

[Cite as *George v. Ohio Bur. of Workers' Comp.*, 2009-Ohio-5787.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ANITA LEE GEORGE, PRO SE

Plaintiff-Appellant

-VS-

ADMINISTRATOR, OHIO BUREAU
OF WORKERS' COMPENSATION

and

CROWN CORK & SEAL CO., INC.

and

K K S G & ASSOCIATES, INC.

Defendants-Appellees

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. William B. Hoffman, J.

Hon. Patricia A. Delaney, J.

Case No. 2009CA00146

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No. 2009CV01123

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

November 2, 2009

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

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Farmer, P.J.

{¶1} On June 13, 2006, appellant, Anita Lee George, settled her workers' compensation claim against her employer, Crown Cork & Seal USA, Inc., with appellee, the Bureau of Workers' Compensation, for \$35,000. On August 1, 2008, appellant filed a motion with the Industrial Commission to vacate the settlement. A Staff Hearing Officer, Gary Frame, denied the motion on October 24, 2008. Appellant sought reconsideration which was denied on January 12, 2009.

{¶2} On March 20, 2009, appellant filed an appeal to the Court of Common Pleas of Stark County, Ohio. On April 15, 2009, appellee filed a motion to dismiss for lack of subject matter jurisdiction. By judgment entry filed May 13, 2009, the trial court granted the motion and dismissed appellant's appeal.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶4} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR WHEN IT GRANTED THE APPELLEE, BWC'S MOTION TO DISMISS WITHOUT FIRST HOLDING AN EVIDENTIARY HEARING ON THE QUESTION OF WHETHER THE JUNE 13, 2006 WORKER'S COMPENSATION SETTLEMENT AGREEMENT HAD BEEN PROPERLY ENTERED INTO UNDER O.R.C. 4123.65."

II

{¶5} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN FINDING THAT IT LACKED SUBJECT MATTER JURISDICTION PURSUANT TO O.R.C.

4123.65 (F) WHEN THE SETTLEMENT AGREEMENT ENTERED INTO BY THE PARTIES DID NOT MEET THE STRICT REQUIREMENTS OF O.R.C. 4123.65."

III

{¶16} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN FAILING TO GRANT SUMMARY JUDGMENT IN FAVOR OF APPELLANT WHEN THERE EXISTED NO GENUINE ISSUES OF MATERIAL FACT IN DISPUTE CONCERNING THE LEGALITY OF THE JUNE 13, 2006 SETTLEMENT AGREEMENT AND THAT THE STAFF HEARING OFFICER'S (S.H.O.) SIGNATURE WAS FORGED, VIOLATING BWC'S TAMPERING WITH CLAIM FILE DOCUMENTS, MEMO S4."

II

{¶17} Appellant claims the trial court erred in determining it lacked subject matter jurisdiction over her request to vacate her prior settlement agreement. We disagree.

{¶18} Appellant originally settled her right to receive benefits via an agreement that she now challenges as fraudulent. See, Settlement Agreement and Application for Approval of Settlement Agreement attached to Appellant's Brief as Plaintiff Exhibit I.

{¶19} Pursuant to R.C. 4123.65(D), a copy of a final settlement shall immediately be sent to "the industrial commission who shall assign the matter to a staff hearing officer. The staff hearing officer shall determine, within the time limitations specified in division (C) of this section, whether the settlement agreement is or is not a gross miscarriage of justice."

{¶10} Appellant argues the purported signature of "L.M.," representing a Staff Hearing Officer who reviewed the settlement agreement, was a forgery. See, BWC

Order attached to Appellant's Brief as Plaintiff Exhibit M. Appellant makes this argument because Mr. Frame, the Staff Hearing Officer who denied her claim to vacate the settlement, noted "[t]here is no evidence that the Industrial Commission reviewed the Administrator's 06/13/2006 order." See, Record of Proceedings attached to Appellant's Brief as Plaintiff Exhibit N. Therefore, appellant argues the BWC Order was altered to make it seem as if it had been reviewed.

{¶11} We note R.C. 4123.65(D) states, "[i]f the staff hearing officer determines that the settlement agreement is not clearly unfair or fails to act within those time limits, the settlement agreement is approved."

{¶12} As cited supra, the matter was heard by the Industrial Commission and denied. The action of the Industrial Commission was not about appellant's right to participate, but was about appellant's request to vacate the prior settlement agreement.

{¶13} R.C. 4123.512 governs appeals of workers' compensation claims, and confers limited jurisdiction over a Court of Common Pleas:

{¶14} "(A) The claimant or the employer may appeal an order of the industrial commission made under division (E) of section 4123.511 of the Revised Code in any injury or occupational disease case, other than a decision as to the extent of disability to the court of common pleas of the county in which the injury was inflicted or in which the contract of employment was made if the injury occurred outside the state, or in which the contract of employment was made if the exposure occurred outside the state. If no common pleas court has jurisdiction for the purposes of an appeal by the use of the jurisdictional requirements described in this division, the appellant may use the venue provisions in the Rules of Civil Procedure to vest jurisdiction in a court.***"

{¶15} The Supreme Court of Ohio has limited the right of appeal to a Court of Common Pleas not only on the issue of the right to participate, *Afrates v. Lorain* (1992), 63 Ohio St.3d 22, but has further restricted appeals under R.C. 4123.512 to questions of causation between employment and claimed injury or death. *State ex rel. Liposchak v. Industrial Commission of Ohio*, 90 Ohio St.3d 276, 2000-Ohio-73.

{¶16} As noted by appellee, it can administratively settle a claim pursuant to R.C. 4123.65(A), but there is no right to appeal a settlement. R.C. 4123.65(F) specifically states, "[a] settlement entered into under this section is not appealable under section 4123.511 or 4123.512 of the Revised Code."

{¶17} Because of the statutory mandates cited supra, the issue was not appealable to the Court of Common Pleas. As the Supreme Court of Ohio suggested in *State ex rel. Wise v. Ryan*, 118 Ohio St.3d 68, 2008-Ohio-1740, the proper remedy available to appellant is a mandamus action.

{¶18} Assignment of Error II is denied.

I, III

{¶19} These assignments are moot given our ruling on the issue of subject matter jurisdiction.

{¶20} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby affirmed.

By Farmer, P.J.

Hoffman, J. and

Delaney, J. concur.

s/ Sheila G. Farmer

s/ William B. Hoffman

s/ Patricia A. Delaney

JUDGES

SGF/sg 1016

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
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JUDGMENT ENTRY

CASE NO. 2009CA00146

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio is affirmed. Costs to appellant.

s/ Sheila G. Farmer

s/ William B. Hoffman

s/ Patricia A. Delaney

JUDGES

