[Cite as *Richardson v. Indus. Comm.*, 2009-Ohio-2548.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

EARL RICHARDSON

Plaintiff-Appellant

v.

INDUSTRIAL COMMISSION OF OHIO,
et al.

Defendant-Appellees

Appellate Case No. 22797

Trial Court Case No. 07-CV-6891

(Civil Appeal from
Common Pleas Court)

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O P I N I O N

Rendered on the 29th day of May, 2009.

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Plaintiff-Appellant, *pro se*

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FAIN, J.

{¶ 1} Plaintiff-appellant Earl Richardson appeals from a judgment of the Montgomery County Court of Common Pleas dismissing his administrative appeal from an adverse decision of the Industrial Commission of Ohio. Richardson contends that his notice of appeal was timely filed and was in substantial compliance with R.C. 4123.512. For the reasons set forth below, we disagree.

I

{¶ 2} Richardson was employed by defendant-appellee Product Action International, LLC (Product Action) during 2004. Richardson alleges that during the term of employment he was exposed to toxic gases which resulted in "high blood pressure, shortness of breath, dizziness, weakness and fatigue etc. [and a] mild heart attack." Richardson claims that while employed by Product Action, he was "contracted out" to TI Group Automotive Systems/Bundy Tubing Corporation's (hereinafter TI Group) Sabina, Ohio plant. It was at the TI Group plant that the alleged exposure to toxic gases occurred. Richardson alleges that a female co-worker purposely exposed him to the gases.

{¶ 3} Richardson filed a claim for workers' compensation benefits with the BWC for what he claimed was an occupational disease allegedly resulting from exposure to the unnamed toxic gases. Richardson's claim was denied by a District Hearing Officer upon a finding that he "failed to submit a causal relationship statement relating an injury to his employment." The Hearing Officer also noted that the only medical evidence in the record

indicated that Richardson's health issues were not related to his work.

{¶ 4} Thereafter, Richardson filed an administrative appeal to the Industrial Commission of Ohio which affirmed the decision of the BWC. The final order issued by the Commission was dated June 20, 2007.

{¶ 5} On August 21, 2007, Richardson filed a document styled as a notice of appeal filed with the Montgomery County Court of Common Pleas. The document named the Commission, the BWC, Product Action and TI Group as defendants. That notice, which consisted of a cover sheet and twenty-four pages of exhibits, did not set forth a BWC claim number or the date of the order appealed. Furthermore, a review of that document reveals that it does not state that Richardson is appealing from the denial of benefits; it expresses Richardson's desire to have the trial court issue a subpoena allowing him access to the records of Product Action and TI Group. The document further states that Richardson wants the court to order a "criminal/civil investigation" of his "toxic exposure claim."

{¶ 6} The record contains another document, time-stamped August 28, 2007, which is also styled as a notice of appeal. This one-page document sets forth Richardson's BWC claim number, the mailing date of the Commission's order, as well as a statement that Richardson was appealing the decision of the Commission.

{¶ 7} The Commission filed a motion to dismiss on the basis that it was not a proper party to the action. Product Action, the BWC and TI Group filed motions to dismiss, contending that Richardson's first notice of appeal was fatally deficient in that it failed to substantially comply with the mandates of R.C. 4123.512, and that his second notice of appeal was untimely.

{¶ 8} On November 14, 2007, the magistrate filed an order and entry setting dates

for all dispositive motions and pleadings. The magistrate issued a decision on January 23, 2008, sustaining all of the defense motions to dismiss. Thereafter, Richardson filed a document styled as an "Answer to Magistrate's Decision," as well as a "Motion to Void/Vacate the Judgment of the Magistrate." The trial court treated these documents as objections to the magistrate's decision, and overruled them. From the dismissal of his administrative appeal, Richardson appeals.

II

{¶ 9} Richardson's Second, Third, Fourth, Sixth, Seventh, and Ninth assignments of error state as follows:

{¶ 10} "DID THE COURT ERROR WHEN IT DISMISSED OHIO BUREAU OF WORKERS COMPENSATION FROM THE ADMINISTRATIVE APPEAL? APPELLANT SAYS YES.

{¶ 11} "DID THE COURT ERROR WHEN IT DISMISSED PRODUCT ACTION INTERNATIONAL FROM THE ADMINISTRATIVE APPEAL? THE APPELLANT SAYS YES.

{¶ 12} "DID THE COURT ERROR WHEN IT DISMISSED TI GROUP AUTOMOTIVE SYSTEMS/BUNDY CORPORATION? APPELLANT SAYS YES.

{¶ 13} "DID THE COURT ERROR WHEN IT RELIED ON BASELESS INFORMATION TO MAKE HIS DECISION CONCERNING THE NOTICE OF APPEAL WITHOUT A TRUE AND HONEST FINDING OF FACT REPORT? APPELLANT SAYS YES.

{¶ 14} "DID THE COURT ERROR WHEN IT DID NOT INVESTIGATE OR INSPECT

THE DOCKET, AND JOURNAL IN THEIR QUEST TO FIND RELIABLE FACTS? APPELLANT SAYS YES.

{¶ 15} "DID THE TRIAL COURT ERROR IN NOT TAKING EVERY STEP NECESSARY TO AID IN THE DISPOSITION OF MY CASE WHEN THEIR JURISDICTION WAS DIVESTED DURING MY APPEAL PROCESS? APPELLANT SAYS YES."

{¶ 16} In support of all of these assignments of error, Richardson argues that the trial court erred by dismissing his administrative appeal. Although the argument set forth in his appellate brief is not clear, we note that during oral argument Richardson claimed that the document styled as a notice of appeal and time-stamped August 28, 2007, was actually provided to the Clerk of Court's office for filing on August 21, along with other documents that were filed on that date. Richardson claims that the clerk erred by failing to time-stamp the document on the correct date, instead holding it until August 28. Thus, he contends that his notice of appeal substantially complied with R.C. 4123.512, and was timely filed.

{¶ 17} We conduct de novo reviews of a trial court's decision to grant a motion to dismiss. *Howard v. Penske Logistics, LLC*, Summit App. No. 24210, 2008-Ohio-4336, ¶7.

{¶ 18} R.C. 4123.512, which governs appeals to the courts of common pleas from decisions of the Industrial Commission, provides in pertinent part as follows:

{¶ 19} "(A) The claimant or the employer may appeal an order of the industrial commission * * * in any injury or occupational disease case * * * to the court of common pleas of the county * * * within sixty days after the date of the receipt of the order appealed from or the date of receipt of the order of the commission refusing to hear an appeal of a staff hearing officer's decision under division (D) of section 4123.511 of the Revised Code. The filing of the notice of the appeal with the court is the only act required to perfect the

appeal.

{¶ 20} "(B) The notice of appeal shall state the names of the claimant and the employer, the number of the claim, the date of the order appealed from, and the fact that the appellant appeals therefrom. * * * * *"

{¶ 21} "The jurisdictional requirements of R.C. 4123.519 [now R.C. 4123.512] are satisfied by the filing of a timely notice of appeal which is in substantial compliance with the dictates of that statute." *Fisher v. Mayfield* (1987), 30 Ohio St.3d 8, paragraph one of the syllabus. "Substantial compliance for jurisdictional purposes occurs when a timely notice of appeal filed pursuant to R.C. 4123.51[2] includes sufficient information, in intelligible form, to place on notice all parties to a proceeding that an appeal has been filed from an identifiable final order which has determined the parties' substantive rights and liabilities." Id., paragraph two of the syllabus.

{¶ 22} We begin with Richardson's claim that the clerk neglected to appropriately time-stamp his notice of appeal. We find nothing in the record to indicate that the clerk erred in filing or time-stamping Richardson's documents on the dates he tendered them, and thus we presume "the regularity of the Clerk of Courts performance of the filing of documents required of the office and as noted in the records required to be kept by the Clerk." *George v. Pequinot* (Aug. 20, 1992), Logan App. No. 8-92-9. Although Richardson claims that he informed the trial court of the clerk's error, we find nothing in the record to support this claim. Since he failed to raise such issue at the trial court level he has waived it for appellate review. *Sandberg v. John T. Crouch Co. Inc.*, Montgomery App. No. 21579, 2007-Ohio-7154, ¶13.

{¶ 23} Richardson did file an affidavit with this court, during the pendency of this

appeal, regarding his claim that the clerk erred. However, we note that this does not constitute evidence in the record before us. The information contained within the affidavit was not brought to the attention of the trial court, and thus we may not consider it on appeal.

{¶ 24} We next address the trial court's decision regarding the adequacy and timeliness of the notice of appeal. The notice of appeal filed on August 21 fails to set forth the BWC claim number, the date of the order appealed from, or a statement that Richardson intends to appeal from the denial of benefits. A review of the notice and attached documents establishes that they are not sufficient to apprise the defendants of Richardson's intent to appeal the BWC and Commission decisions. Instead, as noted above, the document appears to seek a criminal and civil investigation of the events underlying Richardson's claim – not a civil review of the Commission's denial of benefits. In other words, the document fails to place the parties on notice as to the nature of the claim raised by Richardson – that he is seeking administrative appellate review of the Commission's decision in the Montgomery County Court of Common Pleas. Therefore we conclude that the trial court did not err by finding that the August 21 document does not substantially comply with the provisions of R.C. 4123.512. See, *Sorge v. Copaz Packaging Corp.* (1995), Hamilton App. No. C-940818.

{¶ 25} It is undisputed that the notice of appeal filed on August 28 was untimely. The requirement that the notice of appeal be timely filed in the appropriate court of common pleas is jurisdictional. *Gdovichin v. Geauga Cty. Hwy. Dept.* (1993), 90 Ohio App.3d 805. Therefore, even though the later document did substantially comply with R.C. 4123.512, the failure to timely file it is fatal.

{¶ 26} Richardson has continually stated throughout the course of this administrative appeal and in his appellate brief that he is acting pro se and should not be held to the same standards as a licensed attorney. But "a party proceeding pro se is held to the same procedural standards as other litigants that have retained counsel." *State ex rel. Fuller v. Mengel,* 100 Ohio St.3d 352, 2003-Ohio-6448, ¶ 10. Furthermore, pro se litigants are presumed to have knowledge of the law and of correct legal procedure, and are held to the same standard as other litigants. *Kilroy v. B.H. Lakeshore Co.* (1996), 111 Ohio App.3d 357. Thus, Richardson is bound by any substantive or procedural error of his own making.

{¶ 27} The Second, Third, Fourth, Sixth, Seventh and Ninth assignments of error are overruled.

III

{¶ 28} Richardson's First Assignment of Error is as follows:

{¶ 29} "DID THE COURT ERROR WHEN IT DISMISSED INDUSTRIAL COMMISSION FROM THE ADMINISTRATIVE APPEAL? THE APPELLANT SAYS YES."

{¶ 30} In this assignment of error, Richardson contends that the trial court erred when it dismissed the appeal as against the Commission.

{¶ 31} Pursuant to R.C. 4123.512(B), "[t]he administrator of workers' compensation, the claimant, and the employer shall be parties to the appeal and the court, upon the application of the commission, shall make the commission a party."

{¶ 32} In this case, the Commission did not seek to be added as a party to the appeal; therefore, it did not submit to the jurisdiction of the trial court. The trial court

properly dismissed the Commission from the appeal. Although Richardson claims that this was error, he fails to cite, and we cannot find, any case or statutory law to support his claim. Nor does he provide any insight as to why he believes the Commission should have been a party to the appeal. More importantly, in his "answer to the Magistrate's Decision" Richardson states that he "concur[s] with releasing the Commission."

{¶ 33} Given the clear language of the above statute, as well as Richardson's apparent agreement with the decision of the magistrate in this regard, we must conclude that the trial court did not err by dismissing the Commission. Richardson's First Assignment of Error is overruled.

IV

{¶ 34} Richardson's Fifth Assignment of Error provides:

{¶ 35} "DID THE COURT ERROR WHEN IT DISMISSED THE PREMISES LIABILITY COMPLAINT? APPELLANT SAYS YES."

{¶ 36} Richardson contends that the trial court erred by dismissing his complaint against TI Group.

{¶ 37} The record shows that Richardson filed a document entitled "Premises Liability Complaint" against TI Group on November 28, 2007. Thereafter, on January 2, 2008, he filed a document titled as a "First Amendment Premises Liability/Personal Jury Complaint" which reiterated the same allegations as the Premises Liability Complaint. TI Group filed a motion seeking dismissal of the complaint, which the trial court granted.

{¶ 38} Civ.R. 15(A) provides that a party may amend its pleading by leave of court and that such leave "shall be freely given when justice so requires." *Turner v. Cent. Loc.*

School Dist. (1999), 85 Ohio St.3d 95, 99. Absent an abuse of discretion, a trial court's decision whether to grant or deny a motion to amend a pleading will not be reversed on appeal. *State ex rel. Askew v. Goldhart* (1996), 75 Ohio St.3d 608, 610. An abuse of discretion occurs when the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St. 3d 217, 219.

{¶ 39} We begin by noting that Richardson failed to seek leave of court to file the amended complaint, as required by Civ.R. 15. Further the premises liability complaint sets forth a new cause of action for negligence against TI Group, fails to incorporate any of the allegations raised by the administrative appeal, and does not purport to amend the allegations raised by his administrative appeal . In other words, it appears that the premises liability complaint is a distinct cause of action from the appeal of the denial of workers' compensation benefits, and that Richardson did not intend for these actions to be merged. Indeed, during oral argument to this court, and in several different documents filed with the trial court, Richardson has plainly stated that he intends the premises liability complaint to be a "separate action independent from the appeal of the decision denying benefits."

{¶ 40} We cannot say that the trial court abused its discretion in dismissing the premises liability complaint, given Richardson's representations that the administrative appeal and the complaint in negligence were intended to be separate and distinct causes of action.

{¶ 41} The Fifth Assignment of Error is overruled.

V

{¶ 42} Richardson's Eighth Assignment of Error states as follows:

{¶ 43} "DID THE COURT ERROR WHEN IT DENIED ME DUE PROCESS AND ACCESS TO THE PROCEDURAL DEVISES TO OBTAIN PRE-TRIAL DISCOVERY SO THAT EVIDENCE COULD BE HEARD IN THE INSTANT CASE?"

{¶ 44} Richardson contends that the trial court violated his right to due process by denying him the right to conduct discovery.

{¶ 45} Richardson fails to state with specificity how the trial court prevented him from conducting discovery. Throughout this litigation, he has made general assertions that he has been denied access to discovery. However, we note that the record shows that Richardson did conduct discovery. He filed a Request for Production of Documents during the pendency of his administrative appeal in the trial court. There is nothing in the record to suggest that the trial court hindered Richardson's attempt at discovery. Therefore, we conclude that this argument lacks merit. Accordingly, the Eighth Assignment of Error is overruled.

VI

{¶ 46} Richardson's Tenth Assignment of Error is as follows:

{¶ 47} "DID THE COURT ERROR IN SECURING STIPULATIONS IN REGULATING ALL MATTERS INCIDENTAL TO THE PROCEEDINGS OR TRIAL, WHICH FALLS WITHIN ITS JURISDICTION? APPELLANT SAYS YES."

{¶ 48} We cannot discern Richardson's argument in connection with this assignment of error. He has not set forth any argument specifically directed to this assignment of error. We are not aware of any stipulations secured by the trial court, and Richardson fails to

make any specific citation to the record, as required by App.R. 16.[1] Therefore, Richardson's Tenth Assignment of Error is overruled.

VII

{¶ 49} All of Richardson's assignments of error having been overruled, the judgment of the trial court is Affirmed.

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DONOVAN, P.J., and FROELICH, J., concur.

Copies mailed to:

Earl Richardson
Richard Cordray
Douglas R. Unver
Carl E. Habekost
Peter N. Lavalette
Robert G. Hanseman
Hon. A. J. Wagner

[1] As previously noted, pro se litigants are held to the same standard as licensed attorneys. In this case, Richardson has consistently failed to comply with the requirements of App.R. 16.