

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

DON FORTH,	:	APPEAL NO. C-150286
Plaintiff-Appellant,	:	TRIAL NO. 13CV-02130
vs.	:	<i>JUDGMENT ENTRY.</i>
TONI STIDHAM,	:	
and	:	
CRYSTAL GARY,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant Dan Forth sued defendants-appellees Toni Stidham and Crystal Gary in small claims court, claiming that Stidham's children and Gary's children had caused \$2,000 worth of damage to his property. The case proceeded to trial before a magistrate. At trial, Forth contended that the children, who are his neighbors, frequently ran across his front lawn, damaging his grass. He also believed that the children had caused the concrete on his driveway to crack and chip, and that they had broken one of his windows with a basketball. Forth submitted multiple exhibits in support of his claim, including pictures and police reports. Before Forth rested his case, the magistrate asked Forth if he had given her all the exhibits that he wished to submit. Forth responded that he did. At trial, Stidham and Gary each denied that their respective children had damaged Forth's property.

The magistrate construed Forth's claim as one alleging a violation of R.C. 3109.09. In pertinent part, that code section provides that a parent may be held

liable for his or her child's willful property damage. The magistrate ruled in favor of Stidham and Gary, finding (1) that there was insufficient evidence to show that the children had caused the concrete on Forth's driveway to deteriorate, (2) that there was insufficient evidence that Stidham's children and/or Gary's children had willfully caused damage to the lawn, and (3) that there was insufficient evidence to show which children, if any, had willfully damaged Forth's window.

Forth objected to the magistrate's decision. The trial court overruled the objections and adopted the magistrate's decision without first reviewing the trial transcript. Forth appealed that judgment in the case numbered C-130280. We reversed that judgment, and ordered that the trial court review the transcript before ruling. On remand, the trial court followed this court's mandate, and entered judgment adopting the magistrate's decision. This appeal followed.

In his first assignment of error, Forth claims that the magistrate failed to consider all of his exhibits because some were marked and others were not, and because the unmarked exhibits were put in a separate envelope. Because Forth failed to object to the magistrate's decision on these grounds, he has waived all but plain error on appeal. Civ.R. 53(D)(3)(b)(iv); *State ex rel. Booher v. Honda of Am. Mfg., Inc.*, 88 Ohio St.3d 52, 53, 723 N.E.2d 571 (2000). Under a plain error analysis, we will not reverse the trial court's decision unless the alleged error "seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 679 N.E.2d 1099 (1997), syllabus.

In this case, the magistrate specifically asked Forth if he had submitted all of the exhibits that he wished to submit. Forth stated that he had. There is no indication in the record that the magistrate failed to consider what Forth had submitted simply because some of the exhibits were unmarked. *See Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980).

Consequently, Forth is unable to show error, let alone plain error. This assignment of error is overruled.

In his second and third assignments of error, Forth contends that the trial court erred in finding that Forth had failed to prove that Stidham's and/or Gary's children had willfully damaged his lawn, window, or driveway. Forth also contends that he proved the elements of negligent supervision, and that he should have been granted relief on that ground. We address these assignments of error, together.

We review the trial court's decision to adopt the magistrate's decision for an abuse of discretion. *See In re Estate of Knowlton*, 1st Dist. Hamilton No. C-050728, 2006-Ohio-4950, ¶ 43. Upon a review of the record, we find none. *See Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). It is clear that Forth was unable to specifically link the children who he claimed were at fault with the alleged damage to his driveway, lawn, or window. Under either a theory of negligent supervision or under R.C. 3109.09, Forth was required to prove which children had done what. *See R.C. 3109.09; Huston v. Konieczny*, 52 Ohio St.3d 214, 217-218, 556 N.E.2d 505 (1990). He could not. We therefore overrule Forth's second and third assignments of error.

In his fourth assignment of error, Forth claims that the trial court erred when it refused to allow Forth to move a DVD into evidence that had not been submitted during trial. Under Civ.R. 53(D)(4)(b), a trial court has the discretion to take additional evidence before ruling on objections. Forth had argued that the DVD was a copy of a video that he had played at trial, and that he wished the court to review it since the magistrate had viewed it before issuing her decision. The court found that there was no indication that the DVD contained the same video that the magistrate had viewed, and overruled Forth's motion. We cannot say that the court's judgment was unreasonable, arbitrary, or capricious. *See Blakemore*. We therefore find no abuse of discretion. This assignment of error is overruled.

OHIO FIRST DISTRICT COURT OF APPEALS

The trial court's judgment is affirmed.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

FISCHER, P.J., MOCK and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on February 3, 2016
per order of the court _____.

Presiding Judge