

COURT OF APPEALS  
DELAWARE COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STEPHEN ARTHUR	:	JUDGES:
	:	Hon. William Hoffman, P.J.
	:	Hon. Sheila Farmer, J.
Plaintiff-Appellee	:	Hon. Julie Edwards, J.
	:	
-vs-	:	
	:	Case No. 02CA06029
JOHN TRIMMER	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil Appeal from Delaware County Municipal Court Case 01CVF01110

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: April 22, 2003

APPEARANCES:

For Plaintiff-Appellee

DAVID H. BIRCH  
2 West Winter Street  
Delaware, OH 43015

For Defendant-Appellant

JOHN L. ONESTO  
887 South High Street  
Columbus, OH 43206

*Edwards, J.*

{¶1} Defendant-appellant John Trimmer appeals from the June 7, 2002, Judgment Entry/Magistrate's Decision which granted judgment in favor of plaintiff-appellee Stephen Arthur.

### STATEMENT OF THE FACTS AND CASE

{¶2} On September 4, 2001, plaintiff-appellee Stephen Arthur [hereinafter appellee] filed a civil complaint against defendant-appellant John Trimmer [hereinafter appellant]. In the complaint, appellee contended that appellee hired appellant as a subcontractor to perform improvements to property located at 7909 Penn Road, Ostrander, Ohio. Appellee claimed that he paid for the work but appellant did not complete the work or return the payment to appellee. Appellee claimed that appellant owed appellee \$4,200.00 for the work not completed.

{¶3} A trial before a Magistrate was conducted on May 24, 2002. On June 7, 2002, the Magistrate recommended that judgment be granted for appellee for \$3,300.00 plus interest and court costs. The June 7, 2002, Judgment Entry/Magistrate's Decision [hereinafter Magistrate's Decision] had been signed by the trial court Judge and adopted as a final order, subject to Civ. R. 53 and Civ. R. 58.

{¶4} On June 17, 2002, appellant filed a Notice of Appeal. On June 18, 2002, appellant filed objections to the Magistrate's Decision in the trial court.

{¶5} On appeal, appellant raises the following assignments of error:

{¶6} "I. PLAINTIFF-APPELLEE ("ARTHUR") NOT MEETING HIS BURDEN OF PROOF, THE TRIAL COURT ERRED WHEN IT DID NOT GRANT DEFENDANT-APPELLANT'S ("TRIMMER") MOTION TO DISMISS ARTHUR'S ACTION AFTER ARTHUR HAD RESTED HIS CASE.

{¶7} "II. ARTHUR NOT MEETING HIS BURDEN OF PROOF, THE TRIAL

COURT ERRED BY GIVING JUDGMENT TO ARTHUR WHICH, IN EFFECT, OVERRULED TRIMMER'S MOTION TO DISMISS THAT WAS PRESENTED AFTER THE CLOSE OF ALL THE EVIDENCE."

{¶8} In appellant's assignments of error, appellant contends that appellee, the plaintiff in the civil suit, did not present evidence to meet his factual burdens of proof. However, we find that we are unable to address appellant's assignments of error on appeal.

{¶9} The trial in this case was conducted before a Magistrate. The Magistrate filed a Decision on June 7, 2002. On June 17, 2002, appellant filed a notice of appeal, without having filed objections to the Magistrate's Decision.

{¶10} Civil Rule 53(E)(3)(b) provides that "[a] party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law unless the party has objected to that finding or conclusion under this rule." See, e.g., *Stamatakis v. Robinson* (January 27, 1997), Stark App. No. 1996CA00303; *Kademenos v. Mercedes-Benz of North America, Inc.* (March 3, 1999), Stark App. No. 98CA50. In the case sub judice, appellant did not raise objections to the trial court regarding the factual issues involved. Therefore, appellant cannot challenge the factual issues on appeal.

{¶11} Appellant contends that this court can review the factual issues because appellant did file objections to the Magistrate's Decision after he filed his notice of appeal. However, we find that filing the objections after the Notice of Appeal does not alter our conclusion.

{¶12} It is implicit in Civ. R. 53 that the objections to the Magistrate's Decision be filed before the notice of appeal. The objection process gives the trial court the opportunity to review the Magistrate's Decision, in light of a party's objections. As a result, the trial court may decide to adopt, reject, or modify the magistrate's decision, hear additional

evidence, recommit the matter to the Magistrate with instructions, or hear the matter. Civ. R. 53(E)(4)(b). Once a notice of appeal is filed, the trial court has limited jurisdiction over the case. “Once an appeal is taken, the trial court is divested of jurisdiction except ‘over issues not inconsistent with that of the appellate court to review, affirm, modify or reverse the appealed judgment, such as the collateral issues like contempt \* \* \*.’” *State ex rel. State Fire Marshall v. Curl* (2000), 87 Ohio St.3d 568, 56, 2000-Ohio-248, 722 N.E.2d 73.

{¶13} The review and determination of objections to a Magistrate’s Decision is inconsistent with an appeal because objections are directed at the substance of the judgment appealed and the issues raised on appeal. See *Karson v. Ficke*, Medina App. No. 01 CA 3252-M, 2002-Ohio-4528. Therefore, once a notice of appeal is filed, a trial court lacks jurisdiction to consider objections to a Magistrate’s Decision. In accord, *Id.*

{¶14} Therefore, because appellant did not object to the Magistrate’s Decision before the filing of the Notice of Appeal, appellant cannot raise factual issues on appeal.<sup>1</sup>

{¶15} Appellant’s assignments of error are overruled.

{¶16} The judgment of the Delaware County Court of Common Pleas is affirmed.

By Edwards, J.

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<sup>1</sup> We note that authority exists in Ohio law for the proposition that appellant's failure to object to the magistrate's decision does not bar appellate review of "plain error." *Kelley v. Holmes County Sheriff's Dept.* (July 3, 2000), Holmes App. No. 99 CA 4, (citing *R.G. Real Estate Holding, Inc. v. Wagner* (April 24, 1998), Montgomery App. No. 16737; *Timbercreek Village Apts. v. Myles* (May 28, 1999), Montgomery App. No. 17422. ) “A ‘plain error’ is obvious and prejudicial although neither objected to nor affirmatively waived which, if permitted, would have a material adverse affect on the character and public confidence in judicial proceedings....” *Schade Carnegie Body Co.* (1982), 70 Ohio St.2d 207, 209. The plain error doctrine is not favored in civil cases and should only be applied in extremely rare cases that involve exceptional circumstances affecting the basic fairness, integrity or public reputation of the judicial process. (*Callentine v. Central Cab Co.* (Nov. 23, 1998), Warren App. No. 98-03-019. This is not such a case.

Hoffman, P. J. and

Farmer, J. concur

In Re: Motion to Dismiss - Judgment