

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

YOLANDA FINCHER,	:	APPEAL NO. C-070553
	:	TRIAL NO. A-0610269
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
DIRECTOR, OHIO DEPARTMENT OF	:	
JOB & FAMILY SERVICES,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar. This judgment entry is not an opinion of the court.<sup>1</sup>

Plaintiff-appellant Yolanda Fincher appeals pro se from the entry of the trial court adopting the May 15, 2007, magistrate’s decision affirming the Unemployment Compensation Review Commission’s determination that Fincher had fraudulently misrepresented her employment status to collect unemployment benefits.

Fincher had filed claims for unemployment benefits for the weeks ending September 11, 2004, through November 6, 2004. She had collected \$3,231 in benefits for this period. During each week of this period, Fincher continued to inform defendant-appellee, the Ohio Department of Job & Family Services (“ODJFS”), that she had not worked part- or full-time.

An investigator for ODJFS discovered that Fincher had been working part-time for Cincinnati State College while collecting these benefits. Fincher admitted to the hearing officer that she had not reported her work status or her earnings to ODJFS. Fincher was ordered to repay the unemployment-compensation benefits that she had received.<sup>2</sup> The

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

<sup>2</sup> See R.C. 4141.35(A)(1) and 4141.35(A)(3).

review commission affirmed the ODJFS order. And Fincher appealed to the Hamilton County Common Pleas Court pursuant to R.C. 4141.281.

The case was referred to a magistrate. Following oral argument, the magistrate reviewed the record before the commission. The magistrate issued a written decision affirming the commission's decision. In accordance with Civ.R. 53(D)(3)(a)(iii), the decision contained a conspicuous warning that the failure to file a timely and specific objection to the trial court would prevent Fincher from assigning as error on appeal the court's adoption of the magistrate's factual findings and legal conclusions.

Nonetheless, Fincher appealed directly to this court. We dismissed the appeal<sup>3</sup> because a magistrate's decision is not effective, and thus is not appealable, unless adopted by the trial court.<sup>4</sup> When the case returned to the trial court, Fincher did not seek leave to file objections out of time.<sup>5</sup> The trial court adopted the magistrate's decision, and Fincher filed this appeal.

Fincher has raised six assignments of error challenging the hearing officer's and the commission's factual findings, and their interpretation of R.C. 4141.35, which defines fraudulent misrepresentation to obtain benefits, their orders to repay the benefits, and again challenging this court's dismissal of her previous direct appeal from the magistrate's decision. Taken together, Fincher's assignments essentially contest the weight of the evidence adduced to support the magistrate's ruling that Fincher had worked while obtaining unemployment-compensation benefits and had failed to report her work status or the income derived from it to the ODJFS.

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<sup>3</sup> See *Fincher v. Director, Ohio Dept. of Job & Family Services* (June 27, 2007), 1st Dist. No. C-070381.

<sup>4</sup> See Civ.R. 53(D)(4)(a); see, also, *Yantek v. Coach Builders Ltd.*, 1st Dist. No. C-060601, 2007-Ohio-5126, at ¶14.

<sup>5</sup> See Civ.R. 53(D)(5).

Civ.R. 53(D)(3) governs the review of a magistrate’s decision in any factual or legal matter. It provides that “[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law \* \* \* , unless the party has objected to that finding or conclusion as” provided elsewhere in the rule.<sup>6</sup>

To avoid the waste of the court’s and the parties’ time and resources, alleged errors must be addressed at the earliest moment in a lawsuit. This “embodies the long-recognized principle that the failure to draw the trial court’s attention to possible error, by objection or otherwise, when the error could have been corrected, results in a waiver of the issue for purposes of appeal.”<sup>7</sup> Thus, errors that could have been brought to the attention of the trial court before it entered judgment, but that were not, are waived.

Despite the written warning at the conclusion of the magistrate’s decision, Fincher did not file written objections with the trial court as contemplated by Civ.R. 53(D)(3)(b). Thus the limits of our review are narrowly circumscribed. Any error, factual or legal, in the magistrate’s decision is waived, except “plain error.”

The plain-error doctrine is not favored in civil proceedings and “may be applied 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, thereby challenging the legitimacy of the underlying judicial process itself.”<sup>8</sup> Plain error is to be invoked sparingly and is not warranted by a mere failure to object.

Although Fincher has proceeded pro se, she is subject to the same rules and procedures as those litigants who retain counsel and “must accept the result of [her] own

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<sup>6</sup> Civ. R. 53(D)(3)(b)(iv) and 53(D)(4)(e)(i).

<sup>7</sup> *In re Etter* (1998), 134 Ohio App. 3d 484, 492, 731 N.E.2d 694.

<sup>8</sup> *Goldfuss v. Davidson*, 70 Ohio St.3d 116, 1997-Ohio-401, 679 N.E.2d 1099, syllabus.

mistakes and errors.”<sup>9</sup> As the Ohio Supreme Court noted in *Goldfuss v. Davidson*, “it is well established that failure to follow procedural rules can result in forfeiture of rights.”<sup>10</sup>

When, as here, a party fails to file written objections, the trial court “may adopt [the] magistrate’s decision, unless it determines that there is an error of law or other defect evident on the face of the magistrate’s decision.”<sup>11</sup> A reviewing court cannot substitute its judgment for the hearing officer’s or the commission’s factual findings, including their determination of the credibility of the witnesses.<sup>12</sup> From the face of the magistrate’s decision in this case, we cannot say that the commission’s decision was unlawful, unreasonable, or against the manifest weight of the evidence—our only basis for reversing its decision.<sup>13</sup> In light of Fincher’s admission that she had worked while receiving benefits, the trial court’s decision to adopt the magistrate’s ruling was not an error, much less plain error that seriously affected the basic fairness, integrity, or public reputation of the judicial process.

Fincher’s six assignments of error are overruled. Therefore, the trial court’s judgment is affirmed.

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

**SUNDERMANN, P.J., HENDON and CUNNINGHAM, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on May 14, 2008  
per order of the Court \_\_\_\_\_.  
Presiding Judge

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<sup>9</sup> See *Meyers v. First Natl. Bank* (1981), 3 Ohio App.3d 209, 210, 444 N.E.2d 412.

<sup>10</sup> *Goldfuss v. Davidson*, 70 Ohio St.3d at 122, 1997-Ohio-401, 679 N.E.2d 1099.

<sup>11</sup> Civ.R. 53(D)(4)(c) and July 2006 Staff Note (“The ‘evident on the face’ standard does not require that the court conduct an independent analysis of the magistrate’s decision.”).

<sup>12</sup> See *Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Servs.*, 73 Ohio St.3d 694, 696, 1995-Ohio-206, 653 N.E.2d 1207; see, also, *Irvine v. Unemployment Comp. Bd.* (1985), 19 Ohio St.3d 15, 17-18, 482 N.E.2d 587.

<sup>13</sup> See *id.*