

# The Supreme Court of Ohio

---

## CASE ANNOUNCEMENTS

May 21, 2024

[Cite as *05/21/2024 Case Announcements #2, 2024-Ohio-1938.*]

---

## APPEALS NOT ACCEPTED FOR REVIEW

### **2024-0297. Bruce v. Belucon.**

Franklin App. No. 21AP-497, **2024-Ohio-139.**

Donnelly, J., dissents, with an opinion.

Stewart, J., dissents.

Brunner, J., not participating.

---

### **DONNELLY, J., dissenting.**

{¶ 1} In his memorandum in support of jurisdiction, Sean E. Bruce asks this court to consider two propositions of law concerning procedural aspects of a workers' compensation appeal. I believe the first of these—which concerns the effect of a joint dismissal of a workers' compensation administrative appeal filed by the workers' compensation claimant and his employer—is a matter of public or great general interest, *see* Ohio Constitution, Article IV, Section 2(B)(2)(e), and I vote to accept the appeal on that proposition. Because a majority of this court has declined to exercise jurisdiction over this appeal, I dissent.

{¶ 2} Bruce was injured on the job and filed a workers' compensation claim, which was approved following the ordinary administrative process. 2024-Ohio-139, ¶ 2.<sup>1</sup> Bruce's employer appealed the administrative decision to the Franklin County Common Pleas Court under R.C. 4123.512. 2024-Ohio-139 at ¶ 3. And as required under R.C. 4123.512(D), Bruce filed a complaint explaining why he should be allowed to participate in the workers' compensation

---

1. Because we do not have the full record of the lower courts' proceedings in this appeal, the factual and procedural history of this case is gleaned from the Tenth District Court of Appeals' decision and the assertions made by the parties in their filings in this court.

fund. 2024-Ohio-139 at ¶ 3. A little over a year later, Bruce and his employer filed a “joint dismissal without prejudice” stating that both parties were dismissing “ ‘all claims \* \* \* that [were] pending’ ” in the common pleas court. (Emphasis added.) *Id.* Nothing happened in the case for more than two years. But then the employer sought *and received* a judgment in its favor on the basis that Bruce had failed to refile his complaint within a year of its dismissal and therefore failed to demonstrate that he was entitled to participate in the workers’ compensation fund. *Id.* at ¶ 4-6.

{¶ 3} I am unsettled by what happened here.

{¶ 4} Reviewing this case’s history as presented by the Tenth District Court of Appeals, I cannot help but wonder whether there had been a “meeting of the minds” between Bruce and his employer concerning the purpose and effects of the joint dismissal. Under R.C. 4123.512(D), if an employer appeals a workers’ compensation determination to the common pleas court, the workers’ compensation claimant cannot dismiss his complaint without the employer’s permission. But that is not what happened here. The plain, unambiguous language of the joint dismissal does not state that Bruce was dismissing his claim with the consent of his employer. Rather, it stated that *both* parties were dismissing *all* claims pending in the common pleas court. A reasonable person interpreting the joint dismissal could easily construe that filing as extinguishing the appeal.

{¶ 5} This leads to my next concern. I am not convinced that the joint dismissal preserved any claim for the common pleas court to review. According to the court of appeals, the only “claim” that Bruce’s employer had advanced before the joint dismissal was filed was its notice of appeal. *See* 2024-Ohio-139 at ¶ 1-4. And the joint dismissal clearly stated that the parties were dismissing all claims pending in the common pleas court. I fail to see how unambiguous language like that in the joint dismissal preserved any aspect or element of the employer’s appeal, because the dismissal expressly stated that it applied to all claims pending in the common pleas court.

{¶ 6} Despite all this, the court of appeals seemed more interested in tying itself into Gordian knots to affirm the common pleas court’s judgment than in engaging with the legal questions Bruce had raised. Indeed, I have reviewed the cases on which the Tenth District relied in reaching its decision, and all of those cases are readily distinguishable, on either a factual or a legal basis, from the facts and legal issues here. *See, e.g., id.* at ¶ 17, citing *Gambrel v. C.J.*

*Mahan Constr. Co.*, 10th Dist. Franklin No. 07AP-1023, 2008-Ohio-3288, ¶ 14 (discussing the effect of a claimant’s voluntary dismissal of a complaint under Civ.R. 41(A), but failing to consider the effects of a joint dismissal by which both parties dismissed all claims).

{¶ 7} Exercising our jurisdiction and accepting Bruce’s first proposition of law would be consistent with this court’s role. *See State v. Noling*, 136 Ohio St.3d 163, 2013-Ohio-1764, 992 N.E.2d 1095, ¶ 63 (O’Donnell, J., dissenting) (“we are not an error-correcting court; rather, our role as the court of last resort is to \* \* \* resolve uncertainties in the law, and address issues of public or great general interest”). The question Bruce asks this court to decide under his first proposition of law is not one that we have squarely answered. To be sure, R.C. 4123.512(D) provides that a workers’ compensation claimant may not dismiss his complaint without first obtaining the permission of the employer when the employer filed the notice of appeal to the common pleas court. And the law might be settled about the effect of a claimant’s failure to refile his complaint within a year of his voluntary dismissal of his claims. *See, e.g., Paul v. I-Force, L.L.C.*, 2d Dist. Champaign No. 2016-CA-25, 2017-Ohio-5496, ¶ 22 (“an employer is entitled to judgment on the pleadings where a claimant voluntarily dismisses his complaint and fails to refile within one year”). But it is not settled on what effect a filing like the joint dismissal here—which dismisses all pending claims—has on a workers’ compensation appeal. And until we resolve that question, litigants will have to take a belt-and-suspenders approach in cases like this one and ensure that any filing that dismisses a workers’ compensation complaint clearly states what is and what is not being dismissed.

{¶ 8} This confusion also raises the second reason why I believe this court should accept Bruce’s first proposition of law for review. Our resolution of the issue presented in that proposition would affect more than the parties and the outcome in this case. Given the ubiquity of workers’ compensation appeals, a decision by this court in this case would guide courts and litigants throughout the state. Our guidance would help workers’ compensation claimants properly preserve their claims, streamline the workers’ compensation appellate process by ensuring that all parties understand the end results of their filings, and promote the resolution of these cases on their merits rather than on procedural technicalities.

{¶ 9} For these reasons, I dissent from the majority’s decision not to exercise jurisdiction over this appeal, and I vote to accept Bruce’s first proposition of law for review.

