

[Cite as *Houston v. AT&T Teleholdings, Inc.*, 2018-Ohio-293.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 105949

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**JUANITA R. HOUSTON**

PLAINTIFF-APPELLEE

vs.

**AT&T TELEHOLDINGS, INC., ET AL.**

DEFENDANTS-APPELLANTS

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**JUDGMENT:  
REVERSED AND REMANDED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-15-849208

**BEFORE:** Kilbane, P.J., McCormack, J., and Stewart, J.

**RELEASED AND JOURNALIZED:** January 25, 2018

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MARY EILEEN KILBANE, P.J.:

{¶1} Defendant-appellant, AT&T Teleholdings, Inc. (“AT&T”), appeals the trial court’s decision granting the motion of plaintiff-appellee, Juanita R. Houston (“Houston”), to voluntarily dismiss AT&T’s workers’ compensation appeal without AT&T’s consent. Pursuant to the holding of the Ohio Supreme Court in *Ferguson v. State*, 151 Ohio St.3d 265, 2017-Ohio-7844, \_\_\_ N.E.3d \_\_\_, we reverse and remand.

{¶2} Houston was injured on December 12, 2013, in the course and scope of her employment with AT&T, when she slipped and fell on icy steel stairs while at work (the “December 2013 accident”). She filed a claim with appellee, Ohio Bureau of Workers’ Compensation (“BWC”), and the BWC allowed her claim for “facet arthropathy” and “degenerative disc disease at the L3-4, L4-5, and L5-S1 levels.” In January 2015, Houston filed a motion requesting additional allowances for substantial aggravation of each of the initially allowed conditions. The BWC allowed the requested additional conditions.

{¶3} In August 2015, AT&T appealed to the court of common pleas from the order of the staff hearing officer of the Industrial Commission of Ohio (“ICO”). The ICO staff hearing officer found that Houston’s additional conditions were the proximate and direct result of the December 2013 accident and, therefore, she is eligible to participate in the workers’ compensation fund for these additional conditions.

{¶4} The trial court set this matter for trial to commence on June 12, 2017. In May 2017, Houston moved to continue the trial. The trial court denied her motion.

Subsequently, Houston moved to voluntarily dismiss her complaint without prejudice. The trial court granted Houston's motion despite the fact that AT&T did not consent to a voluntary dismissal of Houston's complaint as required by R.C. 4123.512(D) in an employer-initiated workers' compensation appeal.

{¶5} It is from this order that AT&T now appeals, presenting the following single assignment of error for our review:

Assignment of Error

The trial court erred by granting [Houston's] motion to voluntarily dismiss the complaint without prejudice, in that [AT&T] was the party that filed the court appeal and AT&T did not consent to the dismissal as required by R.C. 4123.512(D).

{¶6} R.C. 4123.512(D), commonly known as the workers' compensation statute's "consent provision," specifically provides:

The claimant shall, within thirty days after the filing of the notice of appeal, file a petition containing a statement of facts in ordinary and concise language showing a cause of action to participate or to continue to participate in the fund and setting forth the basis for the jurisdiction of the court over the action. Further pleadings shall be had in accordance with the Rules of Civil Procedure, provided that service of summons on such petition shall not be required and *provided that the claimant may not dismiss the complaint without the employer's consent if the employer is the party that filed the notice of appeal to court pursuant to this section.*

(Emphasis added.) *Id.*

{¶7} We note that Houston's motion to voluntarily dismiss this matter and the trial court's decision to grant her motion were based upon this court's holding in *Ferguson v. State*, 2015-Ohio-4499, 42 N.E.3d 804 (8th Dist.). In *Ferguson*, this court

found that R.C. 4123.521(D) was unconstitutional in that it violated the separation of powers doctrine and the equal protection and due process clauses of the Ohio and federal constitutions. *Id.* at \_ 37. This court stayed the instant appeal pending the Ohio Supreme Court's decision in *Ferguson*.

{¶8} The Ohio Supreme Court recently reversed this court's holding in *Ferguson* and found the consent provision of R.C. 4123.512(D) to be constitutional. *Ferguson*, 151 Ohio St.3d 265, 2017-Ohio-7844, \_\_\_ N.E.3d \_\_\_. Therefore, we must abandon our holding in *Ferguson* and reverse the trial court's judgment allowing Houston to dismiss her complaint without AT&T's consent in violation of R.C. 4123.512(D).

{¶9} Accordingly, AT&T's sole assignment of error is sustained.

{¶10} Judgment is reversed and the matter is remanded to the trial court for further proceedings on the merits.

It is ordered that appellant recover of appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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MARY EILEEN KILBANE, PRESIDING JUDGE

TIM McCORMACK, J., and  
MELODY J. STEWART, J., CONCUR