

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, EX REL. :
GENERAL MOTORS CORPORATION, : Case No. 07-0210
: :
Appellee, : On Appeal from the Franklin County
: Court of Appeals, Tenth Appellate
: District
v. :
: Court of Appeals
CHESTER STEPHAN and : Case No. 06AP-373
THE INDUSTRIAL COMMISSION :
OF OHIO, et al., :
: :
Appellants. :

REPLY BRIEF OF APPELLANT,
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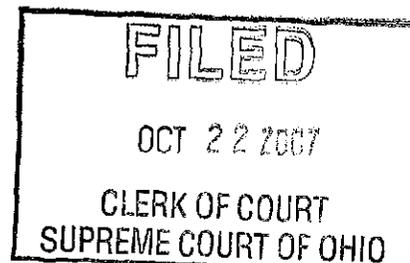


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INTRODUCTION

While this is a case of first impression, it should easily be dispensed with based on long-standing established case law and principles. At the outset, there are three separate issues to be addressed by this brief in reply. First, there is the question as to whether mandamus relief was the correct remedy for General Motors (“GM”) to seek. Whether or not mandamus is the correct vehicle for GM to pursue its remedies rests squarely before this Court.

Secondly, there is the question of whether GM has met its burden in the underlying mandamus action. To get to this question, it must be assumed *arguendo* that mandamus is the correct avenue of redress. However, it then becomes clear that GM has not overcome the fact that the Industrial Commission of Ohio (“commission”) had issued a decision which was supported by some evidence and should thus not be disturbed. As such, mandamus relief should be precluded.

Thirdly, should this Court reach the merits of the underlying case herein, it is clear that the statutory mandates of R.C. 4123.95 must be followed and any ambiguities contained in R.C. 4123.56(A) are required to be construed liberally in favor of Chester Stephan (“Stephan”). For these reasons, as well as those set forth in both Stephan’s and the commission’s underlying merit briefs, this Court should reverse the Court of Appeals’ Decision and reinstate the lower court’s decision.

LAW AND ARGUMENT IN REPLY

PROPOSITION OF LAW # 1:

THE PURPOSE OF A MANDAMUS ACTION IS NOT TO INTERPRET AN AMBIGUOUS STATUTE UNDER THE GUISE OF A “CLEAR LEGAL DUTY”.

The purpose of a mandamus action is to enforce a clear duty in favor of someone who has a clear legal right to the execution of that duty. In this case, it appears that GM is essentially asking the courts to interpret a statute which they feel is ambiguous.

Entitlement to a writ of mandamus requires: 1) a clear legal right to the requested relief by the relator; 2) a corresponding clear legal duty on the part of the respondent; and 3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Moore v. Malone* (2002), 96 Ohio St.3d 417. There is some question as to whether the commission owes GM a “clear legal duty” to interpret and apply R.C. 4123.56(A) in a manner that would justify GM’s new bookkeeping method, notwithstanding the actual language of the statute.

Further, there is indication that GM’s actual complaint may actually be requesting a declaratory judgment of a particular statute. As this Court recently held, “It is axiomatic that ‘if the allegations of a complaint for a writ of mandamus indicate that the real objects sought are a declaratory judgment...the complaint does not state a cause of action in mandamus and must be dismissed for want of jurisdiction.’” *State ex rel. U.A.W. v. Bur. of Workers’ Comp.* (2006), 108 Ohio St.3d 432, ¶ 41, citing *State ex rel. Grendell v. Davidson* (1999), 86 Ohio St.3d 629, 634. Should this Court determine

that GM had an adequate remedy of law via a declaratory judgment action, this case should be dismissed for a lack of subject matter jurisdiction.

PROPOSITION OF LAW # 2:

**IN AN ACTION IN MANDAMUS, NO ABUSE OF DISCRETION
WILL BE FOUND IF THERE IS "SOME EVIDENCE" TO
SUPPORT THE UNDERLYING DECISION.**

The second issue of this reply brief is an exploration of whether GM met its threshold, assuming *arguendo* that mandamus is the correct cause of action to pursue. In an action in mandamus, an order of the commission will be upheld absent a finding that the commission abused its discretion, and no abuse of discretion will be found if there is "some evidence" to support the decision. *State ex rel. Stephenson v. Indus. Comm.* (1987), 31 Ohio St.3d 167, 170; *State ex rel. Burley v. Coil Packaging, Inc.* (1987), 31 Ohio St. 18, 20.

As noted in previous briefs, this Court has defined abuse of discretion as follows: "An abuse of discretion implies not merely error in judgment, but perversity of will, passion, prejudice, partiality or moral delinquency. An abuse of discretion will be found only where there exists no evidence upon which the Commission could have based its decision." *State ex rel. Commercial Lovelace Motor Freight, Inc. v. Lancaster* (1986), 22 Ohio St.3d 191, 193. In this case, the commission set out the reasoning for its decision and this matter was affirmed by the lower courts. Allowing the Court of Appeals' Decision to stand would have the chilling effect of announcing that this Court had adopted a new standard for mandamus review and that is to allow reviewing courts to act as a "super commission" and replace the commission's judgment with their own.

This would reverse long-standing precedence which has stood the test of time in Ohio. Rather than allow such a result, this Court should follow the well-reasoned and established mandates of its previous decisions.

Instead of adhering to this established mandate, GM is essentially asking this Court to affirm the decision of the Court of Appeals wherein it essentially acted as a form of a “super commission”, re-heard the evidence, and came to a different result. As stated, this should not be permitted.

PROPOSITION OF LAW #3:

UNAMBIGUOUS STATUTES ARE TO BE APPLIED. AN AMBIGUOUS WORKERS’ COMPENSATION STATUTE MUST BE CONSTRUED LIBERALLY ON BEHALF OF INJURED WORKERS.

The third issue of this reply brief is how any ambiguities in R.C. 4123.56(A) are to be handled in light of the specific proviso contained in R.C. 4123.95. R.C. 4123.56(A) is a plain and unambiguous statute. This Court reaffirmed that “[w]here the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for * * * [resort] to rules of statutory interpretation.” *State ex rel. Crossett Co., Inc. v. Conrad* (2000), 87 Ohio St.3d 467, 471.

However, for purposes of addressing arguments raised, an ambiguity of the statute in question will be assumed *arguendo*. This Court has previously been faced with the situation of an ambiguous statute and held that “...where a section of the Workmen’s Compensation Act will bear two reasonable but opposing interpretations, the one favoring the claimant must be adopted.” *State ex rel. Sayre v. Indus. Comm.* (1969), 17

Ohio St.2d 57, 62. Again, the legislatively proscribed method of resolving specific conflict within one of the General Assembly's statutes should be followed. Here R.C. 4123.95 adequately explains how this is to be done wherein it states,

“Sections 4123.01 to 4123.94, inclusive, of the Revised Code shall be liberally construed in favor of employees and the dependants of deceased employees.”

G.M. implemented a program which was not approved by the Bureau of Workers' Compensation (“BWC”) or the commission. As previously noted, GM's new program was in derogation of the specific proviso provided for by the General Assembly when addressing offsets of compensation. This program is where all of GM's problems originate.

The specific statutory provisions for offsets of sickness and accident payments paid within the confines of R.C. 4123.56(A) was placed purposefully in the care of the commission by the General Assembly. Yet, this matter was never addressed by the Court of Appeals when it overturned the commission's decision. This Court should defer legislative matters to and follow the direction of the General Assembly by affirming the decision of the commission, rather than attempting to “legislate from the bench” as the Court of Appeals' Decision would have the effect of doing.

The fact that GM chose to erroneously withhold monies by mistakenly believing they have the right to do so does not change the specific statutory mandates set forth by the General Assembly. GM should be precluded from seeking redress for their perception of what they believe the statute should say. The statutory mandates are to be followed. There is no need to attempt to confuse wholly unrelated issues (tax refunds, etc.) with the clear language of the workers' compensation law. For all of the reasons

noted above, Stephan asserts that GM cannot meet the requisite standard needed for this Court to affirm mandamus relief.

CONCLUSION

This Court should overrule the decision of the Tenth District Court of Appeals and re-instate the decision of the Common Pleas Court. There was no basis for the Court of Appeals to disturb the underlying commission decision.

Workers' compensation benefits are not taxable, even though an employer may wish this to be so. Since the commission acted in a manner consistent with the statutory dictates, there can be no evidence of an abuse of discretion. As such, mandamus relief is precluded.

In addition, the relevant statutory proscriptions are clear and unambiguous. As such, they must be followed and not interpreted. If any ambiguity would exist, it would need to be determined in a manner that would benefit the injured worker.

Consequently, Chester L. Stephan respectfully requests that the underlying commission order be upheld and that the Tenth District Court of Appeals Decision be overturned, thus denying G.M.'s request for a writ of mandamus.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief of Appellant, Chester Stephan, was served by U.S. Mail, postage prepaid, this 22nd day of October, 2007, upon the parties listed below:

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