

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Little Tikes Company, :
Relator-Appellant, :
v. : No. 13AP-53
Industrial Commission of Ohio et al., : (C.P.C. No. 10CV-5392)
Respondents-Appellees. : (REGULAR CALENDAR)

D E C I S I O N

Rendered on July 23, 2013

Andrews & Wyatt, LLC, Thomas R. Wyatt and Jerry P. Cline,
for relator-appellant.

Michael DeWine, Attorney General, and Latawnda N. Moore,
for respondent-appellee Industrial Commission of Ohio.

Michael W. O'Neil and Tamzin O'Neil, for respondent-
appellee Veda J. Dickinson.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Little Tikes Company ("Little Tikes") is appealing from the trial court's denial of a request for a writ of mandamus to overturn the granting of permanent total disability ("PTD") compensation for Veda J. Dickinson. Little Tikes assigns two errors for our consideration:

[I.] THE TRIAL COURT ERRED IN DENYING RELATOR-APPELLANT'S REQUEST FOR A WRIT OF MANDAMUS BECAUSE THE INDUSTRIAL COMMISSION'S DECISION GRANTING PERMANENT TOTAL DISABILITY TO THE

RESPONDENT-APPELLEE WAS NOT BASED UPON "SOME EVIDENCE."

[II.] THE TRIAL COURT ERRED IN DENYING RELATOR-APPELLANT'S REQUEST FOR A WRIT OF MANDAMUS BECAUSE THE INDUSTRIAL COMMISSION FAILED TO REVIEW ALL OF THE EVIDENCE TO PROPERLY DETERMINE WHETHER THE RESPONDENT-APPELLEE WAS PERMANENTLY AND TOTALLY DISABLED.

{¶ 2} Such cases normally are filed directly in this appellate court and assigned to one of our magistrates to develop the evidence and render a magistrate's decision. A similar process was used in the court of common pleas in this case. Our analysis of this case as a direct appeal differs somewhat from the analysis we use as the trial court in a mandamus action, although the legal issues overlap. As an appellate court, we must determine if the factual findings of the trial court are supported by competent, credible evidence. We review the trial court's legal analysis de novo.

{¶ 3} The trial court clearly applied the right legal standard when it undertook an analysis of whether some evidence supported the decision of the Industrial Commission of Ohio ("commission") to award PTD compensation in this case.

{¶ 4} Little Tikes wants to argue that the report of an examining physician, M.P. Patel, M.D., was not sufficiently credible to allow PTD compensation to be awarded. Issues of credibility were presented to the commission and resolved initially when the commission awarded PTD compensation. The same issues were presented to the trial court and again resolved against Little Tikes' position. We cannot say the trial court's determination that Dr. Patel's report supported an award of PTD compensation was against the manifest weight of the evidence. Two levels of fact finders have found it

sufficiently credible to support an award of PTD compensation. Dr. Patel examined Veda Dickinson personally and had six months of records from her treating physician.

{¶ 5} The first assignment of error is overruled.

The second assignment of error argues that the commission should have evaluated the non-medical disability factors, frequently called the *Stephenson* factors, even though the commission had found that Veda J. Dickinson was medically incapable of sustained remunerative employment. *State ex rel. Stephenson v. Indus. Comm.*, 31 Ohio St.3d 167 (1987).

{¶ 6} The case law of Ohio on this issue is consistent and clear. Once the commission has determined that the claimant is medically incapable of sustained remunerative employment, the commission can stop its analysis.

{¶ 7} The second assignment of error is overruled.

{¶ 8} Both assignments of error having been overruled, the Franklin County Court of Common Pleas' denial of a writ of mandamus is affirmed.

Judgment affirmed.

KLATT, P.J., and O'GRADY, J., concur.
