

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Judy A. Barron

Court of Appeals No. L-11-1213

Appellant

Trial Court No. CI0201004536

v.

St. Charles Hospital fka St. Charles
Mercy Hospital, et al.

DECISION AND JUDGMENT

Appellee

Decided: April 20, 2012

* * * * *

John S. Shaffer, for appellant.

Vincent S. Mezinko, for appellee.

* * * * *

SINGER, P.J.

{¶ 1} Appellant, Judy A. Barron, appeals a decision from the Lucas County Court of Common Pleas granting summary judgment to appellee, St. Charles Hospital.

{¶ 2} The facts giving rise to this appeal are as follows. On March 14, 1985, appellant suffered a back injury while employed at St. Charles Hospital. She was treated

for low back strain, bulging disc, sciatic radiculopathy, intervertebral disc syndrome and failed back syndrome for several years concluding on February 6, 1996.

{¶ 3} In fall of 2002 appellant developed back pain again and her primary care physician sent her to doctors in Michigan and Indiana for consultations. The doctors advised appellant to attend the Bonati Institute in Hudson, Florida. Appellant sought treatment at the Bonati Institute and went through several procedures from December 10, 2002, through December 2, 2003, for debridement of certain joints, decompression of nerve roots, foraminotomy, partial facetectomy, and excision of herniated disc.

{¶ 4} On May 25, 2004, appellant filed a C-86 form (“Motion”) with the Ohio Bureau of Workers’ Compensation. Appellant sought payments for the consultations with the doctors, and the procedures at the Bonati Institute. The matter was heard and the payments for two surgeries conducted in December 2002 were approved as reasonably related to the allowed conditions. This decision was appealed by both parties, and on January 7, 2005, the hearing officer held that only one payment for the treatment on December 17, 2002, would be authorized.

{¶ 5} Appellant sought additional reports from the Bonati Institute for several years but without success. Appellant has never sent any bills for the December 17, 2002 authorized surgery to St. Charles. In her affidavit, appellant stated that she believed the claims to have been paid by her former employer, her current insurance, or her husband’s insurance, but she was unaware of which one. On the other hand, St. Charles has

presented documentation showing that the last payment made to appellant was on February 6, 1996.

{¶ 6} On December 4, 2009, appellant filed another C-86 Motion for additional allowance of conditions of bulging disc and nerve entrapment, stenosis, and radiculitis, and their benefit payments. A hearing officer found that there was no jurisdiction to address the motion because it was outside the 10-year statute of limitations. Appellant appealed, and the case was dismissed as barred by the statute of limitations.

{¶ 7} Appellant filed a timely appeal to the Lucas County Court of Common Pleas on June 14, 2010. Appellee filed a motion for summary judgment and appellant filed a cross-motion for summary judgment. On July 25, 2011, the trial court denied appellant's motion and granted summary judgment to appellee.

{¶ 8} Appellant now appeals, arguing that an order granting an injured worker's motion for payment of treatment should be sufficient to toll the statute of limitations.

{¶ 9} In reviewing an order of an administrative agency, "an appellate court's role is more limited than that of a trial court reviewing the same order." *Bartchy v. State Bd. of Edn.*, 120 Ohio St.3d 205, 213, 897 N.E.2d 1096 (2008). The appellate court is "to determine only if the trial court has abused its discretion." *Id.*

{¶ 10} R.C. 4123.52 sets forth the guidelines for the Industrial Commission's continued jurisdiction over an injured worker's compensation claim. It establishes that "in cases where compensation has been paid under section 4123.56, 4123.57, or 4123.58

of the Revised Code,” the life of the claim extends for “ten years from the date of the last payment of compensation.” R.C. 4123.52.

{¶ 11} The statutory language explicitly and unambiguously states “payment of compensation” that “has been paid.” *Id.* The Ohio Supreme Court interpreted the relevant part of the statute as “a ten-year limitation for disability claims, which runs from the last payment of compensation.” *Collinsworth v. Western Elec. Co.*, 63 Ohio St.3d 268, 270, 586 N.E.2d 1071 (1992). When interpreting statutes, courts “must give due deference to an administrative interpretation formulated by an agency which has accumulated substantial expertise, and to which the legislature has delegated the responsibility of implementing the legislative command.” *Id.* at 272.

{¶ 12} Appellant argues that an order for a payment should have the same effect as a payment and also toll the statute of limitations. Appellant cites two cases in her support, *Stephenson v. Buckeye Steel Castings Co.*, 10th Dist. No. 95APE04-445, 1995 WL 614086 (Oct. 17, 1995), and *Copeland v. Bur. of Workers’ Comp.*, 192 Ohio App.3d 586, 2011-Ohio-813, 949 N.E.2d 1046 (5th Dist.).

{¶ 13} However, the cases are not on point and do not provide support for appellant. In *Stephenson*, the injured employee filed a request for payment with the Bureau of Workers’ Compensation within the statute of limitations. The employee submitted hospital bills and records to the self-insured employer. The issue in *Stephenson* was whether the filing with the bureau was to be considered an application. It was found as an application; therefore, the self-insured employer should have paid the

employee according to the bills, and that payment would have tolled the statute. The case at bar is distinguishable from *Stephenson* in that appellant never sent any bills to St. Charles, and consequently there could not have been any payment tolling the statute. As the hearing officer decided in denying appellant's C-86 Motion filed on December 4, 2009, "even if these bills [for the December 17, 2002 procedure at the Bonati Institute] were obtained and submitted, they are not payable * * * as they were not filed within two years from the date the services were rendered."

{¶ 14} In *Copeland*, the injured worker filed a C-9 form ("Physician's Request for Medical Service or Recommendation for Additional Conditions for Industrial Accident or Occupational Disease") to request payment for additional treatment two months before the statute of limitations ran. The Bureau of Workers' Compensation did not render any decision. The worker filed a C-86 Motion for additional allowance of conditions one month after the statute had run, and the bureau did not render any decision. More than three years later, the worker filed two C-86 Motions, one seeking determination of the C-9 request for payment of additional treatment, and another for refiling of allowance of conditions. The bureau denied the C-9 request as not reasonably related to the allowed conditions, and the C-86 Motion as barred by statute of limitations.

{¶ 15} The court in *Copeland* remanded the matter for consideration of the C-86 Motion for allowance of conditions, charging the inactivity of the worker's claim to the bureau. *Copeland*, 192 Ohio App.3d 586, 2011-Ohio-813, 949 N.E.2d 1046, at ¶ 19. The court held that "A C-9 claim is not initiated by a claimant, but by a medical

provider,” and thus the worker “had no motivation to expeditiously pursue the [C-9] claim.” *Id.*

{¶ 16} The *Copeland* court suggests that its narrow holding was also because the C-86 Motion for allowance of conditions was for “the precise condition necessary to obtain authorization for the treatment.” *Id.* at ¶ 12. Merely filing the request for additional payment alone did not toll the statute of limitations without a payment. Moreover, the court cites *Rowland v. White Castle System, Inc.*, 10th Dist. No. 86AP-188, 1986 WL 9525 (Aug. 26, 1986) for guidance. In *Rowland*, the injured worker was partially paid and sought remainder payment after 11 years, and the court allowed it. The *Copeland* court phrased the *Rowland* case as “review[ing] an 11-year time span between injury and claim reactivation under R.C. 4123.52,” stating that “[the *Rowland* court] noted that a letter sent to the Bureau of Workers’ Compensation at the time of the injury included medical bills that appellant sought payment for 11 years.” *Copeland* at ¶ 17. The *Copeland* court also noted the effect of submitting bills, as it acknowledged the discretion of the trial courts.

{¶ 17} The court in *Copeland* charged the inactivity of the claim to the bureau, holding the bureau responsible for the delay. For the case at bar, the inactivity of the claim can be charged to appellant, for sleeping upon her rights. Moreover, the present case is distinguishable from *Copeland*, as it is similarly distinguishable from *Stephenson*, in that the *Copeland* court recognized the effect of submitting bills, while appellant in

this case never sent any bills. There could not be any payment tolling the statute of limitations because of appellant's inaction.

{¶ 18} In interpreting the statute in reviewing the administrative agency's order, the trial court gave due deference to the administrative interpretation without abusing its discretion. Appellant failed to respond with specific facts showing that there is a genuine issue of material fact, and the trial court did not err in granting summary judgment to appellee. Appellant's assignment of error is not well-taken.

{¶ 19} The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24(A)(2).

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
