

ORIGINAL

IN THE SUPREME COURT OF OHIO

James R. Bennett,	:	
	:	
Plaintiff-Appellant,	:	Case No. 2018-1279
	:	
v.	:	On Appeal from the Court of
	:	Appeals for Union County
The Scotts Miracle-Gro Company	:	Third Appellate District
	:	Court of Appeals
and	:	Case No. 14-18-04
	:	
Sarah Morrison, Administrator	:	
Ohio Bureau of Workers' Compensation,	:	
	:	
Defendants-Appellees.	:	

MOTION TO STRIKE OF DEFENDANT-APPELLEE
THE SCOTTS MIRACLE-GRO COMPANY

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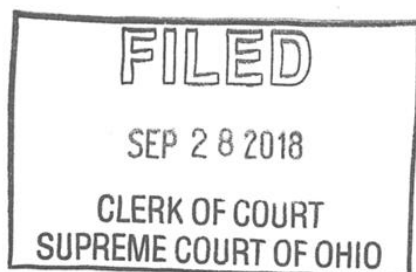
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James Bennett

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MOTION

For the reasons set forth in the accompanying memorandum, Defendant-Appellee, The Scotts Miracle-Gro Company (Scotts) respectfully moves the Court to strike the notice of appeal filed on behalf of Plaintiff-Appellant James Bennett for failure to serve counsel with the notice of appeal and memorandum in support submitted in this action as required by S.Ct.Prac.R. 3.11(B)(1)(a).

Respectfully submitted,

VORYS, SATER, SEYMOUR AND PEASE LLP

By: 

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MEMORANDUM IN SUPPORT OF MOTION

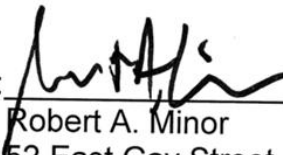
This matter was initiated in the Common Pleas Court of Union County, Ohio, as an appeal taken pursuant to the provisions of Ohio Revised Code Section 4123.512 from a final decision of the Industrial Commission of Ohio involving the right of Plaintiff-Appellant, James Bennett, to participate in the compensation and benefits provided under the Ohio workers' compensation law for an additional condition in his recognized workers' compensation claim. Mr. Bennett alleged that he was exposed to asbestos in the course of his employment with Defendant-Appellee, The Scotts Miracle-Gro Company. He filed a workers' compensation claim alleging entitlement to participate in workers' compensation benefits and his claim was recognized for the condition of "pleural plaques" as the result of asbestosis [sic] exposure." He then sought the allowance of an additional condition of "asbestosis" in his claim. His request was denied, an appeal was taken from the Industrial Commission's final decision disallowing the additional condition to court and the case was tried to Hon. Scott Barrett, Judge of the Common Pleas Court of Hardin County, who sat by assignment over the trial de novo. In a Journal Entry filed on January 18, 2018, Judge Barrett found for Defendant-Appellee, The Scotts Miracle-Gro Company. An appeal was taken to the Court of Appeals for the Third Appellate District which, in an entry filed July 30, 2018, affirmed the judgment of the trial court.

On or about September 11, 2018, a notice of appeal and supporting memorandum were filed with this Court. The caption on the notice of appeal and memorandum, "State of Ohio, ex rel. James R. Bennett" is somewhat misleading inasmuch as this is not a mandamus action but, rather, a discretionary appeal. Counsel

for The Scotts Miracle-Gro Company has not been served with a copy of the notice of appeal nor a copy of the memorandum in support of claim jurisdiction. Please see Affidavit of Robert A. Minor, attached hereto as Exhibit A. Further, counsel for Plaintiff-Appellant, according to his certificate of service, did not serve counsel for Defendant-Appellee, Administrator of the Ohio Bureau of Workers' Compensation, a party to this action. For the foregoing reasons, counsel respectfully requests that the Court strike Plaintiff-Appellant's notice of appeal for failing to comply with S.Ct.Prac.R. 3.11(B)(1)(a).

Respectfully submitted,

VORYS, SATER, SEYMOUR AND PEASE LLP

By: 

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CERTIFICATE OF SERVICE

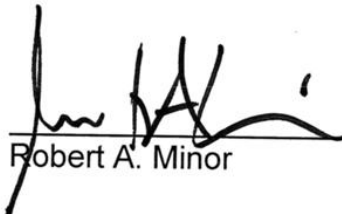
The undersigned certifies that the foregoing has been served upon counsel for
Plaintiff-Appellant:

Michael J. Muldoon (0034007)
1375 Dublin Road
Columbus, Ohio 43215-1069

upon counsel for Defendant-Administrator:

Sherry M. Phillips
Assistant Attorney General
Workers' Compensation Section
150 East Gay Street, 22nd Floor
Columbus, Ohio 43215-3130

by depositing same in the United States Mail, postage prepaid, this 28th day of
September, 2018.



Robert A. Minor

EXHIBIT A

AFFIDAVIT OF ROBERT A. MINOR

State of Ohio :
: ss:
County of Franklin: :

Robert A. Minor, being first duly cautioned and sworn, states as follows:

1. I am a member of the Bar of the State of Ohio, am registered as Attorney No. 0037181, and I am a partner in the law firm of Vorys, Sater, Seymour and Pease LLP.

2. Vorys, Sater, Seymour and Pease LLP represents The Scotts Miracle-Gro Company in an action styled James Bennett v. The Scotts Miracle-Gro Company, et al., and I am the lead attorney on the case.

3. On September 27, 2018, I reviewed the electronic file for the Court of Appeals of Union County to see if a notice of appeal had been taken from the decision entered in favor of The Scotts Miracle-Gro Company in Court of Appeals Case No. 14-18-04, and there was no indication of a notice of appeal having been filed.

4. I then went to the Supreme Court website, entered into the search area the name of James Bennett, and found that a notice of appeal and supporting memorandum had been filed on behalf of Mr. Bennett on or about September 11, 2018 by Mr. Michael Muldoon, his counsel.

5. We have not received a copy of the notice of appeal or memorandum filed in support thereof from Mr. Muldoon.

Further affiant sayeth naught.


Robert A. Minor

(0018371)

Sworn to before me and subscribed in my presence this 28 day of
September, 2018.


Notary Public



KAREN MUELLER MOORE
ATTORNEY AT LAW
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.