[Cite as *Oberhauser v. Mabe*, 2009-Ohio-3680.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

SARAH C. OBERHAUSER, Dec'd., et al.,	:	
Plaintiffs-Appellants,	:	CASE NO. CA2008-11-266
- vs -	:	O P I N I O N 7/27/2009
WILLIAM E. MABE, Administrator, OHIO BUREAU OF WORKERS' COMPENSATION, et al.,	:	
Defendants-Appellees.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV06-09-3292

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POWELL, P.J.

{¶1} Plaintiffs-appellants, Megan and Drew VanWinkle, minor children of decedent, Sarah Oberhauser, and Kevin VanWinkle, the children's father and guardian, appeal the decision of the Butler County Court of Common Pleas finding they are not entitled to participate in the Ohio Workers' Compensation Fund following Oberhauser's death.

{¶2} This matter concerns the death of Sarah Oberhauser. At the time of her death,

Oberhauser was employed by appellee, Talawanda City School District Board of Education (Talawanda), as a chemistry teacher at Talawanda High School. At 8:35 a.m. on Saturday, January 26, 2002, Oberhauser was involved in a fatal automobile accident as she was driving to a teaching workshop entitled, "Workplace Readiness Through Chemistry." The workshop was sponsored by and held on the Middletown campus of Miami University. Oberhauser registered for the workshop after receiving an email solicitation from Miami University Middletown promoting the workshop. Talawanda administrative personnel did not direct or instruct Oberhauser to attend the workshop, and were unaware Oberhauser planned to attend.

{¶3} According to the director of the workshop, Lynne Hogue, the purpose of the workshop was for teachers to develop "prototype" lesson plans for Miami University. Participants who completed the spring session of the workshop received three hours of tuition-free graduate credit as well as a $200 stipend from the University. Participants who completed the summer session received two credit hours of tuition-free graduate credit as well as a $100 stipend. Talawanda did not compensate Oberhauser for her attendance at the workshop.

{¶4} By statue, all teachers employed by Ohio public school districts are required to possess a valid teaching license or certificate. R.C. 3319.22; R.C. 3319.30. At the time of Oberhauser's death, the Ohio Department of Education (ODE) was transitioning from teacher certification to teacher licensure. Pursuant to Senate Bill 230, every public school district in Ohio was required to establish a local professional development committee (LPDC) to review coursework and other professional development activities proposed and completed by teachers to determine whether the requirements for certificate or license renewal had been met. A teacher wishing to renew a four-year or eight-year certificate, or transition from a certificate to a license, was required to submit documentation of her coursework or

professional development activities to the LPDC before the teacher's application for renewal was sent to ODE.

{¶5} As part of the transition process, ODE permitted teachers who held a provisional certificate issued prior to September 1, 1998, to either renew their certificates one more time or transition to licensure. Teachers who wished to transition to licensure were required to submit an Individual Professional Development Plan (IPDP) to the LPDC for approval. Teachers who elected to renew their certificates were not required to submit an IPDP.

{¶6} As of the date of the accident, Oberhauser held a four-year provisional teaching certificate that was valid through June 30, 2002. She had not submitted an IPDP to Talawanda's LPDC. Under the Ohio State Board of Education standards that applied to teachers holding a certificate issued prior to September 1, 1998, including Oberhauser, teachers electing to renew a certificate were permitted to complete continuing education courses in any subject of their choosing. Accordingly, Oberhauser could have used the graduate credits she earned from the chemistry workshop toward the renewal of her teaching certificate.

{¶7} Following Oberhauser's death, appellants filed an application for workers' compensation benefits with the Ohio Bureau of Workers' Compensation, and the claim was allowed. Following a hearing on the matter, the District Hearing Officer of the Industrial Commission likewise allowed the claim. The allowance of appellants' claim was thereafter affirmed following appeals to the Staff Hearing Officer of the Industrial Commission, and to the Industrial Commission. Talawanda subsequently filed a notice of appeal in the common pleas court. Appellants later voluntarily dismissed their complaint pursuant to Civ.R. 41(A).

{¶8} In September 2006, appellants timely refiled their complaint, and the matter was tried to the court in February 2008. On August 13, 2008, the trial court issued a decision

finding that appellants were not entitled to participate in the workers' compensation fund for Oberhauser's death. Appellants filed a motion for a new trial pursuant to Civ.R. 59, which the trial court denied in October 2008. Appellants now appeal both decisions of the trial court, advancing three assignments of error.

{¶9} Assignment of Error No. 1:

{¶10} "THE TRIAL COURT ERRED IN FINDING THAT [APPELLANTS] WERE NOT ENTITLED TO PARTICIPATE IN THE BENEFITS OF THE WORKERS' COMPENSATION SYSTEM FOR THE DEATH OF SARAH OBERHAUSER."

{¶11} In their first assignment of error, appellants argue the trial court erred in finding they were not entitled to participate in the workers' compensation fund where they presented sufficient evidence that Oberhauser's death occurred in the course of and arising out of her employment with Talawanda. We find appellants' argument without merit.

{¶12} A reviewing court will not reverse a judgment as being against the manifest weight of the evidence when there exists competent, credible evidence supporting the trial court's findings of fact and conclusions of law. *Bales v. Miami Univ.*, Butler App. No. CA2006-11-295, 2007-Ohio-6032, ¶15, citing *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, syllabus; and *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80. The weight to be given the evidence and the credibility of the witnesses are primarily matters for the trier of fact. Id., citing *Gordon Construction, Inc. v. Peterbilt of Cincinnati, Inc.,* Clermont App. No. CA2002-11-094, 2003-Ohio-5111, ¶30.

{¶13} A reviewing court must indulge every reasonable presumption in favor of the trial court's judgment and findings of fact. Id. at ¶16, citing *Gerijo, Inc. v. Fairfield,* 70 Ohio St.3d 223, 226, 1994-Ohio-432. In the event the evidence is susceptible to more than one interpretation, a reviewing court must construe it consistently with the trial court's judgment. Id. In reviewing a bench trial, an appellate court will uphold the trial court's decision unless it

appears the record cannot support a reasonable person in concluding as the trial judge did. Id., citing *Harris v. Custom Graphics, Inc.,* Cuyahoga App. No. 84326, 2005-Ohio-285, ¶8.

{¶14} Ohio law limits a claimant's access to the workers' compensation fund. "It is well settled that the Workmen's Compensation Act does not create a general insurance fund for the compensation for injuries in general to employees * * *." *Lohnes v. Young* (1963), 175 Ohio St. 291, 292. Rather, "a compensable injury is one that has a sufficiently strong connection to the injured person's employment." *Hirschle v. Mabe*, Montgomery App. Nos. 22954, 22975, 2009-Ohio-1949, ¶11, citing *Bralley v. Daugherty* (1980), 61 Ohio St.2d 302, 303.

{¶15} The Workers' Compensation Act, codified as R.C. 4123.01(C), provides that the requisite connection exists when the injury is "received in the course of, and arising out of, the injured employee's employment." "Satisfaction of both statutory elements is a prerequisite to recovery from the fund." *Ruckman v. Cubby Drilling, Inc.*, 81 Ohio St.3d 117, 121, 1998-Ohio-455. The statute must be liberally construed in favor of awarding benefits. *Fisher v. Mayfield* (1990), 49 Ohio St.3d 275, 278. The claimant, however, bears the burden of establishing both conjuncts of the compensation formula. *French v. AT & T Technologies, Inc.* (1990), 69 Ohio App.3d 342, 347, citing *Lord v. Daugherty* (1981), 66 Ohio St.2d 441.

{¶16} "The phrase 'in the course of employment' limits compensable injuries to those sustained by an employee while performing a required duty in the employer's service." *Ruckman*, 81 Ohio St.3d at 120. "To be entitled to workmen's compensation, a workman need not necessarily be injured in the actual performance of work for his employer." *Sebek v. Cleveland Graphite Bronze Co.* (1947), 148 Ohio St. 693, paragraph three of the syllabus. "An injury is compensable if it is sustained by an employee while that employee engages in activity that is consistent with the contract for hire and logically related to the employer's business." *Ruckman*. Significantly, where an employee sustains an injury elsewhere than

upon the employer's premises, the employee must, "at the time of his injury, have been engaged in the promotion of his employer's business and in the furtherance of his affairs." *Indus. Commis. of Ohio v. Bateman* (1933), 126 Ohio St. 279, paragraph two of the syllabus.

{¶17} The phrase, "arising out of," refers the "causal connection between the injury and the employment." *Fisher*, 49 Ohio St.3d at 277-278. "Whether there is a sufficient 'causal connection' between an employee's injury and his employment to justify the right to participate in the Worker's Compensation Fund depends on the totality of the facts and circumstances surrounding the accident, including, (1) the proximity of the scene of the accident to the place of employment, (2) the degree of control the employer had over the scene of the accident, and (3) the benefit the employer received from the injured employee's presence at the scene of the accident." *Lord*, 66 Ohio St.2d at syllabus.

{¶18} "As to the attending of conventions, institutes, seminars, and trade expositions, compensability * * * turns on whether claimant's contract of employment contemplated attendance as an incident of his work. It is not enough that the employer would benefit indirectly through the employee's increased knowledge and experience * * *.

{¶19} "Employment connection may be supplied by varying degrees of employer encouragement or direction. The clearest case for coverage is that of a teacher who is directed to attend a teacher's institute. It is also sufficient if attendance, although not compulsory, is 'definitely urged' or 'expected,' but not if it is merely 'encouraged.' Connection with the employment may also be bolstered by the showing of a specific employer benefit, as distinguished from a vague and general benefit, as when the attendance of an automobile mechanic at an examination given by the manufacturer permitted the dealer to advertise 'factory-trained mechanic.'" *Camburn v. Northwest School Dist.* (1999), 459 Mich. 471, 477-478, quoting 1A Larson, Workmen's Compensation Law, 5-397 to 5-403, Section 27.31(c).

{¶20} In this case, the trial court determined, and the record supports, that

Oberhauser was not "engaged in the promotion of the Talawanda School District's business and in furtherance of the Board's affairs at the time of the tragic * * * accident." As an initial matter, the record demonstrates that the accident occurred while Oberhauser was en route from her home to a chemistry workshop hosted by and held on the campus of Miami University Middletown. The workshop was scheduled on a Saturday morning, rather than during Oberhauser's regularly scheduled work week of Monday through Friday, 7:30 a.m. to 2:30 p.m. Talawanda superintendent, Phillip Cagwin, testified that, by contract, teachers could only be required to work a maximum of seven and a half hours per school day, and were not required to work on weekends. Cagwin also testified that teachers who wished to renew their certificates had to complete their education credits outside their normal working hours, and were not compensated for doing so. Notably, the record indicates that Miami University Middletown paid workshop enrollees a stipend for the completion of the workshop, and that there was no enrollment fee for the course.

{¶21} The record demonstrates that as of the date of the accident, Oberhauser held a teaching certificate that was valid through the remainder of her employment contract with Talawanda. The certificate was to expire in June 2002, prior to the commencement of the 2002-2003 school year. Ohio law mandates that "no person shall receive any compensation for the performance of duties as teacher in *any* school supported wholly or in part by the state or by federal funds who has not obtained a license of qualification for the position * * *." R.C. 3319.30. (Emphasis added.) Cagwin testified that Talawanda, like all public schools in the state of Ohio, only employed teachers who held a valid license or certificate.

{¶22} The children's father, Kevin VanWinkle, testified that Oberhauser intended to renew her certificate one more time, rather than transition to licensure.[1] Accordingly, it was

1. As previously stated, as of the date of the accident, Ohio public school teachers who wished to renew or transition to a teaching license were required to submit an IPDP, while teachers who elected to renew their certificates one more time were not. Oberhauser had not submitted an IPDP as of the date of the accident.

necessary for Oberhauser to obtain the requisite continuing education credits to renew her certificate prior to the commencement of the 2002-2003 school year. Oberhauser could have used the graduate credits she earned from the chemistry workshop toward the renewal of her teaching certificate.

{¶23} Significantly, Cagwin testified he did not instruct or direct Oberhauser to attend the workshop. In fact, Cagwin indicated he was unaware Oberhauser planned to attend. There is no indication in the record that any other administrative personnel instructed, directed or expected Oberhauser to attend the workshop. Moreover, the workshop director, Lynne Hogue, testified that the purpose of the workshop was for the teachers to develop "prototype" lesson plans to be delivered over to Miami University. Hogue indicated that the teachers may have tried the lesson plans in their own classes to see if they were successful, but that such lesson plans would have been a deviation from the curriculum that was currently in place. Mark Mortine, assistant principal and member of the Talawanda School District Curriculum Council, testified that as of the date of the accident, Oberhauser had not submitted anything to the council to change the chemistry curriculum at Talawanda High School, nor had she notified the council of her intention to attend the workshop in order to do so.

{¶24} Appellants rely upon the case of *Bower v. Indus. Commis.* (1939), 61 Ohio App. 469, in which the Sixth District Court of Appeals upheld the trial court's finding that a teacher, who was injured in an automobile accident while out of town attending a teaching seminar, was entitled to compensation. We find *Bower* is distinguishable. There, the superintendent of the school district expressly requested and instructed the claimant and other teachers to attend the seminar. The school at which the claimant taught was closed so the teachers could attend the seminar, and teachers attending the seminar received their regular pay while teachers who did not forfeited a day's pay.

{¶25} Transportation and lodging, however, were not provided by the school district, and the claimant was injured in an automobile accident while driving from the seminar to a friend's house, where she intended to stay the night. The trial court found the claimant's injuries occurred in the scope of her employment, stating: "at the moment of injury the [claimant] was performing duties incidental to her employment and a necessary part of her entire trip * * * to attend the institute, as she had been directed to do by her employer, and that she was doing at the time what her employer would reasonably expect her to do * * *." Id. at 841-842.

{¶26} Conversely in this matter, and as previously discussed, neither Talawanda's superintendent nor any other administrative personnel directed or instructed Oberhauser to attend the workshop, or were aware she planned to attend. Moreover, Oberhauser was not permitted to take a paid teaching day to attend the workshop. The record demonstrates that Oberhauser was to receive a stipend from Miami University Middletown for attending the workshop, and could have used the credits she earned from completing the workshop to renew her teaching certificate, which was due to expire at the end of the school year. While appellants contend that completion of professional coursework was considered during a teacher's performance evaluation,[2] the record demonstrates that Oberhauser received a rating of "distinguished" in her latest evaluation despite having failed to turn in any documentation of completed coursework.

{¶27} After reviewing the record, we find there are sufficient facts to support the trial court's decision that Oberhauser's death did not occur in the course and scope of her employment with Talawanda. Rather, the record demonstrates that Oberhauser was furthering a primarily personal interest in maintaining her teaching certification, which was a prerequisite to continuing her employment at any public school in Ohio. While Talawanda

2. Appellants base this claim on Talawanda's inclusion of a category on its evaluation instrument that measures

may have indirectly benefited from Oberhauser's attendance at the workshop, such as through an improvement in Oberhauser's knowledge and teaching skills, the trial court could reasonably conclude, based upon the facts presented, that her attendance at the workshop was primarily for her own personal benefit. Accordingly, we find the trial court did not err in finding appellants were not entitled to participate in the workers' compensation fund for Oberhauser's death.

{¶28} Appellants' first assignment of error is overruled.

{¶29} Assignment of Error No. 2:

{¶30} "THE TRIAL COURT ERRED IN APPLYING THE "COMING AND GOING" RULE TO BAR [APPELLANTS'] PARTICIPATION IN THE WORKERS' COMPENSATION FUND FOR THE DEATH OF SARAH OBERHAUSER INSTEAD OF ANALYZING THE TOTALITY OF THE CIRCUMSTANCES."

{¶31} In their second assignment of error, appellants argue the trial court erred in applying the "coming and going" rule where Oberhauser was not traveling to her fixed employment situs at the time of the accident. "'As a general rule, an employee with a fixed place of employment, who is injured while traveling to or from his place of employment, is not entitled to participate in the Workers' Compensation Fund because the requisite causal connection between injury and the employment does not exist.'" *Ruckman*, 81 Ohio St.3d at 119, quoting *MTD Products, Inc. v. Robatin* (1991), 61 Ohio St.3d 66, 68. In its decision in this case, the trial court stated that it "[could not] conclude that the 'coming and going' rule should not apply to bar Ms. Oberhauser's participation in the workers' compensation fund."

{¶32} Because we have already determined that the trial court did not err in finding Oberhauser's attendance at the chemistry workshop was not within the course and scope of her employment with Talawanda, we find that application of the "coming and going" rule is

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whether a teacher "[a]ssumes personal responsibility for professional growth and continuing education."

not relevant. Accordingly, appellants' argument concerning the "coming and going" rule is moot, and appellants' second assignment of error is therefore overruled.

{¶33} Assignment of Error No. 3:

{¶34} "THE TRIAL COURT ERRED IN OVERRULING [APPELLANTS'] MOTION FOR A NEW TRIAL BECAUSE [APPELLANTS] DEMONSTRATED THERE WAS AN ERROR OF LAW, AND THE JUDGMENT WAS NOT SUPPORTED BY THE WEIGHT OF THE EVIDENCE AND THAT THE JUDGMENT WAS CONTRARY TO LAW."

{¶35} In their final assignment of error, appellants contend the trial court erred in denying their motion for a new trial. The record demonstrates that appellants filed a motion for a new trial pursuant to Civ.R. 59(A)(6), (7) and (9), arguing that the trial court's judgment was not supported by the weight of the evidence, that the judgment was contrary to law, and that the trial court committed an error of law. These arguments were premised upon the same facts set forth in appellants' previous two assignments of error.

{¶36} It is well-settled that a reviewing court will not disturb a trial court's decision granting or denying a motion for a new trial pursuant to Civ.R. 59(A) absent an abuse of discretion. *Hover v. O'Hara*, Warren App. No. CA2006-06-077, 2007-Ohio-3614, ¶71, citing *Sharp v. Norfolk & W. Ry. Co.*, 72 Ohio St.3d 307, 312, 1995-Ohio-224. For the reasons set forth in our discussion of appellants' first and second assignments, appellants' third assignment of error is likewise without merit, and is hereby overruled.

{¶37} Judgment affirmed.

YOUNG and HENDRICKSON, JJ., concur.

[Cite as *Oberhauser v. Mabe*, 2009-Ohio-3680.]