

[Cite as *Nelson v. Lane*, 2009-Ohio-4844.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Douglas B. Nelson,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 09AP-291
v.	:	(C.P.C. No. 06CVC04-4870)
	:	
Thomas R. Lane,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

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D E C I S I O N

Rendered on September 10, 2009

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*Ambrose Moses, III*, for appellant.

*Edward F. Pelteson*, for appellee.

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APPEAL from the Franklin County Court of Common Pleas.

FRENCH, P.J.

{¶1} Plaintiff-appellant, Douglas B. Nelson, appeals the judgment of the Franklin County Court of Common Pleas, which granted judgment against Nelson and in favor of defendant-appellee, Thomas R. Lane. Because Nelson failed to file objections to the trial court magistrate's decision, we affirm.

{¶2} Nelson rented an apartment from Lane, who lived in an apartment downstairs from Nelson. Nelson suffered serious injuries when a handrail on the

balcony of the upstairs apartment gave way, and Nelson fell to the ground. Nelson sued Lane for damages.

{¶3} A magistrate of the trial court conducted a trial on May 19, 2008. On December 2, 2008, the magistrate issued a decision finding that Lane was not liable for Nelson's injuries and damages because Nelson had not proven that Lane knew or should have known that the handrail was unsafe.

{¶4} Nelson did not file objections to the magistrate's decision. On February 19, 2009, the trial court adopted that decision in favor of Lane.

{¶5} Nelson filed a timely notice of appeal. In his detailed assignment of error, he contends that the trial court erred by (1) entering judgment in favor of Lane, and (2) failing to consolidate his case with a case involving Lane's insurance claim for property damage.

{¶6} Civ.R. 53 imposes an affirmative duty on parties to make timely, specific objections in writing to the trial court, identifying any error of fact or law in the magistrate's decision. *Howard v. Norman's Auto Sales*, 10th Dist. No. 02AP-1001, 2003-Ohio-2834, ¶21. Pursuant to Civ.R. 53(D)(3)(b), a party may not raise on appeal any error pertaining to a trial court's adoption of any finding of fact or conclusion of law by a magistrate unless that party timely objected to that finding or conclusion as required under the rule. *State ex rel. Booher v. Honda of Am. Mfg., Inc.*, 88 Ohio St.3d 52, 53-54, 2000-Ohio-269.

{¶7} Here, Nelson concedes that he did not file objections to the magistrate's decision. Therefore, he forfeited those objections for purposes of appeal. *Brown v.*

*Zurich US*, 150 Ohio App.3d 105, 2002-Ohio-6099, ¶27; *O'Connor v. Trans World Servs., Inc.*, 10th Dist. No. 05AP-560, 2006-Ohio-2747, ¶8.

{¶8} Nevertheless, Nelson contends that this court should review the magistrate's decision for plain error. This court has held that, when a party fails to file objections to a magistrate's decision, an appellate court may still review the decision for plain error. *Brown* at ¶27; *O'Connor* at ¶11. See also Civ.R. 53(D)(3)(b)(iv). The plain error doctrine is not favored in civil appeals, however, and we may apply it "only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process." *Goldfuss v. Davidson* (1997), 79 Ohio St.3d 116, 1997-Ohio-401, syllabus. Upon review, we do not conclude that this case, which resolves to a determination of whether Nelson or Lane was more credible, involves exceptional circumstances requiring plain error review.

{¶9} In his assignment, Nelson also states that the magistrate erred by denying a motion to consolidate this case with a case involving an insurance claim Lane made for property damage from a May 2001 storm, the same storm Nelson alleges caused the handrail to come loose. Nelson did not, however, make or support the consolidation argument in his brief. Instead, Nelson argues that Lane's allegation in that complaint—that the balcony was damaged in the storm—contradicts his position in this case. We conclude, however, that nothing in Lane's August 2006 complaint for insurance payments addresses, let alone contradicts, his position that he was unaware of the damage prior to Nelson's fall.

{¶10} Finally, we note that Nelson did not file a transcript of the trial court proceedings. Therefore, we have no transcript of the hearing before the magistrate. Without it, we have no basis for reviewing the factual issues Nelson raises. See *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199 ("When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm.").

{¶11} For all these reasons, we overrule Nelson's assignment of error. We affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

KLATT and SADLER, JJ., concur.

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