plaintiff

Joseph Salzgeber
Plaintiff's Attorney

VS

PAUL A. SMITH
Defendant

John Haynes
Defendant's Attorney

This matter is before the Court on Plaintiff's Objections To Magistrate's Decision Filed On September 21, 2017, filed with the Court October 5, 2017. Defendant did not file an opposition brief. Oral hearing had February 15, 2018.

Pursuant to Civ. R 53(D)(3)(b), Plaintiff's Objections to the Magistrate's Decision are not well-taken and are hereby OVERRULED.

Pursuant to Civ. R 53(D)(4), after independent review as to the objected matters, the Court finds that the Magistrate properly determined the factual issues and appropriately applied the law. As such, pursuant to Civ. R 53(D)(4)(b), the Court hereby adopts the Magistrate's Decision *in toto*.

Judgment is granted in favor of Defendant. Costs to Plaintiff. Case closed.

See Judgment Entry.

IT IS SO ORDERED.



JUDGE D. Chris Cook

cc: Salzgeber, Esq.
Haynes, Esq.



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INTRODUCTION

On August 8, 2017 this case proceeded to bench trial before Magistrate James Blaszak. On September 21, 2017, the Magistrate issued a Magistrate's Decision granting Defendant's Motion To Dismiss. On October 5, 2017, Plaintiff filed his Objections.

STANDARD OF REVIEW – CIVIL RULE 53: MAGISTRATE'S DECISION

" [T]he decision to adopt, reject, or modify a magistrate's decision lies within the discretion of the trial court and should not be reversed on appeal absent an abuse of discretion.' *Barlow v. Barlow*, 9th Dist. Wayne No. 08CA0055, 2009–Ohio–3788, ¶ 5. An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). When applying this standard, a reviewing court is precluded from simply substituting its own judgment for that of the trial court. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621 (1993)." *Amstutz v. Amstutz*, 9th Dist. Wayne No. 16AP0027, 2017-Ohio-7909, at ¶ 5.

STATEMENT OF PERTINENT FACTS

The facts of this case are largely undisputed. In early January, 2011, Defendant, Paul A. Smith ("Smith"), instituted criminal proceedings against Plaintiff, Brian E. Stanley ("Stanley"), when Smith filed a complaint with the Wellington Police Department.



Stanley was arrested on a misdemeanor warrant based upon Smith's complaint and spent two days in jail. Ultimately, the complaint against Stanley was dismissed.¹

On these relatively simple facts, Stanley filed his complaint alleging 1) Common Law False Arrest/Wrongful Arrest/Imprisonment; 2) Common Law Malicious Prosecution; 3) Abuse of Process; 4) Intentional Infliction of Emotional Distress; and, 5) Gross Neglect.

ANALYSIS

In ruling in favor of Smith, the Magistrate focused on two main points: first, that Smith very quickly realized that he may have mistakenly identified Stanley as the perpetrator² and did everything he could to clear and/or assist Smith; and, second, that even if Smith was liable to Stanley for some transgression, he proved no damages.

The Court agrees.

The evidence was uncontroverted that on the morning of Stanley's arraignment³, Smith called Stanley's attorney and advised that Smith may have made a mistake in identifying Stanley as the caller. That morning, Smith attended the arraignment and wanted the charges dropped and offered to post Stanley's bond. Ultimately, seven months later, at Smith's request, the charges against Stanley were dropped.

As for damages, even if Smith's initial conduct subjected him to liability, the Court agrees that Stanley did not prove any loss.

For example, Stanley testified that he lost wages in the amount of \$400.00 to \$800.00 per day, but he produced absolutely no evidence (other than his testimony) to support this claim. He was unsure of the amount (\$400.00 or \$800.00), had no records, deposits, pay stubs, tax records, or 1090's. And, he was unsure of the exact dates he missed work and did not even testify as to what his job actually was.

Similarly, his second damages claim, the attorney's fees he incurred in the amount of \$15,000.00 to \$18,000.00⁴, were also unsupported by any collaborating evidence.⁵ No cancelled checks, receipts, "paid" invoices. Moreover, his attorney testified at trial and

¹ Smith was instrumental in getting the charges against Stanley dropped.

² Smith initially alleged that Stanley violated a civil stalking protection order by calling and threatening Smith.

³ His initial appearance at court.

⁴ Recall this was one misdemeanor count in a municipal court that was dismissed seven months after it was filed.

⁵ At the oral hearing, to his credit, counsel for Smith conceded that his client's testimony about the attorney's fees were "clearly excessive" and may have included fees from Smith's divorce.



he failed to bring any evidence of his bills! No deposits, no receipts, no ledger statement, no client-accounting.

Smith posited no other testimony or evidence of damages, no medical or psychological reports or expenses, and nothing to demonstrate he suffered any pecuniary loss.

As for Smith's Objections, none of them have merit.

Stanley first points-out that Smith improperly moved for a "directed verdict" at the close of Stanley's case. While correct, this argument elevates form over substance. Regardless, the Magistrate properly treated the motion for directed verdict as a Civ. R 41(B)(2) motion to dismiss (a non-jury action) and granted it on those grounds.

Next, Stanley urges that his testimony alone "is sufficient to establish damages" and supports this position with appropriate case law. This is a correct statement of law, but misses the mark as to this case. Sufficiency is not the issue but rather weight and credibility. Obviously, the Magistrate *could* have found Stanley's testimony credible (and sufficient to prove damages) but did not. Just because a party submits evidence that, if believed would be legally sufficient to sustain an involuntary dismissal does not mean that *it must*. Put another way, the evidence must be sufficient and credible.

The seminal case from the Ohio Supreme Court on this issue is *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179. In that case, the Supreme Court stated, "We . . . hold that in civil cases, as in criminal cases, the sufficiency of the evidence is quantitatively and qualitatively different from the weight of the evidence." *Id.* at ¶ 6.

The Court continued, "In civil cases, the concepts of sufficiency of the evidence and weight of the evidence continue to be sources of confusion, particularly as to what standard of review should apply when a verdict is challenged as being against the manifest weight of the evidence. But there is no reason why the fundamental logical differences between evidential sufficiency and weight cease to exist in civil cases." *Id.* at ¶ 10.

The high court went on to discuss the nuanced difference between "sufficiency" and "weight" and defined "sufficiency" as "a term of art meaning that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law." * * * In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law." *Id.* at ¶ 11.

Conversely, the court identified "manifest weight" as ". . . the inclination of the *greater amount of credible evidence*, offered in a trial, to support one side of the issue rather



than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the *greater amount of credible evidence* sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its *effect in inducing belief*.” *Id.* at ¶ 12.

The Supreme Court also noted that the Ninth District is one of the few Ohio Appellate Courts that acknowledged the difference between sufficiency and manifest weight in civil cases. “For example, the Ninth District stated how a review on manifest weight is to be conducted: “The [reviewing] court * * * weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.” * * * *Id.* at ¶ 20. Citing, *Tewarson v. Simon*, 141 Ohio App.3d 103, 115, (9th Dist. 2001), quoting *Thompkins*, 78 Ohio St.3d at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175.

While Stanley may have posited legally sufficient evidence to support his damages claims by way of his unsubstantiated testimony, the evidence lacked credibility (\$15,000.00 to \$18,000.00 attorney’s fees for a one-count, dismissed misdemeanor) and carried no weight with the Magistrate. Accordingly, this Court on review cannot conclude that the Magistrate (the finder of fact) “clearly lost his way.”

Stanley’s final argument is that “a private citizen can sign a criminal complaint.” This statement is also accurate as a matter of law – but it is of no accord. There is no doubt that Smith made a formal criminal complaint to the Wellington Police Department that resulted in Stanley’s arrest and subsequent prosecution. As previously noted *supra*, this conduct by Smith, if done erroneously (it was not done maliciously) might subject him to civil liability, even if he later (which he did) attempt to withdraw the charges.

Regardless, Stanley still was required to prove damages or monetary loss. This he failed to do, and the Magistrate was wholly correct in granting judgment in favor of Smith at the close of Stanley’s case.

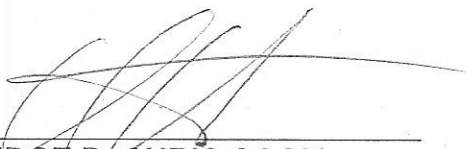


CONCLUSION

After review of the pleadings, briefing, and other Civ. R. 53(D)(4) materials and consideration of the oral arguments of counsel, as well as the relevant case law supplied by the parties, the Court finds the following:

The Magistrate's Decision granting Defendant, Paul A. Smith, judgment is hereby adopted *in toto*, Plaintiff's Objections are overruled, and judgment is hereby granted in favor of Defendant.

IT IS SO ORDERED.



JUDGE D. CHRIS COOK

TO THE CLERK: PURSUANT TO CIV.R. 58(B), THIS IS A FINAL APPEALABLE ORDER. PLEASE SERVE UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR NOTICE OF THE JUDGMENT AND ITS DATE OF ENTRY UPON THE JOURNAL.