

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

David A. Rath, M.D.,	:	
Appellant-Appellant,	:	No. 14AP-150
v.	:	(C.P.C. No. 13CV-9295)
Ohio Bureau of Workers' Compensation,	:	(ACCELERATED CALENDAR)
Appellee-Appellee.	:	

D E C I S I O N

Rendered on March 17, 2015

Graff & McGovern, LPA, and James M. McGovern, for appellant.

Michael DeWine, Attorney General, and LaTawnda N. Moore, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, P.J.

{¶ 1} This is an appeal by appellant, David A. Rath, M.D., from a judgment of the Franklin County Court of Common Pleas affirming an order of appellee, Ohio Bureau of Workers' Compensation ("BWC"), denying appellant's application for certification to participate in BWC's Health Partnership Program ("HPP").¹

{¶ 2} In 2005, while serving as the Delaware County Coroner, appellant developed an opiate addiction. In July 2005, appellant stole a vial of morphine tablets from an investigation scene, resulting in a felony theft offense charge brought against him

¹ The Health Partnership Program is a "comprehensive managed care program administered by the BWC to provide medical services to employees for their compensable work-related injuries or occupational diseases." *Wloszek v. Ohio Bur. of Workers' Comp.*, 10th Dist. No. 12AP-529, 2013-Ohio-769, ¶ 3.

in Delaware County. On September 12, 2005, appellant filed a motion for intervention in lieu of conviction, pursuant to R.C. 2951.041, in the Delaware County Court of Common Pleas. Following appellant's entry of a guilty plea, the trial court sentenced him to intervention in lieu of conviction. In September 2005, the State Medical Board of Ohio ("medical board") suspended appellant's certificate to practice medicine and surgery in Ohio.

{¶ 3} On July 11, 2007, the medical board reinstated appellant's medical license subject to probationary terms and conditions. On January 3, 2008, appellant filed an application to seal the records in Delaware County Court of Common Pleas case Nos. 05CR-I-08-0404 and 05CR-I-08-0406 relating to his guilty plea and his motion for intervention in lieu of conviction. On February 15, 2008, the State of Ohio filed an objection to appellant's application. By judgment entry filed March 10, 2008, the Delaware County Court of Common Pleas granted appellant's application for sealing of records.

{¶ 4} In 2009, appellant filed an application for certification to participate in the HPP. By letter dated May 11, 2009, the BWC denied appellant's application, citing the provisions of Ohio Adm.Code 4123-6-02.2(B). Appellant requested a formal hearing to appeal the denial. On May 20, 2010, a BWC referee conducted an adjudication hearing. On September 7, 2010, the referee issued a report and recommendation finding that appellant was ineligible to participate in the HPP. On September 24, 2010, appellant filed objections to the referee's report and recommendation. On January 4, 2011, the BWC administrator issued a final order denying appellant's application based upon his history of intervention in lieu of conviction.

{¶ 5} On May 13, 2011, appellant filed an appeal with the Franklin County Court of Common Pleas from the BWC's order. By decision and entry filed May 15, 2012, the trial court dismissed appellant's action for lack of jurisdiction on the basis that he failed to timely perfect his notice of appeal pursuant to R.C. 119.12.

{¶ 6} On July 27, 2011, the Delaware County Court of Common Pleas issued a nunc pro tunc judgment entry in Common Pleas case Nos. 05CR-I-08-0404 and 05CR-I-08-0406, stating in part that all official records pertaining to those cases "are sealed subject to the provisions of R.C. 2953.52." On August 3, 2012, appellant filed a new

application for certification to participate in the HPP. In a letter dated October 22, 2012, the BWC, citing the provisions of Ohio Adm.Code 4123-6-02.2(B)(5), informed appellant that it had identified information within his application "that prevents you from becoming a BWC certified provider." Appellant subsequently requested a hearing regarding the denial of his application.

{¶ 7} On December 13, 2012, a BWC referee conducted an adjudication hearing. On April 10, 2013, the referee issued a report and recommendation, finding that res judicata barred appellant's claim that the trial court had sealed his records under R.C. 2953.52 (and therefore, according to appellant, BWC could not consider his intervention in lieu of conviction); alternatively, the referee rejected on the merits appellant's argument that the sealing of his court records barred the agency from consideration of his treatment in lieu of conviction. Appellant filed objections to the report and recommendation of the referee. On August 12, 2013, the BWC administrator issued an order adopting the referee's findings of fact and conclusions of law and denying appellant's application for certification to participate in the HPP.

{¶ 8} Appellant filed an appeal with the Franklin County Court of Common Pleas from the order of the BWC. On February 21, 2014, the trial court rendered a decision and judgment entry affirming the agency's order denying appellant's application for certification to participate in the HPP.

{¶ 9} On appeal, appellant sets forth the following two assignments of error for this court's review:

[I.] The Franklin County Court of Common Pleas erred and abused its discretion when it found that BWC, in support of its Final Order could consider Dr. Rath's sealed history of intervention in lieu of conviction as having a "direct and substantial relationship to the position for which the person is being considered," even though that quoted language comes from R.C. 2953.33(B), regarding sealed convictions, while Dr. Rath's intervention in lieu of conviction case was sealed under R.C. 2953.52, which does not relate to convictions and does not contain the above quoted language relied upon by the Court.

[II.] The Franklin County Court of Common Pleas erred and abused its discretion when it found that BWC's Adjudication

Order was based upon reliable, probative and substantial evidence and was in accordance with law.

{¶ 10} In considering an administrative appeal under R.C. 119.12, "a common pleas court reviews the entire record and determines whether an agency's order is supported by reliable, probative, and substantial evidence and is in accordance with law." *Wloszek v. Ohio Bur. of Workers' Comp.*, 10th Dist. No. 12AP-529, 2013-Ohio-769, ¶ 6. In an appeal from "a determination by the common pleas court that an agency's order was supported by reliable, probative, and substantial evidence, this court reviews the lower court's decision for abuse of discretion." *Id.* However, with respect to " 'the question of whether the agency's order was in accordance with law, this court's review is plenary.' " *Id.*, quoting *Leslie v. Ohio Dept. of Dev.*, 171 Ohio App.3d 55, 2007-Ohio-1170, ¶ 44 (10th Dist.).

{¶ 11} Appellant's assignments of error are somewhat interrelated and will be addressed together. Under the first assignment of error, appellant contends that the trial court's decision affirming the BWC's order is contrary to both the nunc pro tunc judgment entry of the Delaware County Court of Common Pleas, rendered on July 27, 2012, and the provisions of R.C. 2953.52. Under his second assignment of error, which asserts in general that the trial court erred in finding that the BWC's order was supported by reliable, probative, and substantial evidence and in accordance with law, appellant notes that the trial court limited its review of the BWC's order to matters addressed in the first assignment of error; appellant therefore seeks to preserve, under his latter assignment of error, several other challenges he made before the trial court regarding the BWC's order, including the BWC's res judicata determination.

{¶ 12} With respect to the first assignment of error, appellant notes that the BWC declined to grant his application for certification in the HPP on the basis of his history of a court supervised intervention in lieu of conviction and the provisions of Ohio Adm.Code 4123-6-02.2(B)(5). Appellant argues that both the trial court and BWC failed to appreciate the difference between the provisions for sealing of records under R.C. 2953.31 to 2953.36, which govern the sealing of records following a conviction, and the provisions of R.C. 2953.52 to 2953.55, which govern the sealing of records after disposition other than a conviction. Appellant asserts he was never "convicted" in the proceedings before

the Delaware County Court of Common Pleas; rather, the charges were dismissed as a result of his successful completion of the intervention plan, and therefore his application to seal records fell within the purview of R.C. 2953.52(A)(1).² Appellant maintains that the trial court, by failing to address the provisions of R.C. 2953.52 to 2953.55, and focusing instead on the language appearing only under R.C. 2953.31 to 2953.36, erred in affirming the BWC's denial of his 2012 application for HPP certification.

{¶ 13} R.C. 2951.041 governs the procedure for intervention in lieu of conviction. Pursuant to R.C. 2951.041(A)(1), if the court has reason to believe that drug or alcohol usage by an offender was a factor leading to the criminal offense, "the court may accept, prior to the entry of a guilty plea, the offender's request for intervention in lieu of conviction."

{¶ 14} R.C. 2951.041(E) addresses the sealing of records with respect to intervention in lieu of conviction and states as follows:

If the court grants an offender's request for intervention in lieu of conviction and the court finds that the offender has successfully completed the intervention plan for the offender, including the requirement that the offender abstain from using illegal drugs and alcohol for a period of at least one year from the date on which the court granted the order of intervention in lieu of conviction, the requirement that the offender participate in treatment and recovery support services, and all other terms and conditions ordered by the court, the court shall dismiss the proceedings against the offender. Successful completion of the intervention plan and period of abstinence under this section shall be without adjudication of guilt and is not a criminal conviction for purposes of any disqualification or disability imposed by law and upon conviction of a crime, and the court may order the sealing of records related to the offense in question in the manner provided in sections 2953.31 to 2953.36 of the Revised Code.

{¶ 15} The provisions of R.C. 2953.31 to 2953.36 govern the sealing of an offender's record following conviction of a crime. *State v. Niesen-Pennycuff*, 132 Ohio

² In asserting that the sealing of his records fell within the purview of R.C. 2953.52 (and not under R.C. 2953.31 to 2953.36), appellant argued before the trial court that R.C. 2953.52 to 2953.55 does not contain any language similar to R.C. 2953.33(B)(1), which provides in part that an applicant for "employment, license, or other right or privilege" may be questioned about a sealed conviction if such "question bears a direct and substantial relationship to the position for which the person is being considered."

St.3d 416, 2012-Ohio-2730, ¶ 9. Pursuant to R.C. 2953.32(A)(1), an eligible offender who has been convicted of a felony may apply to the sentencing court for the sealing of the conviction "at the expiration of three years after the offender's final discharge."

{¶ 16} R.C. 2953.52 addresses the sealing of records after a finding of not guilty or the dismissal of a complaint, indictment or information. Under the provisions of R.C. 2953.52(A)(1), "any person who is found not guilty of an offense or whose complaint, indictment, or information was dismissed may apply for an order to seal related records any time after the not-guilty finding or dismissal is entered." *Niesen-Pennycuff* at ¶ 10. In accordance with R.C. 2953.52(B)(4), if the court determines that the individual was found not guilty, or that the complaint, indictment or information was dismissed, "the court shall issue an order directing that all official records pertaining to the case be sealed and that * * * the proceedings in the case be deemed not to have occurred."

{¶ 17} Ohio Adm.Code 4123-6-02.2(B) sets forth the minimum credentials for a provider in the HPP. Ohio Adm.Code 4123-6-02.2(B)(5) states in part: "The provider shall [n]ot have a history of a felony conviction in any jurisdiction, a conviction under a federal controlled substance act, a conviction for an act involving dishonesty, fraud, or misrepresentation, * * * or court supervised intervention or treatment in lieu of conviction pursuant to section 2951.041 of the Revised Code."

{¶ 18} As noted, appellant contends the trial court and BWC erred in failing to apply the provisions of R.C. 2953.52 in considering his application for certification in the HPP. In the April 10, 2013 report and recommendation, the referee determined that the doctrine of *res judicata* precluded appellant from raising the applicability of R.C. 2953.52 in the current proceedings on the basis that the same claim had "been raised and rejected in the 2009 administrative proceeding." Specifically, the referee found that appellant had argued during the 2009 application proceedings that "because the records of his criminal case had been sealed under Revised Code 2953.52 his treatment in lieu of conviction could not be used to support the denial of his application."

{¶ 19} Additionally, and alternatively, the referee considered and rejected the merits of appellant's claim, concluding as follows:

Assuming that the issue was not barred by *res judicata*, this Referee rejects Dr. Rath's argument that the sealing of his court records bars any consideration of his treatment in lieu of

conviction. Revised Code 2953.52 allows the sealing of "official records." The contents of BWC's provider file are not "official records." Further, the records of the State Medical Board were expressly excluded from the order sealing his court records. The only record presented at the hearing upon which BWC would not have been able to consider were Dr. Rath's Motion for Treatment in Lieu of Conviction.

It is the existence of Dr. Rath's history of treatment in lieu of conviction that is controlling here, not the means by which BWC learned of that history. As the testimony established, BWC had knowledge of Dr. Rath's treatment in lieu of conviction from multiple sources, including the personal knowledge of Ms. Russell. Therefore, this Referee concludes that BWC was entitled to consider Dr. Rath's sealed treatment in lieu of conviction. Because BWC lacks discretion, once that treatment in lieu of conviction is considered, it must bar him from participation in HPP according to OAC Rule 4123-6-022. Therefore, I find the BWC decision denying Dr. Rath's application to participate in the HPP is proper.

{¶ 20} At the outset, we address the BWC's determination that principles of res judicata precluded appellant from raising the applicability of R.C. 2953.52 at the time of his 2012 application for HPP certification. As indicated under the facts, the BWC administrator adopted the referee's findings of fact and conclusions of law, including the referee's finding that the BWC had previously rejected, during the 2009 administrative proceedings, appellant's argument that he should be allowed to participate in the HPP because the sealing of his records was made under the provisions of R.C. 2953.52 to 2953.55.³

{¶ 21} In general, "[t]he doctrine of res judicata 'promotes principles of finality and judicial economy by preventing endless relitigation of an issue upon which there was already a full or fair opportunity to be heard.' " *Daniel v. Williams*, 10th Dist. No. 13AP-155, 2014-Ohio-273, ¶ 18, quoting *State v. Jama*, 10th Dist. No. 11AP-210, 2012-Ohio-2466, ¶ 45. The doctrine "precludes relitigation of the same issue when there is mutuality of the parties and when a final decision has been rendered on the merits." *Aspinwall v.*

³ While both parties briefed and argued the merits of the BWC's res judicata holding, the trial court did not address the BWC's determination on that issue. Rather, in affirming the order of the BWC, the trial court held that "the factual inquiries concerning [appellant's] conviction are proper notwithstanding the fact of the judicial sealing of records or the statutory mechanism used to seal the records."

Mentor Bd. of Tax Review, 146 Ohio App.3d 466, 471 (11th Dist.2001). The applicability of the doctrine of res judicata involves "a question of law we consider de novo." *Daniel* at ¶ 18. Under Ohio law, "[r]es judicata, whether claim preclusion or issue preclusion, applies to quasi-judicial administrative proceedings." *State ex rel. Varnau v. Wenninger*, 128 Ohio St.3d 361, 2011-Ohio-759, ¶ 11.

{¶ 22} On appeal, in support of its position that the BWC administrator properly determined that res judicata barred appellant's claim regarding the applicability of R.C. 2953.52, the BWC cites to the 2009 record of proceedings involving appellant's first application for HPP certification. In response, appellant maintains that his 2009 application only dealt with the applicability of R.C. 2953.31 to 2953.36 (rather than the provisions of R.C. 2953.52 to 2953.55). We turn, therefore, to the record of proceedings before the BWC regarding appellant's 2009 application for certification in the HPP.

{¶ 23} As set forth under the facts, the BWC, by letter dated May 11, 2009, informed appellant of the agency's intent to deny his application based upon the provisions of Ohio Adm.Code 4123-6-02.2(B). Appellant subsequently requested a hearing, and the matter came before a BWC referee for an adjudication hearing on May 20, 2010. During the hearing, appellant cited to the provisions of R.C. 2953.52 through 2953.55 in support of his argument that, based on the sealing of his records by the Delaware County Court of Common Pleas in 2008, "for legal purposes the matters are deemed not to have occurred." (May 20, 2010, Tr. 30.) Appellant further argued before the referee that he had "no convictions whatsoever," and that "Section 2953.52 applies to individuals wherein the * * * application for sealing was * * * either a finding of not guilty or a dismissal by the court." (May 20, 2010, Tr. 37.)

{¶ 24} In the referee's report and recommendation, dated September 7, 2010, the referee noted that appellant had "offered copies of Ohio Revised Code 2953.52, 2953.53, and 2953.55" during the administrative hearing, and had "read the sections that he believes pertain to him and testified that under Ohio law he was not obligated to disclose or testify to information regarding his criminal history." The referee further noted appellant's testimony "that the Ohio Revised Code prohibits BWC from inquiring about or requiring disclosure of his criminal history in considering his application to participate in the HPP."

{¶ 25} In addressing appellant's arguments, the referee found that appellant "was not in violation of an obligation to honestly disclose information to BWC on his application to participate in HPP because his records were sealed as set forth in Ohio Revised Code 2953.55."⁴ However, in considering the provisions of Ohio Adm.Code 4123-6-02.2(B)(5), the referee noted the fact of appellant's "treatment in lieu of conviction for a felony from the Common Pleas Court of Delaware County." The referee determined that appellant's sealed conviction records "bear a direct and substantial relationship to his certification in the HPP," and therefore "the Bureau was legally permitted to consider those records." Accordingly, the referee concluded that the BWC's denial of appellant's application was proper.

{¶ 26} On September 24, 2010, appellant filed objections to the referee's report and recommendation, in which he argued in part:

There are two statutes that govern the sealing of records. ORC sections 2953.32-36 pertain to individuals who have convictions under law. ORC sections 2953.52-55 pertain to individuals who have been adjudicated as not guilty or who have had cases dismissed.

The Hearing Officer concluded that my ILC [intervention in lieu of conviction] participation may be considered under ORC 2953.33(B). This finding is erroneous, however, as this statute pertains to individuals with convictions whose records have been sealed pursuant to ORC 2953.32. My records were sealed by the Court pursuant to ORC 2953.52, as I had a dismissal, not a conviction. Thus consideration of my ILC participation does not fall within the scope of section 2953.33(B).

ORC section 2953.52(B)(3) states, in pertinent part, "The proceedings in the case are deemed not to have occurred."

* * *

In summary, I had no previous conviction of any offense, only a case that was dismissed by the Court. ORC section

⁴ R.C. 2953.55(A) provides in part: "In any application for employment, license, or any other right or privilege * * * a person may not be questioned with respect to any record that has been sealed pursuant to section 2953.52 of the Revised Code. If an inquiry is made in violation of this section, the person whose official record was sealed may respond as if the arrest underlying the case to which the sealed official records pertain and all other proceedings in that case did not occur, and the person whose official record was sealed shall not be subject to any adverse action because of the arrest, the proceedings, or the person's response."

2951.041(E) prohibits the consideration of this dismissal for the purpose of imposing a disqualification or disability, as BWC proposes to do according to OAC 4123-6-02.5(B). Additionally, the records in my case were sealed pursuant to ORC section 2953.52, not section 2953.32, thus my participation in the ILC program has been legally determined not to have occurred. * * * Thus the Hearing Officer's recommendation that my application be denied is without basis in law and is, in fact, in contradiction to the applicable sections of the Ohio Revised Code.

{¶ 27} The BWC filed a memorandum contra appellant's objections. On October 11, 2010, appellant filed a response to the memorandum contra, asserting that the cases cited and relied upon by the BWC involved "instances where the parties had convictions under law and whose records were sealed pursuant to ORC 2953.32," thereby permitting "questioning under 2953.33(B)" in those particular cases.

{¶ 28} Appellant reiterated that the proceedings in his case, by contrast, "were *DISMISSED* by the Court with no adjudication of guilt," and that his records "were sealed pursuant to ORC 2953.52." (Emphasis sic.) In his response to the BWC's memorandum contra, appellant additionally argued as follows:

It should be apparent that my case was sealed pursuant to ORC 2953.52, the statute that applies to dismissed cases, and NOT pursuant to ORC 2953.32, which applies to persons with convictions, since my case was dismissed by the Court in May of 2007 and the Court ordered the records sealed in March of 2008. This would not have been permitted under ORC 2953.32, since this statute requires the application of a three-year period following final disposition of a case before an application for sealing can even be made.⁵

(Emphasis sic.)

{¶ 29} On January 4, 2011, the BWC administrator issued an order adopting the referee's recommendation to deny appellant's application for certification to participate in the HPP. The administrator, in finding that appellant had failed to comply with the

⁵ In 2012, the Supreme Court of Ohio interpreted R.C. 2951.041(E) with respect to a trial court's discretion to seal the record of a defendant who has completed an intervention in lieu of conviction program. In *Niesen-Pennycuff* at ¶ 1, the court held that a trial court has discretion to determine that successful completion of such program "entitles the defendant to immediate sealing of his or her record under R.C. 2953.52(A)(1) or to impose the waiting period set forth in R.C. 2953.32(A)(1)."

applicable statutes and rules (including his history of treatment in lieu of conviction as contrary to Ohio Adm.Code 5123-6-02.2(B)(5)), noted that the order had taken into consideration the following:

The transcript of the record hearing conducted in this matter by Referee Richard Blake on May 20, 2010; BWC Exhibits 1, 2, 3, 4, 5, and 6; Respondent's Exhibit A; the report and recommendation of the Referee mailed to all the parties on September 7, 2010; Dr. Rath's Objections to the Report and Recommendation of the Referee, dated September 24, 2010; the Memorandum Contra to Dr. Rath's Objections filed by the Attorney General, dated October 4, 2010; and the Response of Dr. Rath to the Attorney General's Memorandum, dated October 11, 2010.

{¶ 30} Upon review, the record supports the BWC's contention that appellant, during the 2009 proceedings involving his first application for HPP certification, raised and argued the claim that he was eligible to apply for certification because the Delaware County Court of Common Pleas had sealed his records under R.C. 2953.52 and not under 2953.32. Further, despite appellant's objections that the trial court had sealed his records under R.C. 2953.52, the agency rendered a final decision finding that he could not participate in the HPP because of his history of intervention in lieu of conviction. In the instant action, in his objections to the referee's April 10, 2013 report and recommendation, appellant again raised the claim that the referee failed to recognize the difference between the sealing of records under R.C. 2953.32 (following a conviction) and the sealing of records under R.C. 2953.52 (following a dismissal of charges).

{¶ 31} Appellant maintains, however, that the 2009 proceedings did not involve a determination of the same claim because the BWC did not have the benefit of the nunc pro tunc entry filed by the Delaware County Court of Common Pleas on July 27, 2011, making clear that his records were sealed under R.C. 2953.52. As indicated above, appellant contends the 2009 application only dealt with the applicability of R.C. 2953.31 to 2953.36. Implicit in appellant's argument is the suggestion that the trial court's 2011 nunc pro tunc entry was not made to correct a clerical or ministerial error but, rather, to effectuate a substantive change, i.e., to change the sealing of appellant's records from R.C. 2953.32 to R.C. 2953.52. However, based upon a review of the trial court's 2008

judgment entry sealing appellant's records (as well as a review of the court's 2011 nunc pro tunc entry), such an interpretation lacks support in the record.

{¶ 32} We note that the 2008 judgment entry of the Delaware County Court of Common Pleas granting appellant's application for sealing of records contains references to both R.C. 2953.32 and 2953.52. In that entry, the court initially addressed the state's argument, made in opposition to appellant's application for sealing, that "the applicant must wait those three years from May 29, 2007 and to treat the applicant the same as if he were convicted." In analyzing the state's argument, the trial court recognized that "[u]nder Revised Code Section 2953.32(A)(1) the application may be made at the expiration of three years after final discharge." The trial court, however, cited to and relied instead on the language of R.C. 2953.52(A)(1) (i.e., allowing any person named in a dismissed complaint to file an application for an order to seal "any time after" the dismissal of the complaint).

{¶ 33} Specifically, in considering the competing arguments and the provisions under R.C. 2953.32 and 2953.52, the trial court held in part:

The applicant falls within the purview of R.C. 2953.52(A)(1) because the charges were dismissed. The three-year time limit applies in a situation where a conviction occurs. By definition, the present case does not contain a conviction. Therefore, R.C. 2953.52(A)(1) would allow Dr. Rath to file the motion at any time after the Court's dismissal on May 29, 2007. So the Court will apply R.C. 2953.52 to these proceedings.

{¶ 34} Notwithstanding the trial court's analysis and the pronouncement to apply R.C. 2953.52 to appellant's application for sealing, the concluding paragraph of the 2008 entry stated in part: "Therefore, it is ordered that all official records pertaining to this case * * * are sealed subject to the provisions of R.C. 2953.32(d)." In the trial court's 2011 nunc pro tunc entry, the only change to the original judgment entry is the court's substitution of "R.C. 2953.52" in place of "R.C. 2953.32(d)."

{¶ 35} Here, a review of the trial court's original (2008) judgment entry granting appellant's application to seal his records reflects the court's intent to seal such records under R.C. 2953.52. As noted, the trial court addressed and rejected the state's argument that appellant "must wait" three years to effectuate the sealing of his records. Rather, the

court made clear it would "apply R.C. 2953.52 to these proceedings." Under Ohio law, "[t]he purpose of a *nunc pro tunc* order is to have the judgment of the court reflect the action the court has taken." *Nationscredit Fin. Servs. Corp. Equicredit v. Boulton*, 5th Dist. No. 2006-CA-0087, 2006-Ohio-6010, ¶ 17. In this respect, nunc pro tunc entries "are not appropriate to effect substantive changes in judgments; rather, they are manifestations of courts' 'inherent authority to correct errors in judgment entries so that the record speaks the truth.' " *Ferraro v. B.F. Goodrich Co.*, 149 Ohio App.3d 301, 2002-Ohio-4398, ¶ 9 (9th Dist.), quoting *State ex rel. Litty v. Leskovyansky*, 77 Ohio St.3d 97, 100 (1996). A consideration of the entries at issue does not suggest that the trial court's nunc pro tunc entry effected a substantive change in the judgment; instead, the subsequent entry reflects what the court actually decided, i.e., to "apply R.C. 2953.52 to these proceedings."

{¶ 36} As further discussed above, the record of the 2009 administrative proceedings supports the BWC's determination that appellant raised and fully argued the claim that he was entitled to participate in the HPP because the trial court sealed his records under R.C. 2953.52 rather than under the provisions of R.C. 2953.32. Again, despite appellant's arguments and objections regarding the applicability of R.C. 2953.52, the agency denied his 2009 application for certification in the HPP based upon his history of intervention in lieu of conviction. Following the BWC's denial of his application, appellant filed an appeal with the trial court from the agency's order. The trial court, however, dismissed appellant's appeal for failure to timely perfect the notice of appeal. The doctrine of res judicata is applicable to "quasi-judicial decisions by administrative agencies from which no appeal is taken." *Aspinwall* at 471. *See also Brott v. City of Green Zoning Bd. of Appeals*, 9th Dist. No. 21209, 2003-Ohio-1592, ¶ 21 (appellant's failure to timely appeal agency's decision bars action under doctrine of administrative res judicata); *State ex rel. Casale v. McLean*, 58 Ohio St.3d 163, 164-65 (1991); *State ex rel. Bingham v. Riley*, 6 Ohio St.2d 263 (1966). Because the record supports the BWC's determination that appellant's claim regarding the applicability of R.C. 2953.52 was previously raised and rejected during the 2009 proceedings, we find that the agency properly determined appellant's claim was barred by the doctrine of res judicata.

{¶ 37} Accordingly, although we rely on different grounds, we conclude that the trial court did not err in affirming the order of the BWC. Further, in light of our holding that the BWC properly determined that appellant's claim was barred by res judicata, we do not reach the merits of the BWC's alternative determination that appellant did not meet the minimum credentialing criteria of Ohio Adm.Code 4123-6-02.2 because of his intervention in lieu of conviction.

{¶ 38} Based upon the foregoing, appellant's second assignment of error is overruled to the extent indicated, the first assignment of error is rendered moot, and the judgment of the Franklin County Court of Common Pleas, affirming the order of the BWC, is hereby affirmed.

Judgment affirmed.

KLATT and DORRIAN, JJ., concur.
