The Supreme Court of Ohio

CASE ANNOUNCEMENTS

March 24, 2023

[Cite as *03/24/2023 Case Announcements #2*, 2023-Ohio-956.]

MOTION AND PROCEDURAL RULINGS

2022-1446. Ramos v. Fresh Mark Canton.
Stark App. No. 2021 CA 00076, 2022-Ohio-3642. On motion of Ohio Bureau of Workers' Compensation to realign as appellant. Motion granted.

Brunner, J., dissents, with an opinion.

BRUNNER, J., dissenting.

{¶ 1} According to the Fifth District Court of Appeals' opinion in this case, appellant, Domingo Ramos, was working for appellee, Fresh Mark Canton, on December 16, 2017, when he was injured so grievously that he died immediately thereafter. 2022-Ohio-3642, 198 N.E.3d 1009, ¶ 2 (5th Dist.). Almost two years later, on December 5, 2019, his significant other submitted an application to the Ohio Bureau of Workers' Compensation seeking death benefits for Ramos's four children. *Id.* at ¶ 3.[1] Fresh Mark, a self-insuring employer, denied the claim on the ground that it had been filed past the one-year statute of limitations set forth in R.C. 4123.84(A). 2022-Ohio-3642, 198 N.E.3d 1009, at ¶ 3. However, the record indicates that Fresh Mark did not report Ramos's death to the bureau in accordance with R.C. 4123.28, thus, arguably tolling the statute of limitations. 2022-Ohio-3642, 198 N.E.3d 1009, at ¶ 5. A district hearing officer denied the application for death benefits and a staff hearing officer affirmed the denial, as did the court of common pleas. *Id.* at ¶ 5-7. In a fractured one-one-one opinion, the Fifth District affirmed the trial court's judgment, with one dissenting judge and the two judges in the majority all asserting different reasoning.

1. Throughout this dissenting opinion, "Ramos" will be used to refer to the applicant on behalf of Ramos's children.

{¶ 2} We accepted Ramos's request for further appellate review. 169 Ohio St.3d 1423, 2023-Ohio-212, 201 N.E.3d 911.

{¶ 3} The motion now under review by this court is whether the bureau may "realign" its party status to be designated as an appellant. The bureau asserts that it was named as a defendant (actually, an appellee) in the court of common pleas as required by R.C. 4123.512(B). It is undisputed that both a district and a staff hearing officer from the bureau agreed with Fresh Mark and denied the application for death benefits for Ramos's children. After the court of common pleas affirmed the staff hearing officer's decision denying benefits and Ramos appealed that judgment to the Fifth District, the Fifth District erroneously omitted the bureau as a party to the appeal. The bureau surmises that when this court granted Ramos's request for jurisdictional review, there was no indication that the bureau (which had not sought to oppose the decision of the Fifth District) was anything other than appellee. (However, our case-management system currently characterizes the bureau as a "Non-Party.")

{¶ 4} Although the bureau neither participated in nor opposed Ramos's arguments before the Fifth District (the bureau also did not seek reconsideration of the Fifth District's judgment), it now asserts that the Fifth District's interpretation of R.C. 4123.28 is erroneous. Specifically, in its motion to realign, the bureau argues that "R.C. 4123.28 requires employers to report instantaneous workplace deaths to the Bureau, and each day the [employer] fails to do so extends the statute of limitations to file a claim for benefits due for that death." The bureau concludes, therefore, that while it normally would be an appellee under these circumstances, it now should be an appellant because of its changed views. As such, the bureau seeks a redesignation of its party status in this appeal.

{¶ 5} The bureau's request is unopposed by any party, and the majority now grants the bureau's request to be "realigned." Because I do not believe that redesignating the bureau's party status is procedurally necessary or appropriate, I respectfully dissent. The bureau's hearing officers denied Ramos's request for death benefits, and both the court of common pleas (where the bureau was designated as an appellee) and the court of appeals (where the bureau did not participate) affirmed that judgment. That procedural history makes the bureau an appellee. The fact that the bureau has since reconsidered its position does not alter its party status—it merely makes the bureau a party that conceded its previously held position.

{¶ 6} Because of its decision to concede appellate error, the bureau appears to be concerned about due process for Fresh Mark. But Fresh Mark has counsel and is perfectly free to defend its position on the meaning of the statute with or without a change in the bureau's party status. And whether the bureau is an appellant or an appellee, its view of the statute at issue is merely persuasive and not binding on either Fresh Mark or this court. *See, e.g., State v. Pountney*, 152 Ohio St.3d 474, 2018-Ohio-22, 97 N.E.3d 478, ¶ 20 (this court reviews questions of statutory interpretation de novo). Thus, while I appreciate the bureau's intellectual honesty and willingness to concede what it views to be a problematic interpretation by the Fifth District, I do not see the need to change its party status when it has merely changed its arguments and legal conclusions.

{¶ 7} It is not unheard of for a party to concede various arguments after reexamining the facts and the law in a case. The objectivity displayed by the bureau is the result of diligent legal analysis, and the bureau does not need altered party labels to advocate for or validate its position. Because of this, I would deny the bureau's motion to realign its party status. Because the majority does not, I respectfully dissent.