

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

[State ex rel.] Tamara Carroll,	:	
Relator,	:	
v.	:	No. 14AP-944
Galion Assisted Living Ltd.	:	(REGULAR CALENDAR)
and Industrial Commission of Ohio,	:	
Respondents.	:	
	:	

D E C I S I O N

Rendered on November 17, 2015

Michael J. Muldoon, for relator.

Dawson & Myers LLC, and *Shane M. Dawson*, for
respondent Galion Assisted Living Ltd.

Michael DeWine, Attorney General, and *Eric J. Tarbox*, for
respondent Industrial Commission of Ohio.

IN MANDAMUS
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

SADLER, J.

{¶ 1} Relator, Tamara Carroll, commenced this original action requesting a writ of mandamus ordering respondent Industrial Commission of Ohio ("commission") to vacate the October 14, 2014 order of its staff hearing officer ("SHO"), which exercised continuing jurisdiction to vacate a November 22, 2013 final order of the Ohio Bureau of Workers' Compensation ("bureau") that allowed her the industrial claim for a knee injury, and to enter an order reinstating the bureau order allowing the claim.

{¶ 2} Pursuant to Civ.R. 53 and Loc.R. 13(M) of the Tenth District Court of Appeals, this matter was referred to a magistrate who issued the appended decision, including findings of fact and conclusions of law. Specifically, the magistrate determined that relator has a plain and adequate remedy at law by way of an appeal to the common pleas court and additionally determined that the commission clearly had continuing jurisdiction to vacate the November 22, 2013 bureau order and to enter an order that administratively disallows relator's claim. Therefore, the magistrate recommended that this court deny the requested writ of mandamus.

{¶ 3} Relator filed an objection to the magistrate's decision, which we have paraphrased and grouped as follows:¹

1. The magistrate erred in determining that relator had an adequate remedy at law and that mandamus was not the appropriate vehicle to question whether the commission properly exercised continuing jurisdiction on the issue of clarification of allowance.
2. The magistrate erred in finding that the commission had continuing jurisdiction to take further action regarding relator's claim.

{¶ 4} None of the parties have filed objections to the magistrate's findings of fact and, following an independent review of the record, we adopt those findings as our own. In summary, the bureau allowed relator's industrial claim for a medial meniscus tear of the right knee based on an MRI and a physician's opinion. However, when relator underwent an approved surgery a few months later, the surgeon found the medial meniscus intact with some degeneration and fibrosis, but no tearing. At the request of the bureau, another physician conducted a review of relator's file and opined that degenerative joint disease unrelated to the described workplace injury caused her pain. The bureau moved the commission to exercise its continuing jurisdiction, asserting new and changed circumstances and/or mistake of fact, to vacate the order allowing relator's claim. A district hearing officer ("DHO") did so vacate the prior order, thereby disallowing relator's claim. An SHO affirmed the DHO's decision and later refused

¹ Relator does not delineate objections. In the interest of justice, we gleaned these objections from the "Memorandum in Support of Objections" section of relator's submission to this court. (Objections of Relator Tamara Carroll to Magistrate's Decision Aug. 18, 2015, 3-4.)

relator's administrative appeal. Relator filed a complaint with the common pleas court and, a few days later, filed a mandamus action in this court.

{¶ 5} Here, relator's objections are, in essence, the same arguments made to and addressed by the magistrate, i.e., whether the commission's exercise of continuing jurisdiction to vacate a claim was proper and, regardless, whether an adequate remedy at law exists to preclude a writ of mandamus. For the reasons set forth in the magistrate's analysis of the existence of an adequate remedy at law, we overrule relator's objections. *State ex rel. Schottenstein Stores Corp. v. Indus. Comm.*, 10th Dist. No. 07AP-1066, 2009-Ohio-2142, ¶ 4. Because the lack of an adequate remedy in the ordinary course of the law is a necessary prerequisite for relief in mandamus and is therefore a "threshold" question in determining whether the writ may issue, we modify the magistrate's decision to exclude the analysis and determinations relating to the merits of relator's continuing jurisdiction argument. *See State ex rel. Alhamarshah v. Indus. Comm.*, 142 Ohio St.3d 524, 2015-Ohio-1357, ¶ 11.

{¶ 6} In summary, following review of the magistrate's decision, an independent review of the record, and due consideration of relator's objections, we find the magistrate properly determined the facts and applied the appropriate law with regard to the existence of an adequate remedy in the ordinary course of the law. Therefore, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law as modified herein. In accordance with the magistrate's decision, the requested writ of mandamus is denied.

*Objections overruled;
writ of mandamus denied.*

LUPER SCHUSTER and HORTON, JJ., concur.

APPENDIX
IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

[State ex rel.] Tamara Carroll,	:	
Relator,	:	
v.	:	No. 14AP-944
Galion Assisted Living Ltd.	:	(REGULAR CALENDAR)
and Industrial Commission of Ohio,	:	
Respondents.	:	

MAGISTRATE'S DECISION

Rendered on August 18, 2015

Michael J. Muldoon, for relator.

Dawson Disantis & Myers LLC, and *Shane M. Dawson*, for
respondent Galion Assisted Living Ltd.

Michael DeWine, Attorney General, and *Eric J. Tarbox*, for
respondent Industrial Commission of Ohio.

IN MANDAMUS

{¶ 7} In this original action, relator, Tamara Carroll, requests a writ of mandamus ordering respondent, Industrial Commission of Ohio ("commission"), to vacate the October 14, 2014 order of its staff hearing officer ("SHO") that exercised continuing jurisdiction to vacate a November 22, 2013 final order of the Ohio Bureau of Workers' Compensation ("bureau") that allowed the industrial claim for a medial meniscus tear of the right knee, and to enter an order that denies the bureau's April 11,

2014 motion for the exercise of continuing jurisdiction, and reinstates the November 22, 2013 bureau order.

Findings of Fact:

{¶ 8} 1. On November 4, 2013, relator filed an application for workers' compensation benefits on a bureau form captioned "First Report of an Injury, Occupational Disease or Death" that the bureau designates as a FROI-1. On her application, relator claimed that she injured her right knee on July 7, 2013 while employed with respondent, Galion Assisted Living Ltd ("employer"), a state-fund employer. According to the application, injury occurred when relator twisted her right knee while transferring a patient from a toilet to a recliner.

{¶ 9} 2. Earlier, on September 11, 2013, relator underwent a right knee MRI. The interpreting radiologist, Philip Calendine, M.D., wrote his impression: "[d]egeneration and tear posterior horn medial meniscus with tear extending to the posterior nonarticulating aspect of the meniscus."

{¶ 10} 3. On November 14, 2013, at the bureau's request, Thomas E. Forte, D.O., conducted a file review. In his report of that date, Dr. Forte opined:

In this reviewer's opinion, based upon the described mechanism of injury, the described physical examination data, and the MRI scan report of 09/11/13, there is sufficient objective medical documentation to establish that the claimant suffered a right knee medial meniscus tear as a direct result of the injury of record * * *.

{¶ 11} 4. On November 22, 2013, the bureau mailed an order allowing the industrial claim (No. 13-854986) for medial meniscus tear of the right knee. The order states reliance upon the report of Dr. Forte. The November 22, 2013 bureau order was not administratively appealed. Thus, it became a final bureau order allowing the claim.

{¶ 12} 5. On February 3, 2014, relator underwent arthroscopic surgery of the right knee. Surgery was performed by J. Jay Guth, M.D. In his operative report, Dr. Guth wrote:

NAME OF OPERATION: Exam under anesthesia.
Arthroscopic debridement medial femoral condyle right knee.

PREOPERATIVE DIAGNOSIS: Medial meniscal tear right knee. Possible osteochondral defect right knee.

POSTOPERATIVE DIAGNOSIS: Intact medial meniscus. Medial compartment arthrosis involving medial femoral condyle right knee.

In his report, Dr. Guth further wrote:

Medial compartment showed grade 3 changes medial femoral condyle over an extensive area of the medial femoral condyle. Meniscus showed some fibrosis but no tearing. Some degeneration but again no frank tear. The meniscus was carefully probed and did not locate a tear in the meniscus.

{¶ 13} 6. On March 11, 2014, at the bureau's request, Robert D. Whitehead, M.D., performed a file review. In his report, Dr. Whitehead opined:

The MRI initially suggested a medial meniscus tear however, through arthroscopy it was found that no meniscus tear was present and therefore, there is insufficient medical evidence to support the condition of right knee medial meniscus tear. Also, during the arthroscopy there was documentation of the extensive advanced degenerative disease in the medial compartment.

Therefore, the record supports that the workers' [sic] ongoing pain with associated swelling is related to degenerative joint disease. * * *

Her present symptoms are related to her degenerative knee. Her degenerative condition is unrelated to the described workplace injury. Her degenerative knee has not been aggravated by the injury.

{¶ 14} 7. On April 11, 2014, citing Dr. Whitehead's report and the operative report of Dr. Guth, the bureau moved the commission to exercise its continuing jurisdiction to vacate the November 22, 2013 bureau order that allowed the claim. In its motion, the bureau asserted "new and changed circumstances and/or mistake of fact" as grounds for the exercise of continuing jurisdiction.

{¶ 15} 8. On June 26, 2014, Dr. Guth wrote to relator's counsel:

As your records indicate, Tamara underwent surgery on February 3, 2014. She had a preoperative diagnosis of medial meniscal tear, possible osteochondral defect. During her surgery, we found her meniscus to be intact. We found arthritis of her medial femoral condyle, significant in its nature. She was found to have Grade 3 changes of her medial femoral condyle over a large area. This certainly was more of an arthritic-type situation than an acute injury.

Based upon the history that Tammy has related, which states that she was asymptomatic prior to the day at work that she injured her knee, I would conclude that she substantially aggravated this condition in her right knee. There is really no other way for me to know as I had never seen Tammy prior to that date and I have found her to be honest and forthright and have no reason not to trust her.

{¶ 16} 9. On July 8, 2014, citing Dr. Guth's June 26, 2014 report, relator moved that her claim be additionally allowed for "substantial aggravation of pre-existing arthritis of her medial femoral condyle."

{¶ 17} 10. Following a September 2, 2014 hearing, a district hearing officer ("DHO") issued an order that vacates the bureau's November 22, 2013 order. Invoking the commission's continuing jurisdiction, the DHO disallowed the claim for "tear medial meniscus, right knee."

{¶ 18} Also, the DHO denied relator's July 8, 2014 motion for an additional claim allowance. That is, the DHO disallowed the claim for "substantial aggravation of pre-existing arthritis of the right medial femoral condyle."

{¶ 19} 11. Relator administratively appealed the DHO's order of September 2, 2014.

{¶ 20} 12. On October 13, 2014, at the employer's request, relator was examined by Robert F. Shadel, M.D. In his three-page narrative report, Dr. Shadel answers questions posed to him by employer's counsel:

[One] Based on the records provided and the reported mechanism of injury being lifting a patient and twisting the right knee, does Ms. Carroll suffer from a right medial meniscal tear as a result of the industrial injury that took place on July 7, 2013?
Please explain.

Answer: No. The claimant had no clinical evidence of any right medial meniscus tear. MRI suggested possible tear, but MRI is inaccurate in the context of meniscus degeneration. Operative note confirmed no medial meniscus tear with meniscal degeneration - an integral part of the claimant's chronic long-standing pre-existing degenerative joint disease.

* * *

[Three] If you find that Ms. Carroll suffers from arthritis of the medial femoral condyle is not a direct result of her industrial injury, is her arthritis a pre-existing condition? If so, was her condition substantially aggravated by her industrial injury on July 7, 2013? Please explain.

Answer: By the objective medical evidence, the claimant's right knee DJD including in part the medial femoral condyle arthrosis long pre-existed the 7/7/13 claim date. The claimant has suffered no substantial aggravation of her pre-existing medial compartment arthrosis of the right medial femoral condyle related to alleged 7/7/13 claim.

{¶ 21} 13. Following an October 14, 2014 hearing, an SHO issued an order affirming the DHO's order of September 2, 2014. The SHO's order explains:

The Bureau of Workers' Compensation's Motion, filed 04/11/2014, is granted to the extent of this order and the Claimant's C-86 Motion, filed 07/08/2014, is denied.

The Bureau of Workers' Compensation's motion filed 04/11/2014, requests that the Industrial Commission exercise its continuing jurisdiction under Revised Code 4123.52, to remove a condition from this claim. The Staff Hearing Officer grants this motion and finds there are new and changed circumstances since the time of the 11/22/2013 Bureau of Workers' Compensation order which allowed this claim, and the Staff Hearing Officer also finds a mistake of fact exists on which to exercise continuing jurisdiction.

The Staff Hearing Officer notes the Bureau of Workers' Compensation order dated 11/22/2013 granted the claim application filed 11/04/2013, and allowed this claim for a tear of the medial meniscus of the right knee. However, when the Claimant subsequently underwent arthroscopic surgery

on 02/03/2014, the Claimant's medial meniscus of the right knee was found to be "intact." The operative report by Joseph Jay Guth, M.D. indicates that the meniscus was carefully probed and a tear in the meniscus was not located. The post-operative diagnosis included that of "intact medial meniscus."

Although the Claimant's representative argued at hearing that the medial meniscus was originally torn in the injury and was healed by the time of the 02/03/2014 surgery, there is absolutely no medical evidence which indicates the meniscus was torn and healed by the time of surgery. As the originally allowed medical meniscus tear was subsequently found to not be in existence per the 02/03/2014 operative report, the Staff Hearing Officer exercises the continuing jurisdiction of the Industrial Commission to vacate that allowance from this claim. Therefore, the condition of a **TEAR OF THE MEDIAL MENISCUS OF THE RIGHT KNEE** is specifically **DISALLOWED** in this claim.

The Claimant's C-86 motion, filed 07/08/2014, is denied. That motion requests that the claim be allowed for "substantial aggravation of pre-existing arthritis medial femoral condyle." The Staff Hearing Officer notes that allowances of this claim/additional allowance was a noticed issue for hearing. The FROI-1 First Report of an Injury, Occupational Disease or Death application, filed 11/04/2013, is denied. The claim is disallowed and is further specifically **DISALLOWED** for the condition of **SUBSTANTIAL AGGRAVATION OF PRE-EXISTING ARTHRITIS MEDIAL FEMORAL CONDYLE**.

The Staff Hearing Officer finds that the Claimant has not met her burden of proof in showing the pre-existing arthritis of the medial femoral condyle was substantially aggravated by the 07/07/2013 industrial injury. The 06/26/2014 report of Dr. Guth merely indicates that the Claimant was asymptomatic prior to the injury and based on that fact, he concludes that the Claimant substantially aggravated the condition in her right knee. The Staff Hearing Officer finds that this is legally insufficient on which to additionally allow this claim for that condition or to allow the original claim for that condition. Based on the date of injury in this claim, the Claimant has the burden of proof to show a substantial aggravation by way of objective diagnostic findings, objective

clinical findings, or objective test results. This burden of proof has not been met.

The Staff Hearing Officer further relies on the medical review by Robert Whitehead, M.D. dated 08/02/2014 in rendering this decision. Dr. Whitehead opined that objective data is not present in the record to support a substantial aggravation. The Staff Hearing Officer further relies on the 10/13/2014 report of Robert Shadel, M.D. in rendering this decision. Dr. Shadel opined that the medial femoral condyle arthritis did pre-exist the date of injury in this claim. However, he indicated that the Claimant had no acute clinical findings on her initial exam of 08/05/2013 to support a substantial aggravation. He further indicated that the objective right knee imaging as well as the arthroscopy, did not support a substantial aggravation of the pre-existing medial femoral condyle arthritis in the right knee. The Claimant's representative argued that Dr. Shadel's report was factually incorrect as Dr. Shadel indicates no particular work injury was reported at the Claimant's initial office visit on 08/05/2013. The Staff Hearing Officer rejects this argument. That office note indicates the Claimant noticed pain and swelling in her right knee about five weeks ago and merely indicates the Claimant often lifts and twists heavy weight at work. However, it did not describe the specific incident of lifting a patient on 07/07/2013. Therefore, Dr. Shadel's report was accurate.

(Emphasis sic.)

{¶ 22} 14. On November 4, 2014, another SHO mailed an order refusing relator's administrative appeal from the SHO's order of October 14, 2014.

{¶ 23} 15. Thereafter, pursuant to R.C. 4123.512, relator filed a notice of appeal with the Crawford County Court of Common Pleas ("common pleas court").

{¶ 24} 16. On November 10, 2014, relator filed her complaint with the common pleas court. In her common pleas court complaint, relator demands the right to participate with respect to both alleged conditions as addressed in the SHO's order of October 14, 2014.

{¶ 25} 17. On November 13, 2014, relator, Tamara Carroll, filed this mandamus action.

Conclusions of Law:

{¶ 26} Relator contends that the commission did not have continuing jurisdiction to vacate the November 22, 2013 bureau order that allowed the claim for a medial meniscus tear.

{¶ 27} Because relator has a plain and adequate remedy at law by way of an appeal to the common pleas court, it is the magistrate's decision that this court deny relator's request for a writ of mandamus. Moreover, the commission clearly had continuing jurisdiction to vacate the November 22, 2013 bureau order, and to enter an order that administratively disallows the claim for the medial meniscus tear.

Basic Law — Right to Participate

{¶ 28} A final commission decision involving a claimant's right to participate *or to continue to participate* in the state insurance fund must, if review is sought, be appealed to a common pleas court pursuant to R.C. 4123.512 (formerly R.C. 4123.519). *Afrates v. Lorain*, 63 Ohio St.3d 22 (1992), syllabus. The only decisions reviewable pursuant to R.C. 4123.512 are those decisions involving a claimant's right to participate *or to continue to participate* in the fund. *Id.*

{¶ 29} Once the right of participation for a specific condition is determined by the commission, no subsequent rulings, except a ruling that terminates the right to participate, are appealable pursuant to R.C. 4123.512. *Felty v. AT&T Technologies, Inc.*, 65 Ohio St.3d 234 (1992), syllabus, citing *Afrates*.

{¶ 30} To reiterate well-settled law, a claimant whose right to participate in the fund has been terminated by the commission may appeal to common pleas court under R.C. 4123.512. *Benton v. Hamilton Cty. Educational Serv. Ctr.*, 123 Ohio St.3d 347, 2009-Ohio-4969 at ¶ 16.

{¶ 31} In *State ex rel. Alhamarshah v. Indus. Comm.*, 142 Ohio St.3d 524, 2015-Ohio-1357, the claimant, Mustafa Alhamarshah ("Alhamarshah"), filed a mandamus action that requested a writ ordering the commission to vacate an order allowing the purported employer to administratively appeal from an order of the bureau that had allowed Alhamarshah's claim. The commission ultimately denied the claim on the merits.

{¶ 32} In *Alhamarshah*, the Supreme Court of Ohio denied the writ on grounds that Alhamarshah had a plain and adequate remedy in the ordinary course of law by way of an appeal to common pleas court pursuant to R.C. 4123.512.

{¶ 33} The *Alhamarshah* court explained an important point of law:

In this case, the commission decided that the documentation submitted on behalf of the purported employer substantially complied with the statutory requirements for a notice of an appeal of the bureau's initial order. This decision conferred jurisdiction on the commission to proceed to consider the merits of the purported employer's appeal. The commission's exercise of jurisdiction resulted in a decision denying the claimant's right to participate in the workers' compensation system. Consequently, the decision allowing the appeal to proceed was essential to the ultimate determination that denied the claimant's participation in the workers' compensation system. As such, the commission's decision to accept the appeal as valid was appealable pursuant to R.C. 4123.512. See [*State ex rel. Consolidation Coal Co. v. Indus. Comm.*, 18 Ohio St.3d 281 (1985)].

Id. at ¶ 12.

Analysis

{¶ 34} Here, it is beyond dispute that the commission terminated relator's right to participate for a medial meniscus tear. That commission decision is clearly appealable to common pleas court pursuant to R.C. 4123.512 and, in fact, relator has appealed that decision to the common pleas court.

{¶ 35} Moreover, the decision of the Supreme Court of Ohio in *Alhamarshah* strongly suggests that relator's claim that the commission did not have continuing jurisdiction over the November 22, 2013 bureau's order is an issue that can be adjudicated in the common pleas court action because the exercise of continuing jurisdiction was essential to the commission's ultimate determination that terminated relator's right to participate for a medial meniscus tear.

{¶ 36} Continuing jurisdiction is not unlimited. Its prerequisites are (1) new and changed circumstances, (2) fraud, (3) clear mistake of fact, (4) clear mistake of law, or (5) error by inferior tribunal. *State ex rel. Nicholls v. Indus. Comm.*, 81 Ohio St.3d 454 (1998).

{¶ 37} As indicated in the SHO's order of October 14, 2014, the commission's exercise of continuing jurisdiction was premised upon new and changed circumstances and a clear mistake of fact. As explained in the SHO's order, the February 3, 2014 surgery that followed the September 11, 2013 MRI presented new medical evidence that contradicted the MRI report as to the existence of a medial meniscus tear. The SHO's order found that the February 3, 2014 operative report presented new and changed circumstances as to the existence of a medial meniscus tear, and the report also showed that the claim allowance for a medial meniscus tear was a clear mistake of fact.

Relator's Cases

{¶ 38} However, citing *State ex rel. Martin v. Connor*, 9 Ohio St.3d 213 (1984) and *State ex rel. DeLong v. Indus. Comm.*, 40 Ohio St.3d 345 (1988), relator argues that the commission lacked continuing jurisdiction over the November 22, 2013 bureau order because the "decision [was] made in good faith and all of the parties believed that that was the right decision when it was made * * *." (Relator's brief, 8.) Relator contends that the *Martin* and *DeLong* cases "stand for the proposition that if it was the proper entitlement at the time that it was made, then the Industrial Commission does not have continuing jurisdiction to vacate the previous decision." (Relator's brief, 9.)

{¶ 39} Relator's reliance upon *Martin* and *DeLong* is misplaced. While the *Martin* decision preceded the *DeLong* decision by over four years, analysis here begins with a discussion of the *DeLong* decision — a decision that endeavors to interpret or analyze the *Martin* decision as well as two other cases, namely *Indus. Comm. v. Dell*, 104 Ohio St. 389 (1922) and *State ex rel. Weimer v. Indus. Comm.*, 62 Ohio St.2d 159 (1980). In *DeLong*, the court held that the employer was entitled to recoupment of an overpayment of temporary total disability compensation from the claimant. In reviewing the pertinent case law, the *DeLong* court stated:

[R]ecoupability of payments made under a mistake of fact depends on the circumstances. * * * In stating the rule, *Martin* defined the key consideration as the "determination of the recipient's entitlement" * * * *at the time payments were made*. At the time the claimant received compensation in *Martin*, both he and the Bureau of Workers' Compensation believed he was entitled to them. So, too, was this the situation in *Dell*. In both *Martin* and *Dell* a

unanimous belief of entitlement at the time of payment was changed by subsequently discovered facts-notification of a retroactive social security benefit entitlement in Martin and the newly discovered existence of a previously unknown spouse in Dell.

In contrast, Weimer involved overpayment precipitated solely by clerical error. In permitting recovery, we held that "[a]lthough the question presented here is sui generis, the mistake in this case was indisputably a clerical error." * * * Weimer was distinguished by the Martin court which, in contrasting the uniform belief of entitlement in Martin and Dell, stated that " * * * in Weimer the bureau never believed the claimant was entitled to the amount she received, and in all likelihood, neither did the claimant." * * *

The present case, unlike Dell and Martin, involved no subsequent factual discovery or occurrence which eliminated a once legitimate right to compensation. The present appellee, in all likelihood, never had a good faith belief of entitlement since the employer's appeal was filed prior to the disbursement of funds. We therefore find Weimer to be controlling.

Id. at 347.

{¶ 40} This action does not involve the recoupability of payments made under a mistake of fact. Rather, relator questions whether the commission properly invoked its continuing jurisdiction over a bureau order that had allowed the claim. Therefore, relator's reliance upon *Martin* and *DeLong* is misplaced.

{¶ 41} Contrary to relator's suggestion, this action does not properly invoke the question of whether the bureau must pay for the February 3, 2014 surgery or other medical treatment that occurred before the industrial claim was disallowed by the commission on the theory that the treatments were performed under a good-faith belief of entitlement to the medical services at the time that the services were rendered. In her reply brief, relator states that she "underwent the surgery in good faith." (Reply brief, 4.) Again, this action does not properly raise an issue regarding payment for the surgery or other medical treatments.

{¶ 42} Accordingly, for all the above reasons, it is the magistrate's decision that this court deny relator's request for a writ of mandamus.

/S/ MAGISTRATE
KENNETH W. MACKE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that 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 under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).