

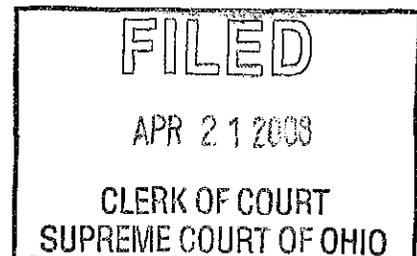
IN THE SUPREME COURT OF OHIO

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.	:	

APPELLANT, CHESTER STEPHAN'S MOTION FOR RECONSIDERATION

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MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION

This Court should reconsider its recent decision in this case for several reasons. The first question that this Court sought to answer was whether mandamus relief was the correct remedy for General Motors Corporation (“GMC”) to seek. In its decision, this Court stated opposite findings in this regard. The second question before this Court was whether GMC had met its burden to obtain the requested writ, assuming that mandamus was the correct remedy. This issue was never addressed by this Court. Finally, assuming arguendo that GMC did meet its burden, the issue of statutory mandates being followed would have to be addressed. This becomes increasingly important since the question of tax offsets is an issue of first impression which needed to be resolved. However, this Court did not adjudicate this matter. Instead it focused on the method of bringing the case and not the merits.

Thus, Appellant Chester Stephan (“Stephan”) respectfully requests reconsideration for the following reasons:

- (1.) This decision contradicts itself by first stating that GMC could have had an adequate remedy at law by combining a declaratory judgment action with a mandatory injunction and then conversely stating that they did not have an adequate remedy at law. This direct contradiction needs clarification.
- (2.) Assuming that mandamus was the proper vehicle of redress, this Court’s decision never actually decided the issue of whether GMC has met its burden in order to obtain the requested writ.
- (3.) This Court’s decision also never addressed whether GMC could take tax offsets in direct derogation of the controlling workers’ compensation statutes.

Each of these reasons will be more fully explored in the following portions of this Memorandum in Support for Reconsideration.

- (1.) This decision contradicts itself by first stating that GMC could have had an adequate remedy at law by combining a declaratory judgment action with a mandatory injunction and then conversely stating that they did not have an adequate remedy at law. This direct contradiction needs clarification.

This Court has issued previous decisions against the very labor union that Stephan was a member of while this case was pending. In *State ex rel. United Auto., Aerospace & Agricultural Implement Workers of Am. v. Bureau of Workers' Comp.*, 108 Ohio St.3d 432, this Court affirmed the dismissal of the complaint in mandamus because it decided that the relator had adequate remedies by way of declaratory judgment and prohibitory injunction. *Id.* at ¶ 62. While that case sought to challenge the constitutionality of a newly enacted subrogation statute, the basis for the suit is applicable here.

In paragraph 9 of the decision in the instant case (decision attached hereto as Appendix A), this Court noted that, “In order to be entitled to a writ of mandamus, GMC must establish a clear legal right to the requested relief, a clear legal duty on the part of the commission to provide the relief, and **the lack of an adequate remedy in the ordinary course of law** (emphasis added)”, citing *State ex rel. MetroHealth Med. Ctr. v. Sutula* (2006), 110 Ohio St.3d 201, ¶ 8. Thus, the threshold of being able to maintain a mandamus action is that the complaining party **not have an adequate remedy at law**. If an adequate remedy at law exists, mandamus relief shall not be permitted. While this Court’s decision notes that a declaratory

judgment in and of itself would be insufficient to provide adequate relief to GMC (see paragraph 13 of decision), there is no reason given as to why GMC should not have been precluded from seeking a declaratory judgment and an accompanying mandatory injunctive relief.

In paragraph 10 of the decision in the instant case, this Court noted that, standing alone, a declaratory judgment could not compel a government official to perform a specific legal duty. However, the very next sentence clearly stated that, "...a declaratory judgment must be accompanied with injunctive relief in the form of a mandatory injunction in order to successfully compel the government to act", citing *State ex rel. Fenske v. McGovern* (1984), 11 Ohio St.3d 129. By its own ruling, this Court sets forth the remedy that GMC should have sought instead of mandamus. The decision then goes into an explanation of the difference between prohibitory and mandatory injunctions. While a prohibitory injunction may not have addressed GMC's concerns, this Court's decision confirms that GMC's concerns would have been satisfied had it chosen to correctly file for declaratory judgment coupled with a request for a mandatory injunction.

This tenet is confirmed by this Court's decision in paragraph 12 wherein it is stated, "A mandatory injunction, however, is an extraordinary remedy that compels the defendant to restore a party's rights through an affirmative action", citing *Gratz v. Lake Erie & W. RR. Co.* (1907), 76 Ohio St. 230, 233. This Court goes on to explain that the distinction between these two categories of injunctive relief can best be summed up as follows: a prohibitory injunction is used to prevent a future injury, but a mandatory injunction is used to **remedy past injuries** (emphasis added). In paragraph 13 of the decision, this Court clearly noted that the "harm" suffered by GMC was a **past injury** (emphasis added). If there was any doubt whatsoever as to this Court's view of what would have constituted an adequate remedy on GMC's behalf, one need only look

to paragraph 14 of the decision. It stated, “Therefore, the only way a declaratory-judgment action could provide GMC a remedy is if GMC also sought a mandatory injunction that compelled the commission to vacate its order and enter a new order pursuant to R.C. 4123.56 crediting GMC with the tax withholdings.” Cf. *State ex rel. Fenske*, 11 Ohio St.3d at 131, (“declaratory judgment would not be a complete remedy, unless coupled with ancillary relief in the nature of mandatory injunction since relator seeks to compel respondents ***to perform a specific act incumbent upon their offices”). There can be no question as to the language this Court used and the meaning of it. GMC had an adequate remedy at law, but it did not choose to bring a declaratory judgment action coupled with a mandatory injunction. The key is that **there was an adequate remedy at law**. Stephan should not be punished because GMC chose the incorrect vehicle for its lawsuit.

Lastly, and most notably, is this Court’s final sentence in paragraph 14 of its decision. Even though the above-noted analysis was so clearly set forth by this Court, the last sentence goes on to state, “..mandamus...was proper...because the other available alternative would not provide a complete and adequate remedy.” How is this possible? The decision is based on diametrically opposed findings. Was the decision incorrect when it stated that declaratory judgment with a mandatory injunction **would be a complete remedy** ? Or, was the decision incorrect when it stated that this other available alternative would not provide a complete remedy? How can the future readers of this decision determine which statement this Court actually meant? This confusion may well cause a flood of cases to be filed in this Court with opposing sides citing the same decision to further their cases. That is why reconsideration is so vitally important – to clear up this obvious contradiction.

It may be offered that the commission urged this Court to find that GMC should have filed a declaratory judgment action coupled with a prohibitory injunction. However, whatever positions the parties assert has absolutely no bearing on the threshold question of whether mandamus is the proper vehicle for this lawsuit. What does matter is whether the threshold requirement is met - did GMC have an adequate remedy at law? From the above citations to the decision (paragraphs 10, 12, and 14), there can be no doubt that this Court clearly found that GMC would have had an adequate remedy had it chosen to seek a declaratory judgment coupled with a mandatory injunction. As such, mandamus should not have been accepted as the correct method of redress.

- (2.) Assuming that mandamus was the proper vehicle of redress, this Court's decision never actually decided the issue of whether GMC has met its burden in order to obtain the requested writ.

It is well-settled under Ohio Law that the extraordinary remedy in the form of a writ of mandamus will not be issued from a determination of the Commission unless the Relator establishes that there is a clear legal right to the relief sought and that the Commission has a clear legal duty to provide such relief. *State ex rel. Pressley v. Indus. Comm* (1967), 11 Ohio St.2d 141. The Relator has the burden of proof in this regard. *State ex rel. Rouch v. Eagle Tool and Machine Company* (1986), 26 Ohio St.3d 197, 198. A clear legal right to a writ of mandamus exists where the Relator shows that the Commission abused its discretion by entering an order which is not supported by any evidence in the record. *State ex rel. Elliott v. Indus. Comm.* (1986), 26 Ohio St.3d 76. 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.

In *Elliott*, this Court stated, “[I]t must be assumed, absent evidence to the contrary, that the Commission acted in good faith and properly performed its function in reviewing the evidence before it.” *Elliott, supra*, at 79. See, also, *State ex rel. Gerspacher v. Coffinberry* (1952), 157 Ohio St. 32. Also, in *State ex rel. Brady v. Indus. Comm.* (1986), 28 Ohio St.3d 241, 242, this Court stated, “...because decisions that come to us from the Commission have a presumption of regularity..., [this Court] will not compel the Commission to specifically and expressly disprove every potential basis for compensation, either real or imagined, before [this Court] allow[s] a Commission decision to stand.”

Thus, Courts may not usurp the discretionary function vested with the Commission where the Commission has exercised its discretion soundly and within legal bounds. *State ex rel. Goodyear Tire & Rubber Co. v. Indus. Comm.* (1974), 38 Ohio St.2d 57. 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.

With this foundation in place, this Court had an obligation to address the reason(s) that it found fault with the commission’s order. Yet this Court never stated the commission’s alleged “abuse of discretion” which is required for mandamus relief. The General Assembly squarely

left the offset provisions under R. C. 4123.56 (A) within the commission's purview and discretion. Without any ensuing explanation, the decision in the instant case has the effect of taking away the authority granted to the commission and causing this Court to act as a "super commission", in effect. This is clear error and flies in the face of long-standing precedence set by this Court.

(3.) This Court's decision also never addressed whether GMC could take tax offsets in direct derogation of the controlling workers' compensation statutes.

The governing statute for payment of temporary total disability benefits is R.C. 4123.56(A). In it, the General Assembly made particular provisions for offsets of sickness and accident payments within the purviews of R.C. 4123.56(A). Specifically, the statute provides:

"Offset of the compensation shall be made **only** upon the prior order of the bureau or industrial commission or agreement of the claimant."

Allowing the decision in the instant case to stand would have the chilling effect of allowing employers to ignore statutory mandates as the one just cited. Nowhere in the underlying case was there even offered a scintilla of evidence which showed that there was a prior order of the bureau or a prior order of the industrial commission or an agreement of Stephan to the offsets that GMC made. None was offered because none existed. Yet, this was never addressed by this Court in its decision.

The General Assembly clearly left the offset provisions under the commission's purview. Yet, this Court failed to address this issue although directly before it. Statutory mandates must be followed. Employers cannot be allowed to operate in a system created by statute and ignore

the directives of the same. Courts must be able to address any deviations there from. This is another reason reconsideration should be granted.

While the above-noted analysis of employers ignoring statutory mandates is chilling, even more so is the fact that this decision itself would have a similar effect. Rather than addressing the merits, this Court felt that “The primary question before us today is whether an action in mandamus by GMC was the proper vehicle by which to seek relief from the order of appellant Industrial Commission..”, citing from paragraph 1 of the decision in the instant case. Thus, the underlying merits of the case were never addressed by this Court.

Clearly, the workers’ compensation law is a creation of statute. As such, the General Assembly is given great deference in the language that they chose to enact the various provisions that govern payments to injured men and women in this State. By not addressing the merits, the various dictates and directives contained within the workers’ compensation law (notably R.C. 4123.56 (A) and 4123.95) are essentially invalidated by this Court. Without a ruling from this Court on the issue, it may have the effect on readers of believing that this Court has implicitly ignored these statutes. By not addressing the statutory concerns, the statutes would have no force and effect. Clearly, this cannot be this Court’s intention.

In addition to the offset provision and its requirements, it is also necessary to turn to the actual language of R.C. 4123.56 (A), as read in context with R.C. 4123.95. The next issue is how any ambiguities in R.C. 4123.56(A) should be handled in light of the specific proviso contained in R.C. 4123.95. While no one could reasonably contend that the offset provision was ambiguous, the term “paid” seems to have been misconstrued by GMC. GMC seems to believe that their burden for payment of temporary total disability benefits is satisfied as long as they pay the benefits to someone or to an agency on behalf of someone. Yet this is not what the statute

says. As such, it is necessary to turn to this Court's own decisions should this portion of the statute be deemed ambiguous. 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. Once again, the legislatively prescribed method of resolving specific conflict within one of the General Assembly's statutes should be followed. 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."

GMC implemented a new program which was not approved by the Bureau of Workers' Compensation ("BWC") or the commission. GMC's new program was in derogation of the specific proviso provided for by the General Assembly when addressing offsets of compensation.

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."

It must be remembered that the purpose of temporary total disability benefits is to compensate an injured worker for the loss of earnings he incurs while his injury heals. This purpose would be thwarted if benefits were not available immediately to replace his loss of earnings. These are weekly benefits meant to replace earned wages. It is beyond reason to

believe that the General Assembly meant for injured workers to be forced to reclaim their benefits many weeks, even years, after the disability period by requesting refunds from various governmental agencies. For GMC to contend that R.C. 4123.56 (A) envisioned that payment did not have to be made directly to the injured worker is absurd. Payment is to be made to the injured worker, not on behalf of the injured worker. To hold otherwise would open up a virtual Pandora's Box. It would not be a far reach to have an employer pay temporary total disability benefits to creditors on behalf of the worker and claim that the worker received the benefit of the payments. Workers compensation benefits are not taxable. The system was working properly. It was not until GMC decided to change its accounting procedures, while ignoring the statutory directives, that this convoluted situation occurred.

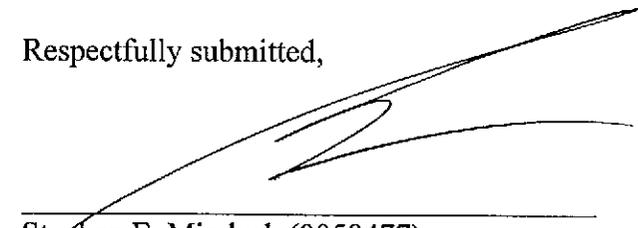
When construing the statute liberally on behalf of claimants, there can be no question that the General Assembly envisioned payment of temporary total disability benefits being made **to the injured workers**, and not to some taxing authority. This very issue may well have been the reason that the General Assembly predicated offsets **“only upon the prior order of the bureau or industrial commission or agreement of the claimant.”** R.C. 4123.56 (A) in pertinent part. Without a specific decision on this matter by this Court, however, working men and women in this State will be left in the dark as to the salient law on the issue.

CONCLUSION

As enumerated, the decision by this Court in the instant case is flawed in a number of ways. These must be corrected for the system to work as designed. If left as is, this Court's decision would cause much confusion over the issues raised and would give employers an incentive to abuse the Industrial Commission framework. That is not what the workers' compensation system was designed to do when it was established almost 100 years ago as a bargained-for exchange wherein workers gave up the right to sue at common law.

For all of the foregoing reasons, Appellant Stephan respectfully requests this Court to reconsider the issues raised in this Memorandum.

Respectfully submitted,



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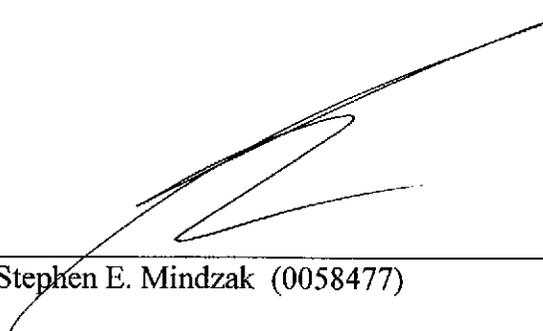
CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Appellant, Chester Stephan's Motion for Reconsideration was mailed to the parties listed below by regular U.S. Mail, postage prepaid, this 21st day of April, 2008.

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APPENDIX A

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Gen. Motors Corp. v. Indus. Comm.*, Slip Opinion No. 2008-Ohio-1593.]

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2008-OHIO-1593

**STATE OF OHIO EX REL. GENERAL MOTORS CORPORATION, APPELLEE, v.
INDUSTRIAL COMMISSION OF OHIO ET AL., APPELLANTS.**

[Until this opinion appears in the Ohio Official Reports advance sheets,
it may be cited as *State ex rel. Gen. Motors Corp. v. Indus. Comm.*,
Slip Opinion No. 2008-Ohio-1593.]

*Workers' compensation—Credit for payments by self-insured employer under
wage-replacement program—R.C. 4123.56(A)—Employer entitled to
offset for taxes withheld—Mandamus is proper remedy.*

(No. 2007-0210 — Submitted January 22, 2008 — Decided April 9, 2008.)

APPEAL from the Court of Appeals for Franklin County,
No. 06AP-373, 2006-Ohio-6786.

O'CONNOR, J.

{¶ 1} The primary question before us today is whether an action in mandamus by appellee General Motors Corporation (“GMC”) was the proper vehicle by which to seek relief from the order of appellant Industrial Commission that under R.C. 4123.56, GMC could not claim an offset for taxes withheld on

appellant Chester Stephan's behalf. For the reasons that follow, we hold that mandamus was the proper course of action for this case.

Relevant Background

{¶ 2} On October 5, 1998, Stephan, a GMC employee, herniated a disc in the performance of his duties. Following the injury, Stephan filed a workers' compensation claim. While Stephan's claim was pending, GMC paid him \$7,091.30 through its wage-replacement insurance program. In making those payments, GMC withheld a portion of each payment and sent the withholdings to federal and state taxing authorities.

{¶ 3} In February 1999, after concluding its investigation of the incident, GMC informed the commission that it would recognize Stephan's injury as work-related. Stephan was thus entitled to \$9,119.71 in temporary total disability ("TTD") payments for the time he missed. GMC paid Stephan the difference between the TTD benefits and the amount it had already paid him through the wage-replacement program.

{¶ 4} Stephan, however, believed that he was owed additional compensation because GMC's payment did not include the taxes GMC previously withheld. A district hearing officer agreed with Stephan that he was entitled to a net amount of \$9,119.71. GMC appealed, and a staff hearing officer determined that GMC had paid the correct amount and vacated the order. In turn, Stephan appealed to the commission, which vacated the order of the staff hearing officer and ordered that GMC could not claim an offset for the withheld taxes.

{¶ 5} GMC then filed a complaint in mandamus in the Franklin County Court of Common Pleas, seeking an order directing the commission to credit GMC for the tax withholdings in calculating the amount Stephan was owed. After some procedural oddities in the trial court, and a remand from the Tenth District Court of Appeals, *State ex rel. Gen. Motors Corp. v. Indus. Comm.*, 159

Ohio App.3d 644, 2005-Ohio-356, 825 N.E.2d 167, the trial court denied GMC's requested writ.

{¶ 6} On GMC's appeal, the court of appeals initially resolved the threshold question of whether GMC had properly brought the case in mandamus. The appellate court concluded that because GMC did not have an adequate remedy in the ordinary course of law, "mandamus was the proper remedy to test the validity of the commission order in the trial court." *State ex rel. Gen. Motors Corp. v. Indus. Comm.*, 10th Dist. No. 06AP-373, 2006-Ohio-6786, ¶ 14. The appellate court, therefore, reversed the trial court's judgment and remanded the case with "instructions to issue the requested writ of mandamus ordering the Industrial Commission to set off the full amount paid by [GMC] under the nonoccupational sickness and accident insurance program, including those amounts withheld for the employee's taxes." *Id.* at ¶ 27.

{¶ 7} The commission and Stephan filed notices of appeal with this court, and we granted discretionary jurisdiction.

Analysis

{¶ 8} The first question is whether GMC's complaint for a writ of mandamus was the proper avenue through which to seek relief.¹

{¶ 9} In order to be entitled to a writ of mandamus, GMC must establish a clear legal right to the requested relief, a clear legal duty on the part of the commission to provide the relief, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. MetroHealth Med. Ctr. v. Sutula*, 110 Ohio St.3d 201, 2006-Ohio-4249, 852 N.E.2d 722, ¶ 8. A mandamus action is thus appropriate where there is a legal basis to compel a public entity to perform

1. Both GMC and the commission agree that the commission's order at issue in this case was not appealable to the trial court under R.C. 4123.512, so our analysis focuses solely on whether an action in mandamus or a declaratory-judgment action constitutes the appropriate avenue for relief.

SUPREME COURT OF OHIO

its duties under the law.² *State ex rel. Levin v. Schremp* (1995), 73 Ohio St.3d 733, 735, 654 N.E.2d 1258. Likewise, a writ of mandamus may lie if the public entity has abused its discretion in carrying out its duties. *State ex rel. Potts v. Comm. on Continuing Legal Edn.* (2001), 93 Ohio St.3d 452, 457, 755 N.E.2d 886. In addition, if the public entity has misinterpreted a statute, a writ of mandamus may be an available remedy. *State ex rel. Gassmann v. Indus. Comm.* (1975), 41 Ohio St.2d 64, 65, 70 O.O.2d 157, 322 N.E.2d 660 (“A mandatory writ may issue against the Industrial Commission if the commission has incorrectly interpreted Ohio law”); *Sullivan v. State ex rel. O'Connor* (1932), 125 Ohio St. 387, 392, 181 N.E. 805 (flagrant misinterpretation of statute by a county board of elections is reviewable through an action in mandamus).

{¶ 10} Conversely, when a party files an action for declaratory judgment pursuant to R.C. 2721.02, the party seeks merely a declaration of its “rights, status, and other legal relations whether or not further relief is or could be claimed.” Standing alone, a declaratory judgment cannot compel a government official to perform a specific legal duty. *State ex rel. Ohio Civ. Serv. Emps. Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd.*, 104 Ohio St.3d 122, 2004-Ohio-6363, 818 N.E.2d 688, ¶ 16, quoting 1 Antieau, *The Practice of Extraordinary Remedies* (1987) 300, Section 2.06 (“ ‘A declaratory action, which merely announces the existence of a duty to be performed, has generally not been deemed as adequate as the writ of mandamus, which compels performance’ ”). Thus, a declaratory judgment must be accompanied with injunctive relief in the form of a mandatory injunction in order to successfully compel the government to act. *State ex rel. Fenske v. McGovern* (1984), 11 Ohio St.3d 129, 131, 11 OBR 426, 464 N.E.2d 525.

2. Although a writ of mandamus cannot control the entity’s discretion, a writ can compel the entity to exercise its discretion when it has a clear legal duty to do so. See *State ex rel. Huntington Ins. Agency, Inc. v. Duryee* (1995), 73 Ohio St.3d 530, 534, 653 N.E.2d 349.

{¶ 11} Because a complaint that seeks to prevent, rather than compel, an action is not proper for mandamus, we must ascertain the substance of GMC's complaint and its aims. *State ex rel. Stamps v. Montgomery Cty. Automatic Data Processing Bd.* (1989), 42 Ohio St.3d 164, 166, 538 N.E.2d 105. GMC seeks a writ directing the commission to vacate its order and to properly credit GMC for all the sums it has paid for and on behalf of Stephan, in the form of the withheld taxes, in calculating the amount still owed to Stephan. The complaint, therefore, seeks to compel the commission to take an affirmative action.

{¶ 12} On the other hand, the commission urges us to find that GMC should have filed a declaratory-judgment action coupled with a request for a prohibitory injunction. This position reflects a misunderstanding of the distinction between prohibitory and mandatory injunctions. A prohibitory injunction preserves the status quo by enjoining a defendant from performing the challenged acts in the future. *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, 2005-Ohio-1508, 824 N.E.2d 990, ¶ 50. A mandatory injunction, however, is an extraordinary remedy that compels the defendant to restore a party's rights through an affirmative action. *Gratz v. Lake Erie & W. RR. Co.* (1907), 76 Ohio St. 230, 233, 81 N.E. 239. The distinction between these two categories of injunctive relief can best be summed up as follows: a prohibitory injunction is used to prevent a future injury, but a mandatory injunction is used to remedy past injuries.

{¶ 13} R.C. 4123.56(A) provides for "[o]ffset of the compensation * * * only upon the prior order of the bureau or industrial commission or agreement of the claimant." Because the commission already has determined that the amount of Stephan's workers' compensation benefits would not be offset by the tax withholdings made by GMC, a declaratory judgment in and of itself is insufficient to provide adequate relief to GMC. Likewise, a prohibitory injunction would be

useless, as the harm suffered by GMC is a past injury, rather than future conduct that GMC seeks to enjoin.

{¶ 14} Therefore, the only way a declaratory-judgment action could provide GMC a remedy is if GMC also sought a mandatory injunction that compelled the commission to vacate the order and enter a new order pursuant to R.C. 4123.56 crediting GMC with the tax withholdings. Cf. *State ex rel. Fenske*, 11 Ohio St.3d at 131, 11 OBR 426, 464 N.E.2d 525 (“declaratory judgment would not be a complete remedy, unless coupled with ancillary relief in the nature of mandatory injunction since relator seeks to compel respondents * * * to perform a specific act incumbent upon their offices”). As a result, a mandamus action was proper to challenge the commission’s order because the other available alternative would not provide a complete and adequate remedy.

{¶ 15} In addition to holding that GMC’s action seeking a writ of mandamus was proper, we agree with the court of appeals that GMC was entitled to the requested writ. The offset statute contains no ambiguity—“compensation paid under this section * * * shall be paid only to the extent by which the payment or payments exceeds the amount of the nonoccupational insurance or program paid or payable.” R.C. 4123.56(A).

{¶ 16} Although GMC withheld taxes on Stephan’s behalf, the withholdings do not affect the amount GMC paid under its wage-replacement program. The statute simply does not limit the employer’s setoff to the net amount the claimant actually receives. Under the plain terms of the statute, therefore, GMC is entitled to a setoff for the entire amount GMC paid, including the tax withholdings.

Conclusion

{¶ 17} For the foregoing reasons, we hold that the proper avenue of relief for GMC to challenge the commission’s order was a complaint for a writ of mandamus. Under these circumstances, the issuance of the writ is proper.

{¶ 18} We therefore affirm the judgment of the court of appeals.

Judgment affirmed.

MOYER, C.J., and LUNDBERG STRATTON, O'DONNELL, LANZINGER, and CUPP, JJ., concur.

PFEIFER, J., dissents.

PFEIFER, J., dissenting.

{¶ 19} Chester Stephan suffered a work-related injury and was entitled to temporary total disability payments of \$9,119.71 in 1998 and 1999. Before the determination that the injury was work-related, General Motors paid \$7,091.30 to Stephan through its wage-replacement insurance program, from which it withheld \$1,189.32 for taxes. After the determination that the injury was work-related, General Motors paid Stephan \$2,028.41, the difference between the \$9,119.71 owed for temporary total disability payments and the \$7,091.30 “paid” to Stephan through the wage-replacement insurance program.

{¶ 20} A more reasonable employer might have realized that \$1,189 is a much higher percentage of \$9,119.71 (Stephan’s disability income resulting from his 1998 injury) than it is of \$161,000,000,000 (General Motors’ approximate 1998 revenues). A more reasonable employer might have paid Stephan the amount to which he was entitled and then sought a refund of the taxes paid on Stephan’s behalf. (Such a transaction would likely require little more than a couple of phone calls.) Instead, General Motors decided to play hardball with one of its injured employees.

{¶ 21} Today, this court validates General Motors’ decision. Instead, we should deny the writ and uphold the reasonable decision of the commission, which concluded that Stephan should receive the entire \$9,119.71 to which he was entitled. The majority opinion speaks much of General Motors’ lack of an adequate remedy in the ordinary course of law. The majority opinion has it

completely backwards—General Motors wasn't injured in any way. General Motors didn't herniate a disc; Stephan did. General Motors isn't out money to which it is entitled; Stephan is. General Motors should ask one of its tax professionals to request an accounting adjustment from the tax agencies with which it has regular routine contact. General Motors should not require its injured workers to take a crash course on tax procedure.

{¶ 22} I do not believe a writ of mandamus is appropriate in this case for one simple reason: General Motors does not lack an adequate remedy, because it can ask for a refund or an accounting adjustment. If the government agencies to which General Motors paid Stephan's withholding taxes do not grant a refund, then General Motors should seek legal recourse against the recalcitrant government agencies. I dissent.

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