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SLIP OPINION NO. 2026-OHIO-3935

**THE STATE EX REL. MCCARTNEY [DECEASED], APPELLEE, v. SIMCO
MANAGEMENT, INC.; INDUSTRIAL COMMISSION, APPELLANT.**

**[Until this opinion appears in the Ohio Official Reports advance sheets, it
may be cited as *State ex rel. McCartney v. Simco Mgt., Inc.*,
Slip Opinion No. 2026-Ohio-3935.]**

Mandamus—Workers’ compensation—Permanent-total-disability (“PTD”) compensation—Court of appeals did not err in denying Industrial Commission’s motion to vacate on basis that judgment was void ab initio for lack of subject-matter jurisdiction—Appellee’s mandamus action is moot because his PTD-compensation claim abated upon his death—Court of appeals’ judgment denying Industrial Commission’s motion to vacate reversed, and cause remanded for dismissal of action.

(No. 2026-0025—Submitted August 4, 2026—Decided October 8, 2026.)

APPEAL from the Court of Appeals for Franklin County,
No. 24AP-13, 2025-Ohio-753.

The per curiam opinion below was joined by KENNEDY, C.J., and FISCHER, DEWINE, BRUNNER, DETERS, HAWKINS, and SHANAHAN, JJ.

Per Curiam.

{¶ 1} Appellee, David McCartney, sought a writ of mandamus requiring appellant, the Industrial Commission of Ohio, to vacate its order denying his application for permanent-total-disability (“PTD”) compensation. After the Tenth District Court of Appeals granted the writ, the commission moved to vacate the judgment because—unbeknownst to the court and any counsel in the case—McCartney had died before the court granted the writ. The Tenth District, however, refused to vacate its judgment granting the writ, and the commission has appealed the denial of its motion to vacate.

{¶ 2} We conclude that because McCartney’s claim for PTD compensation abated upon his death, his mandamus action is moot. We therefore reverse the Tenth District’s judgment denying the commission’s motion to vacate, remand the case to that court, and instruct it to vacate its prior decision and judgment granting a writ of mandamus and to dismiss the action as moot.

I. BACKGROUND

A. The Tenth District Grants McCartney a Writ of Mandamus

{¶ 3} In March 2001, McCartney sustained a work-related injury while employed by Simco Management, Inc. His workers’ compensation claim was allowed for various injuries, and he was awarded permanent-partial-disability compensation.

{¶ 4} McCartney also requested—but was denied—PTD compensation. The commission denied his first application in 2008, his second application in 2016, and his third application in 2023. In the 2023 order, a staff hearing officer for the commission concluded that McCartney had not demonstrated new and changed

circumstances since the denial of his second application for PTD compensation, as is required by R.C. 4123.58(G) for the commission to consider a subsequent application for PTD compensation based on the same injury.

{¶ 5} On January 5, 2024, McCartney filed his mandamus action in the Tenth District, seeking a writ directing the commission to vacate its 2023 order and either grant him PTD compensation or conduct further proceedings on his third application for PTD compensation. The case was assigned to a magistrate, who recommended that the Tenth District deny the writ. 2025-Ohio-753, ¶ 57 (10th Dist.). McCartney objected to the magistrate’s decision, arguing that he had established new and changed circumstances since the denial of his second application for PTD compensation.

{¶ 6} In March 2025, the Tenth District entered a decision and judgment sustaining McCartney’s objection, agreeing that he had presented evidence of new and changed circumstances. *Id.* at ¶ 17. The court further explained, however, that McCartney had overcome only the “procedural hurdle to obtaining the commission’s consideration of the merits of [his] PTD application” and that he was still required to “prove entitlement to PTD compensation by establishing under a preponderance of the evidence that the injury [was] permanent and the inability to work [was] causally related to the allowed conditions.” *Id.* at ¶ 18. Therefore, the Tenth District granted a writ of mandamus ordering the commission to vacate its 2023 order and conduct further proceedings on McCartney’s third application for PTD compensation. *Id.* at ¶ 19.

{¶ 7} About a month later, the commission filed a motion to vacate the Tenth District’s judgment for lack of jurisdiction. The commission stated that unbeknownst to any counsel in the case, McCartney died on January 30, 2024—more than 13 months before the Tenth District granted the writ. The commission argued that upon McCartney’s death, his claim for PTD compensation abated and his mandamus action therefore was moot. And because the action was moot, the

commission contended, the Tenth District lacked jurisdiction to issue its March 2025 judgment and it should vacate that judgment as void ab initio.

{¶ 8} Because the Tenth District had not ruled on the commission’s motion to vacate before the commission’s deadline to appeal the March 2025 judgment, the commission appealed that judgment to this court and then requested that we remand the matter to the Tenth District for it to rule on the motion to vacate. Without any opposition from McCartney’s counsel, we granted the commission’s motion to remand. *See* 2025-Ohio-2062.

B. The Tenth District Denies the Motion to Vacate

{¶ 9} On November 25, 2025, the Tenth District denied the commission’s motion to vacate the March 2025 judgment. 10th Dist. No. 24AP-13, ¶ 14 (Nov. 25, 2025). The Tenth District agreed that McCartney’s claim for PTD compensation had abated upon his death and that his mandamus action had become moot, *id.* at ¶ 6, 12, but the court distilled the issue before it as “whether the action’s mootness rendered [the March 2025] judgment entry and decision void,” *id.* at ¶ 7. The Tenth District said that if the commission had timely raised the mooting of McCartney’s writ action, the court would have dismissed the case. *Id.* at ¶ 13. But because “the commission waited until after [the Tenth District] had issued a decision and final judgment” to notify the court of McCartney’s death, the court found that it had subject-matter jurisdiction to issue the March 2025 judgment. *Id.* And because it had jurisdiction, the court held, the March 2025 judgment was not void ab initio, so the court refused to vacate that judgment. *Id.*

{¶ 10} The commission has appealed the denial of its motion to vacate, which is the matter currently before us.¹

1. The commission also moved to stay the briefing schedule in its first appeal, case No. 2025-0565, pending the outcome of this appeal. We granted that motion. *See* 2026-Ohio-616.

II. STANDARD OF REVIEW

{¶ 11} In a workers' compensation mandamus appeal, a writ of mandamus may lie when there is a legal basis to compel the commission to perform its duties under the law or when the commission has abused its discretion in carrying out its duties. *State ex rel. Gen. Motors Corp. v. Indus. Comm.*, 2008-Ohio-1593, ¶ 9. To be entitled to a writ of mandamus, a relator must show by clear and convincing evidence that he or she has a clear legal right to the requested relief, that the commission has a clear legal duty to provide that relief, and that the relator lacks an adequate remedy in the ordinary course of the law. *State ex rel. Zarbana Industries, Inc. v. Indus. Comm.*, 2021-Ohio-3669, ¶ 10.

{¶ 12} The issue in this appeal, however, is not whether the Tenth District correctly granted McCartney a writ of mandamus in March 2025. Rather, we are reviewing the Tenth District's November 2025 judgment denying the commission's motion to vacate. Although some courts have stated that the denial of a common-law motion to vacate a void judgment is reviewed under an abuse-of-discretion standard, *see, e.g., During v. Quoico*, 2012-Ohio-2990, ¶ 16 (10th Dist.); *Flaughner v. Flaughner*, 2020-Ohio-299, ¶ 9 (2d Dist.), this appeal presents questions relating to subject-matter jurisdiction and mootness, and we review decisions on subject-matter jurisdiction de novo, *State ex rel. Ohio Civ. Serv. Emps. Assn. v. State*, 2016-Ohio-478, ¶ 12.

III. ANALYSIS

{¶ 13} The commission raises three propositions of law. For the reasons explained below, we reject the first proposition of law, which challenges the Tenth District's subject-matter jurisdiction, but hold that the second proposition of law, which relates to the appropriate remedy, has merit—at least in part. Because we find that the commission's second proposition resolves this appeal, it is not necessary to consider the commission's third proposition of law.

A. The Commission’s First Proposition of Law: Subject-Matter Jurisdiction

{¶ 14} As its first proposition of law, the commission contends that the Tenth District erred in finding that it had subject-matter jurisdiction to issue its March 2025 judgment granting a writ against the commission. The commission argues that McCartney’s claim for PTD compensation abated upon his death and mooted his mandamus action. Without any cognizable claim before the Tenth District, the commission asserts, the court lacked authority—and therefore lacked subject-matter jurisdiction—to adjudicate the mandamus action, rendering the March 2025 judgment void ab initio.

{¶ 15} The commission is correct that McCartney’s third application for PTD compensation abated upon his death. Adm.Code 4123-5-21(A) provides that “[w]hen a claimant dies, action on any application filed by the claimant, and pending before the . . . industrial commission at the time of their death, is abated by the claimant’s death.” Because Adm.Code Ch. 4123-5 does not define “abated,” we give the term its plain and ordinary meaning. *See State ex rel. Culver v. Indus. Comm.*, 2025-Ohio-1612, ¶ 35. In this context, “abate” means “to become defeated or become null or void (as of a writ or appeal).” *Webster’s Third New International Dictionary* (2002); *see also Black’s Law Dictionary* (12th Ed. 2024) (defining “abatement” as the “act of eliminating or nullifying” or the “suspension or defeat of a pending action for a reason unrelated to the merits of the claim”).

{¶ 16} Courts have further clarified that when the commission *disallows* a claim to participate in the workers’ compensation fund or *denies* certain benefits to a claimant allowed to participate in the fund and the claimant dies before final disposition of any administrative appeal or mandamus action related to that particular claim or those particular benefits, the appeal or mandamus action also abates. *See, e.g., State ex rel. Hamlin v. Indus. Comm.*, 1993-Ohio-21, ¶ 5-6; *Zebrasky v. Discount Drug Mart, Inc.*, 2017-Ohio-4446, ¶ 7 (8th Dist.); *State ex*

rel. Byk v. Indus. Comm., 2022-Ohio-136, ¶ 9-12 (10th Dist.); *Rodgers v. Ford Motor Co.*, 2003-Ohio-977, ¶ 9-14 (5th Dist.).²

{¶ 17} Thus, McCartney’s claim for PTD compensation abated—i.e., was defeated or nullified—upon his death in January 2024. But contrary to the commission’s contention, the abatement of McCartney’s claim does not mean that the Tenth District lost subject-matter jurisdiction over his mandamus action.

{¶ 18} “Subject-matter jurisdiction refers to the constitutional or statutory power of a court to adjudicate a particular class or type of case. ‘It is a “condition precedent to the court’s ability to hear the case.”’ ” *State v. Harper*, 2020-Ohio-2913, ¶ 23, quoting *Pratts v. Hurley*, 2004-Ohio-1980, ¶ 11, quoting *State ex rel. Tubbs Jones v. Suster*, 1998-Ohio-275, ¶ 12; *accord Ostanek v. Ostanek*, 2021-Ohio-2319, ¶ 2 (“When a court has the constitutional or statutory power to adjudicate a particular class or type of case, that court has subject-matter jurisdiction.”). “‘A court’s subject-matter jurisdiction is determined without regard to the rights of the individual parties involved in a particular case.’ Rather, the focus is on whether the forum itself is competent to hear the controversy.” *Harper* at ¶ 23, quoting *Bank of Am., N.A. v. Kuchta*, 2014-Ohio-4275, ¶ 19. If a court lacks subject-matter jurisdiction over a case, any order issued by that court in the case is void ab initio. *Ostanek* at ¶ 2.

{¶ 19} Here, McCartney filed a complaint for a writ of mandamus in the Tenth District. Article IV, Section 3(B)(1) of the Ohio Constitution vests the

2. In contrast, when the commission has *allowed* a claimant to participate in the workers’ compensation fund or *awarded* certain benefits to a claimant allowed to participate in the fund before the claimant dies or if the claimant prevails in an administrative appeal before the claimant dies, the claim is not abated by the claimant’s death. *See, e.g., State ex rel. Nossal v. Terex Div. of I.B.H.*, 1999-Ohio-144, syllabus; *State ex rel. Coleman v. Indus. Comm.*, 2013-Ohio-2406, ¶ 13, fn. 2; *Zebrasky* at ¶ 7. Additionally, an employer’s administrative appeal from or mandamus action relating to an adverse ruling by the commission is not subject to dismissal because of the claimant’s death while the appeal or mandamus action is pending. *See Youghioghney & Ohio Coal Co. v. Mayfield*, 11 Ohio St.3d 70 (1984), syllabus; *State ex rel. Navistar, Inc. v. Indus. Comm.*, 2020-Ohio-712, ¶ 8-12.

district courts of appeals with original jurisdiction over five types of writ actions: quo warranto, mandamus, habeas corpus, prohibition, and procedendo. Because the Tenth District had the constitutional power to adjudicate the type of case filed by McCartney, it had subject-matter jurisdiction over his mandamus action.

{¶ 20} The commission argues that the Tenth District lost subject-matter jurisdiction after McCartney’s claim for PTD compensation abated and his mandamus action became moot. But in general, “once a tribunal has jurisdiction over both the subject matter of an action and the parties to it, the right to hear and determine is perfect; and the decision of every question thereafter arising is but the exercise of the jurisdiction thus conferred.” (Cleaned up.) *Ostaneck* at ¶ 23. And even though Adm.Code 4123-5-21(A) provides that action on any pending application for workers’ compensation benefits “is abated by the claimant’s death,” that administrative rule cannot be interpreted as removing the Ohio Constitution’s grant of subject-matter jurisdiction to the court of appeals to hear mandamus cases.

{¶ 21} In sum, the abatement of McCartney’s claim for PTD compensation and the mooting of his mandamus action speak not to the subject-matter jurisdiction of the Tenth District but, rather, to that court’s ability to grant any of the relief he requested. Therefore, the Tenth District did not err in denying the commission’s motion to vacate on the ground that the March 2025 judgment was void ab initio for lack of subject-matter jurisdiction.

B. The Commission’s Second Proposition of Law: Vacatur

{¶ 22} As its second proposition of law, the commission asserts that even if the Tenth District’s March 2025 judgment was not void ab initio, the Tenth District should have vacated that judgment, given the newly discovered fact that McCartney died prior to issuance of the writ of mandamus. We agree that under the unique facts of this case, vacatur is the appropriate remedy.

I. This mandamus action is moot

{¶ 23} “A case becomes moot when ‘the issues presented are no longer “live” or the parties lack a legally cognizable interest in the outcome.’ ” *Maurent v. Spatney*, 2025-Ohio-5002, ¶ 11, quoting *Powell v. McCormack*, 395 U.S. 486, 496 (1969). Put another way, “when events occur that make it impossible for a court to grant ‘any effectual relief whatever,’ a case is moot and the court must dismiss the appeal.” *Id.*, quoting *Miner v. Witt*, 82 Ohio St. 237, 239 (1910).

{¶ 24} There is no question that McCartney’s mandamus action is moot. As explained above, McCartney’s claim for PTD compensation abated upon his death. Because the claim has been extinguished, it is impossible for the commission to grant McCartney’s third application for PTD compensation and returning this matter to the commission would therefore be futile. A writ of mandamus “will not issue to compel the doing of a vain thing.” *State ex rel. Petroff v. Indus. Comm.*, 127 Ohio St. 65, 68 (1933). And any decision by this court regarding whether the commission abused its discretion in denying McCartney’s third application or whether the Tenth District correctly granted a writ of mandamus would be a purely advisory opinion.

{¶ 25} McCartney’s counsel argues that this case is not moot, because McCartney’s death did not abate his dependents’ or his estate’s entitlement to a back period of accrued PTD compensation under the Tenth District’s March 2025 judgment. But neither a surviving dependent nor the estate of a deceased claimant may “step into the shoes” of the claimant and continue to pursue the claimant’s own workers’ compensation claim through a related mandamus action after the claimant’s death. *See State ex rel. Nicholson v. Copperweld Steel Co.*, 1996-Ohio-198, ¶ 8; *Petroff* at paragraph one of the syllabus; *Zebrasky*, 2017-Ohio-4446, at ¶ 10 (10th Dist.); *Byk*, 2022-Ohio-136, at ¶ 10-13 (10th Dist.).

{¶ 26} In sum, because McCartney’s mandamus action sought to compel the commission to grant or act on a claim that has since abated, the action is no

longer live. “Courts do not review cases that no longer present live controversies.” *M.R. v. Niesen*, 2022-Ohio-1130, ¶ 10.

2. *Vacatur is the appropriate remedy*

{¶ 27} Having concluded that McCartney’s mandamus action is moot, we must next decide whether to vacate the Tenth District’s March 2025 judgment granting a writ against the commission. In considering whether vacatur is the appropriate remedy here, we find instructive our approach in *Highland Tavern, L.L.C. v. DeWine*, 2023-Ohio-2577.

{¶ 28} In *Highland Tavern*, a bar initiated a declaratory-judgment action to contest the constitutionality of an emergency administrative rule promulgated by the Ohio Liquor Control Commission. The trial court dismissed the action, concluding that it had been filed in an effort to bypass the administrative-appeal process for challenging liquor-permit revocations. The Tenth District affirmed the trial court’s judgment. On appeal to this court, however, we concluded that because the emergency rule had expired while the case was pending, the question of the rule’s constitutionality was moot. *Id.* at ¶ 32-34. Consequently, we vacated the Tenth District’s judgment and remanded the case to the trial court, instructing it to dismiss the action. *Id.* at ¶ 34.

{¶ 29} In support of our judgment, we cited *United States v. Munsingwear*, in which the United States Supreme Court noted that its “established practice” in dealing with a civil case “which has become moot while on its way [to the Supreme Court] or pending [the Court’s] decision on the merits [wa]s to reverse or vacate the judgment below and remand with a direction to dismiss,” 340 U.S. 36, 39-40 (1950). That practice, the Supreme Court explained, “eliminates a judgment, review of which was prevented through happenstance” and ensures that no party is prejudiced by a decision that was only preliminary. *Id.* at 40.

{¶ 30} The Supreme Court has since said that the portion of *Munsingwear* describing an “established” vacatur practice was dictum and that determining

whether to vacate a judgment because of mootness is not automatic but an equitable inquiry that depends on the circumstances of the case. *U.S. Bancorp Mtge. Co. v. Bonner Mall Partnership*, 513 U.S. 18, 23, 25-29 (1994) (describing circumstances when the Court will not vacate a judgment, such as when mootness has resulted from a settlement rather than happenstance). However, the Court also said that it “stand[s] by *Munsingwear*’s dictum that mootness by happenstance provides sufficient reason to vacate,” *id.* at 25, fn. 3, explaining that “[a] party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance, ought not in fairness be forced to acquiesce in the judgment,” *id.* at 25. Indeed, the Supreme Court continues to vacate lower-court judgments in cases that, while on appeal, became moot by happenstance rather than settlement or other voluntary action by the party seeking appeal. *See, e.g., Alvarez v. Smith*, 558 U.S. 87, 94-97 (2009); *Camreta v. Greene*, 563 U.S. 692, 712-714 (2011); *Acheson Hotels, L.L.C. v. Laufer*, 601 U.S. 1, 5 (2023).

{¶ 31} Here, vacatur is appropriate because the commission has lost the right to appeal the Tenth District’s March 2025 judgment by happenstance. The commission, McCartney’s counsel, and the Tenth District all concede that—unbeknownst to them all—McCartney died before the Tenth District granted the writ of mandamus he had requested. The commission did not cause the case to become moot by any voluntary action, and there is no suggestion that the commission knew of McCartney’s death and intentionally delayed informing the Tenth District of his death. Based on these unique facts, the Tenth District’s November 2025 judgment denying the commission’s motion to vacate is reversed, and on remand, the court is instructed to vacate its March 2025 decision and judgment and to dismiss McCartney’s mandamus action as moot.

C. The Commission’s Third Proposition of Law: Conflicting Decisions

{¶ 32} As its third proposition of law, the commission asserts that the Tenth District’s November 2025 decision denying the commission’s motion to vacate

conflicts with a different Tenth District decision involving nearly identical facts. Given our disposition of the commission's second proposition of law, it is not necessary to consider the commission's third proposition of law.

IV. CONCLUSION

{¶ 33} For the foregoing reasons, we reverse the Tenth District's judgment denying the commission's motion to vacate, remand the case to that court, and instruct it to vacate its March 2025 decision and judgment and to dismiss McCartney's mandamus action as moot.

Judgment reversed
and cause remanded.

Schiavoni, Schiavoni, Bush & Muldowney Co., L.P.A., and Shawn R. Muldowney, for appellee.

D. Andrew Wilson, Attorney General, and Denise A. Corea, Assistant Attorney General, for appellant.
