ORIGINAL

In the

Supreme Court of Ohio

[State ex rel.] JAMES E. LUNDEEN, SR., M.D., Appellant-Relator, v. MARSHA P. RYAN, ADMINISTRATOR OHIO BUREAU OF WORKERS' COMPENSATION, Appellee-Respondent.	: : : : : : : : : : : :	Case No. 2010-1400 On Appeal from the Franklin County Court of Appeals, 10th Appellate District Case No. 08AP-601

MOTION OF APPELLEE ADMINISTRATOR THAT THE COURT EXPEDITE RULING ON PENDING DISPOSITIVE MOTION

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[State ex rel.] JAMES E. LUNDEEN, SR., M.D., Appellant-Relator, v. MARSHA P. RYAN, ADMINISTRATOR OHIO BUREAU OF WORKERS' COMPENSATION Appellee-Respondent.	: : : : : : : : : : : :	Case No. 2010-1400

Appellant James E. Lundeen, M.D., initiated an appeal as of right to this Court from a decision rendered by the Tenth Appellate District, wherein the appellate court denied his request for issuance of a writ of mandamus. In the action, Dr. Lundeen, who is before the Court pro se, seeks a court order that the Ohio Bureau of Workers' Compensation pay certain sums due to him as a medical provider under the workers' compensation system.

A magistrate in the court below had issued a decision on October 13, 2009, recommending that the court deny the requested writ. *No objections to that decision were filed by Lundeen* in accordance with Civ.R. 53(D)(3)(b)(i) and/or Loc.R. 12(M)(3) of the Tenth District Court of Appeals. In a decision rendered on June 29, 2010, the court of appeals rendered its decision in the case, adopting as its own the findings of fact and conclusions of law contained in the Magistrate's Decision. This was journalized by a June 30, 2010, Judgment Entry, from which Lundeen initiated his appeal on August 10, 2010.

On August 25, 2010, prior to the Court's referring the case to mediation, the Administrator filed a Motion to Strike the Appeal and Dismiss the Cause Pursuant to Civ.R. 53(D)(3)(b). The basis for the motion was Lundeen's failure to comply with the provision of

Civ.R. 53(D) that prohibits a party's assigning as error on appeal the lower court's adoption of any factual finding or conclusion of law unless the party has objected in accordance with Civ.R. 53(D)(3)(b). Civ.R. 53(D)(3)(b)(iv) further provides that the failure to timely object to a finding or conclusion operates as a waiver of the right to do so.

In response, on September 13, 2010, Lundeen moved to strike the Administrator's motion pursuant to S. Ct. Prac. R. 14.2(D)(1), based upon his claimed failure of service of the Administrator's motion required under S. Ct. Prac. R. 14.2(A)(1). No other response to the merits of the Administrator's motion was offered. The Administrator answered Lundeen's motion on September 23, 2010, representing that her motion to strike and dismiss the cause was timely and properly served in accordance with her counsel's normal business practices. (It is believed that the motion was ultimately received by Lundeen via the mail service.)

The matter had been referred by the Court to mediation in accordance with S. Ct. Prac. R. 17.1 on September 15, 2010. A mediation conference was held on November 8, 2010, resulting in the cause being returned to the Court's regular briefing schedule.

An expeditious ruling by the Court on the previously-filed motions would be advantageous to not only the parties, but also the Court. If the Administrator's motion barring Lundeen's appeal on the merits is well-taken and is sustained by this Court, any and all additional briefing by the parties would be in vain. The time and preparation efforts of both Dr. Lundeen, who is before this Court pro se, and counsel for the Administrator will be futile if the matter is definitively resolved via the dispositive motion to dismiss. As recently as November 24, 2010, this Court had reason to address the issue presented in the Administrator's motion to dismiss in another case in which the appealing party failed to file objections to the court of appeals' magistrate's decision under Civ.R. 53(D)(3)(b). In *State ex rel. Johnson v. Ryan,*

Adm'r. Slip Opinion No. 2010-Ohio-5676, at ¶3, this Court held that it "can proceed no further" in the adjudication of the case.

Therefore, in the interests of judicial economy, the Administrator moves the Court to expedite its ruling on the pending motions which can be dispositive of the instant case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion was served by regular U.S. Mail, postage prepaid, this 10th day of December, 2010, upon:

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and

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