

In the
Supreme Court of Ohio

PIETRO CRISTINO, et al.,	:	Case No. 2007-0152
	:	
Plaintiffs-Appellees,	:	
	:	On Appeal from the
v.	:	Cuyahoga County
	:	Court of Appeals,
ADMINISTRATOR, OHIO BUREAU OF	:	Eighth Appellate District
WORKERS' COMPENSATION, et al.,	:	
	:	Court of Appeals Case
Defendants-Appellants.	:	No. CA-06-87567
	:	

**MEMORANDUM OF APPELLANTS ADMINISTRATOR, OHIO BUREAU OF
WORKERS' COMPENSATION AND STATE OF OHIO
OPPOSING MOTION FOR RECONSIDERATION**

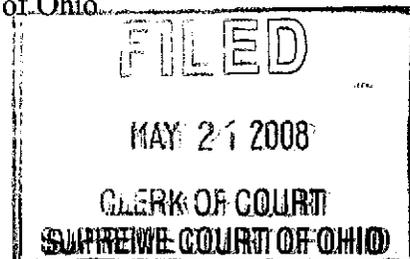
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OPPOSING MOTION FOR RECONSIDERATION**

A. Introduction

In accordance with Supreme Court Practice Rule XI, Section 3(A), Appellants Administrator, Ohio Bureau of Workers' Compensation and the State of Ohio ("State") file this memorandum opposing the motion for reconsideration filed by Appellees Pietro Cristino et al. ("Cristino"). Cristino's motion asks the Court to modify its order to specify "that the class action lawsuit is to be removed or transferred by the Cuyahoga County Court of Common Pleas to the Ohio Court of Claims." Cristino Mot. for Recon. at 2. Because the Ohio Court of Claims could not accept jurisdiction over this case on remand, the Court need not reconsider its decision. Instead, the Court properly dismissed this case by reversing the judgment of the Eighth District Court of Appeals.

On May 7, 2008, the Court announced its decision in this case, unanimously finding that Cristino's "claim against the state for money due under a contract is not a claim of equitable restitution and must be brought in the Ohio Court of Claims." *Cristino v. Ohio Bur. of Workers' Comp.* (May 7, 2008), Slip Op. No. 2008-Ohio-2013, syllabus (attached as "Exhibit A"). The Court reversed the appeals court's judgment and held that "the present claim against the state is not an equitable claim of restitution and that the Cuyahoga County Court of Common Pleas therefore lacks subject-matter jurisdiction over the action." *Id.* at ¶ 1. The Court explained that *Santos v. Ohio Bureau of Workers' Compensation* (2004), 101 Ohio St. 3d 74, was "factually distinguishable from the present matter." *Cristino*, Slip Op. No. 2008-Ohio-2013, ¶ 15.

Now that his common pleas action for money damages has been dismissed, Cristino could file a damages action in the Court of Claims, where subject matter jurisdiction is proper.

Nonetheless, Cristino moves this Court to reconsider its decision and remand this case to the common pleas court for “removal or transfer” to the Ohio Court of Claims. But no statutory mechanism exists for removing or transferring this case from the trial court to the Court of Claims on remand as Cristino requests.

The Court invokes reconsideration procedures “to correct decisions which, upon reflection, are deemed to have been made in error.” *State ex rel. Huebner v. W. Jefferson Vill. Council* (1995), 75 Ohio St. 3d 381, 341; see also *State ex rel. Gross v. Indus. Comm’n* (2007), 115 Ohio St. 3d 249, 2007-Ohio-4916, ¶ 78 (reconsidering prior decision). No such error was made in dismissing this case. Because the Court of Claims cannot obtain jurisdiction over this case on transfer from the common pleas court, Cristino’s motion for reconsideration must be denied.

B. The Ohio Court of Claims could not accept removal or transfer of this case from the trial court on remand.

No statutory mechanism exists to allow the Court of Claims to accept jurisdiction over this case on remand to the court of common pleas. The statutory provision governing removal of cases from common pleas courts to the Court of Claims—R.C. 2743.03(E)—would be inapplicable on remand, and no statute authorizes the Court of Claims to accept case transfers from common pleas courts.

Jurisdiction over the State as a defendant is proper only by either “the filing of an original action in the Court of Claims, or by removal from another trial court of an action which originally did not involve a claim against the state, but where the state became a party-defendant through counterclaim or third-party practice.” *Wirick v. Transp. Am.* (10th Dist. 2002), 2002-Ohio-3619, ¶ 11. Under R.C. 2743.03(E)(1), only two situations give rise to removal under R.C. 2743.03(E): (1) when the State sues a defendant and the defendant counterclaims against the state; and (2) when a plaintiff sues a defendant and the defendant files a third-party complaint

against the State. See *Steward v. Ohio Dep't of Natural Res.* (10th Dist. 1983), 8 Ohio App. 3d 297, 299 (holding that R.C. 2743.03(E) does not provide for removal of cross-claims against the State).

To accomplish removal from the common pleas court under either of those scenarios, a party must file a petition for removal in the Court of Claims. R.C. 2743.03(E)(1); C.C.R. 4. Although Cristino cites *Nease v. Medical College Hospital* (1992), 64 Ohio St. 3d 396, for the proposition that a common pleas court could effect transfer or removal to the Court of Claims, the prior history of that case shows that the defendants removed by filing of a petition with the Court of Claims. *Nease v. Assoc. Physicians of MCO, Inc.* (10th Dist. 1991), 1991 Ohio App. Lexis 1616, *2, *rev'd sub nom. on other grounds, Nease*, 64 Ohio St. 3d 396. Similarly, Cristino's reliance on *Cullen v. Ohio Department of Rehabilitation & Correction* (10th Dist. 1998), 125 Ohio App. 3d 758, is misplaced. Although the common pleas court attempted to transfer that case to the Court of Claims for a determination of whether employees were acting within the scope of their employment, "[t]he Court of Claims rejected the transfer of the case, finding it did not have jurisdiction." *Id.* at 763. Thus, Cristino has not cited a single case—nor is the Bureau aware of one—in which a common pleas court has transferred or removed a case to the Court of Claims other than by the petition process outlined in R.C. 2743.03(E).

Because removal of a case from a common pleas court to the Court of Claims cannot be accomplished by means other than those provided in R.C. 2743.03(E), the Court of Claims could not gain jurisdiction over this case upon remand to the trial court. Cristino's case is an original action for damages against the State that does not arise from counterclaim or third-party practice. See R.C. 2743.02(E) ("[t]he only defendant in original actions in the court of claims is the

state"). Because Cristino cannot fulfill the statutory criteria for removal, and a transfer is not authorized by statute, dismissal, rather than remand, is the proper outcome.

CONCLUSION

For the above reasons, the Court should deny Cristino's motion for reconsideration and dismiss this case.

Respectfully submitted,

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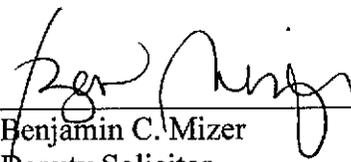
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum of Appellants Administrator, Ohio Bureau of Workers' Compensation and State of Ohio Opposing Reconsideration was served by U.S. mail this 21st day of May 2008 upon the following counsel:

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