

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Justin Lesh,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 11AP-353
v.	:	(M.C. No. 2010 CVI 51431)
	:	
William Moloney et al.,	:	(REGULAR CALENDAR)
	:	
Defendants-Appellees.	:	

D E C I S I O N

Rendered on December 20, 2011

Justin Lesh, pro se.

APPEAL from the Franklin County Municipal Court.

BRYANT, P.J.

{¶1} Plaintiff-appellant, Justin Lesh, appeals from a judgment of the Franklin County Municipal Court, Small Claims Division, adopting a magistrate's decision that denied plaintiff recovery on his breach of contract claim against defendants-appellees, William Moloney and Allison Delisio. Although plaintiff does not specify an assignment of error, the issue on appeal appears to be embodied in the first sentence of plaintiff's argument:

Appellant does not believe that this was a complete settlement through mediation.

Because plaintiff failed to file a transcript in the trial court with his objections to the magistrate's decision, the record presents no basis to conclude the magistrate's factual determinations are erroneous, and so we affirm.

I. Facts and Procedural History

{¶2} On December 29, 2010, plaintiff filed a complaint in the Small Claims Division of the Franklin County Municipal Court seeking "to recover compensation for labor and appliances that were never properly reimbursed" to him. According to the complaint, plaintiff "tried to recover at least half of what [he] was owed through mediation but Defendants didn't agree." The matter was scheduled for trial before a magistrate on February 1, 2011.

{¶3} On the day of trial, plaintiff appeared, as did defendant Moloney, representing himself; defendant Delisio failed to appear. Based on the testimony and evidence the parties presented, the magistrate issued a decision, including findings of fact and conclusions of law, and concluded "plaintiff has not proven a right to recover on the complaint by a preponderance of the evidence."

{¶4} According to the magistrate's decision, defendants were general partners in a business, and each partner could bind the other in the operation of the business. Plaintiff and Moloney entered into a settlement agreement on November 18, 2010 containing two terms; plaintiff asserts defendants breached the agreement. Under the first term, defendants agreed to receive plaintiff's receipt from Lowe's to "determine if they accept [the] expenses as work done to their apartment by Justin Lesh and will mail a check for \$48.95 if they believe that these were incurred expenses." (Mag. Dec., 1.) After the defendants received the receipt, Moloney reviewed it and contacted plaintiff about

some entries on the receipt. Because plaintiff was too busy with other matters to answer Moloney's questions, Moloney determined the receipt did not represent "work done to their apartment." The magistrate concluded, based on those facts, that "defendants fully performed their obligations under the first term of the agreement."

{¶5} The second term of the agreement required Delisio to pay plaintiff \$34.76 by a check to be mailed on November 19, 2010. The magistrate concluded defendants "substantially complied with that obligation by sending to the plaintiff a check for \$34.76 dated December 1, 2010."

{¶6} Plaintiff nonetheless contended in the trial court that he did not intend the November 18 agreement to settle the entire dispute between the parties. The magistrate disagreed, noting the language in the agreement. The preamble to the agreement indicates the amount at issue concerns \$1,109.04 for deposit, labor, and materials; the agreement closes with the statement that "the above settlement is fair and reasonable and they agree to follow its terms and conditions." Were any doubt remaining about the effect of the agreement, the magistrate pointed to the additional language stating the parties "further understand and agree that no further legal action will be taken as long as the parties complete all actions included in this agreement." With that additional language, the magistrate concluded "[t]he agreement is a contract to settle this dispute" and "is binding on the parties."

{¶7} Given the language of the agreement, and finding defendants completed both terms in the agreement, the magistrate determined plaintiff's action against defendants "may not proceed," and dismissed plaintiff's complaint. The trial court adopted the magistrate's decision through a judgment entry filed February 7, 2011.

{¶8} Plaintiff filed an objection to the magistrate's decision on February 17, 2011, asserting the mediator who worked with the parties to reach the November 18 agreement advised plaintiff that, in signing the agreement, he was simply agreeing to the points noted and "would have to go after the rest of the money (materials, labor etc.)." (Plaintiff's Objections, 2.) Plaintiff thus contended not everything was settled in mediation, and the magistrate erred in concluding to the contrary.

{¶9} The trial court overruled plaintiff's objection. As the court explained, plaintiff "failed to establish that the magistrate erred in concluding that Mr. Lesh's claims were resolved by the November 18, 2010 settlement agreement or that the magistrate erred in finding that the defendants had complied with that agreement." Plaintiff appeals.

II. Assignment of Error

{¶10} Plaintiff's single argument asserts: (1) based on the mediator's comments to him, he did not believe he was resolving the entire dispute at issue but could recover the unresolved amount through an action in the Small Claims Division of the municipal court, and (2) defendants did not comply with the second term of the November 18, 2010 agreement because the check was not timely mailed.

{¶11} 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, ¶9, quoting *Carter v. Le*, 10th Dist. No. 05AP-173, 2005-Ohio-6209, ¶11. Similarly, 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.

{¶12} The magistrate found that plaintiff agreed to settle his claims against defendants and to take no further action against them if defendants complied with the two terms of the agreement. Absent a transcript, the trial court had no basis to disagree with the magistrate's findings of fact. Accordingly, the trial court did not err in accepting the magistrate's findings of fact and determining they supported the magistrate's conclusions of law concerning the effect of the agreement on future litigation over the subject matter addressed in the agreement.

{¶13} Plaintiff, however, further asserts that, even if the settlement agreement binds him, defendants did not comply with the second term of the agreement. In particular, he points to the language of the second term that required payment in November; contrary to the agreement, defendants paid the specified amount in December. Aware of the untimely payment, the magistrate nonetheless determined defendants substantially complied with the agreement's second term.

{¶14} "The 'long and uniformly settled rule as to contracts requires only a substantial performance in order to recover upon such contract. Merely nominal, trifling,

or technical departures are not sufficient to breach the contract.' " *Hikmet v. Turkoglu*, 10th Dist. No. 08AP-1021, 2009-Ohio-6477, ¶32, appeal not allowed, 125 Ohio St.3d 1413, 2010-Ohio-1893, quoting *U.S. Bank, N.A. v. Stewart*, 2d Dist. No. 21775, 2007-Ohio-5669, ¶42, quoting *Ohio Farmers' Ins. Co. v. Cochran* (1922), 104 Ohio St. 427, paragraph two of the syllabus. As a result, no breach of contract generally occurs if a party has substantially complied with the contract terms. *Hikmet* at ¶33. " 'Substantial performance of a contract is interpreted to mean * * * that slight departures, omissions and inadvertences should be disregarded.' " *Id.*, quoting *Kichler's, Inc. v. Persinger* (1970), 24 Ohio App.2d 124, 126. Even so, " '[f]or the doctrine of substantial performance to apply, the part unperformed must not destroy the value or purpose of the contract.' " *Id.*, quoting *Hansel v. Creative Concrete & Masonry Constr. Co.*, 148 Ohio App.3d 53, 2002-Ohio-198.

{¶15} Nothing in the magistrate's findings of fact suggests the time element of the second term in the November 18, 2010 agreement was critical to the value of the settlement. Moreover, the delay of less than two weeks, absent some additional facts, cannot be said to have materially affected the benefit of the bargain to plaintiff. Although plaintiff does not seek it, even interest on the delay would amount only to pennies. Given the magistrate's findings of fact, the trial court properly adopted the magistrate's conclusion that the delay was not a material breach of the agreement. Cf. *Blenheim Homes, Inc. v. Mathews* (1963), 119 Ohio App. 44; *Russell v. Ohio Outdoor Advertising Corp.* (1997), 122 Ohio App.3d 154; *Fifth Third Bank v. Dayton View Community Dev. Corp.*, 2d Dist. No. 21696, 2007-Ohio-3806.

{¶16} In the final analysis, the magistrate's findings of fact support the conclusions of law in the magistrate's decision. Because plaintiff failed to file a transcript with his objection in the trial court, the trial court had no independent basis on which to review the magistrate's factual findings. Accordingly, the trial court properly adopted the magistrate's decision and entered judgment for defendants. Plaintiff's single assignment of error is overruled, and the judgment of the trial court is affirmed.

Judgment affirmed.

FRENCH and CONNOR, JJ., concur.
