

ORIGINAL

In the
Supreme Court of Ohio

JAMES SPENCER,	:	Case No. 2010-2138
	:	
Plaintiff-Appellee,	:	On Appeal from the
	:	Miami County Court of Appeals,
v.	:	Second Appellate District
	:	
FREIGHT HANDLERS, INC, et al.,	:	Court of Appeals
	:	Case No. 09CA00044
Defendants-Appellants.	:	
	:	

REPLY BRIEF OF DEFENDANT-APPELLANT, ADMINISTRATOR,
BUREAU OF WORKERS' COMPENSATION

JOHN J. SCACCIA* (0022217)
**Counsel of Record*
JEFFREY D. WILSON (0073880)
536 West Central Avenue, 2nd Floor
Springboro, Ohio 45066
937-223-7848
937-550-2311 fax

Counsel for Plaintiff-Appellee,
James Spencer

WILLIAM H. BARNEY, III* (0010792)
**Counsel of Record*
ABIGAIL K. WHITE (0082355)
Dunlevey, Mahan & Furry
110 North Main Street, Suite 1000
Dayton, Ohio 45402
937-223-6003
937-223-8550 fax
whb@dmfdayton.com

Counsel for Defendant-Appellee,
Freight Handlers, Inc.

MICHAEL DEWINE (0009181)
Ohio Attorney General

ALEXANDRA T. SCHIMMER* (0075732)
Solicitor General
**Counsel of Record*

ELISABETH A. LONG (0084128)
Deputy Solicitor
ELISE PORTER (0055548)
COLLEEN C. ERDMAN (0080765)
Assistant Attorneys General

30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax
alexandra.schimmer@ohioattorneygeneral.gov

Counsel for Defendant-Appellant,
Administrator, Bureau of Workers'
Compensation

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INTRODUCTION

Revised Code 4123.512(B) spells out the requirements for appealing a decision of the Industrial Commission of Ohio. Under this section, an appealing party must file a notice of appeal with five specific items, name the Administrator of the Bureau of Workers' Compensation as a party to the appeal, and serve the Administrator with a copy of the notice. The dispute here turns on the naming and service requirements—and specifically, whether they are jurisdictional.

They are. To trigger jurisdiction, a party must substantially comply with R.C. 4123.512(B). See *Fisher v. Mayfield* (1987), 30 Ohio St. 3d 8. Substantial compliance means that the notice of appeal includes enough information to place *all* parties on notice of the appeal. Because the Administrator is a *statutorily-required* party to every workers' compensation appeal, he must be notified of every appeal. It follows logically that if he is not given notice of an appeal—that is, if a party fails to name the Administrator and fails to serve him with the notice—then the requirements of R.C. 4123.512(B) have not been substantially met and a common pleas court lacks jurisdiction over the party's appeal.

The Ohio Association of Claimants' Counsel and the Ohio Association for Justice, as amici for Appellee James Spencer (who failed to file a brief in opposition), counter with several points, all meritless. Only the Administrator's interpretation is faithful to both the words and context of R.C. 4123.512(B) and this Court's jurisprudence on jurisdictional issues.

Because Spencer's notice of appeal did not name the Administrator as a party, and because Spencer did not serve the Administrator with a copy of the notice, the common pleas court could not take jurisdiction under R.C. 4123.512(B).

ARGUMENT

Administrator's Proposition of Law:

R.C. 4123.512(B)'s requirements that the Administrator be a party to the appeal and be served with a notice of appeal are jurisdictional, and noncompliance with these requirements cannot be cured later.

- A. To invoke a trial court's jurisdiction, a notice of appeal under R.C. 4123.512 must place all parties—including the Administrator—on notice that an appeal has been filed.**

Revised Code 4123.512(B) states that “[t]he administrator of workers’ compensation,” along with the claimant and the employer, “shall be parties to the appeal,” and “[t]he party filing the appeal shall serve a copy of the notice of appeal on the administrator at the central office of the bureau of workers’ compensation in Columbus.” These requirements are both mandatory and jurisdictional.

To invoke a common pleas court's jurisdiction over a workers' compensation appeal, the notice of appeal must be “in substantial compliance” with these requirements. *Fisher*, 30 Ohio St. 3d at 10-11. Substantial compliance means that the notice “includes sufficient information, in intelligible form, to place on notice *all parties* to a proceeding *that an appeal has been filed* from an identifiable final order which has determined the parties’ substantive rights and liabilities.” *Id.* at 11 (emphasis added). Under *Fisher*, a somewhat imperfect notice of appeal can still trigger jurisdiction under R.C. 4123.512, but only if it succeeds in putting all parties on notice of the appeal. But when a notice of appeal fails to put the Administrator (a statutorily-required party) on notice—that is, when a party fails to name the Administrator or serve him with the notice—that notice of appeal does not pass jurisdictional muster. See Admin. Br. at 8-10 (discussing *Fisher* and substantial compliance).

B. The Amici's structural arguments have no merit.

Spencer's Amici unpersuasively posit that some requirements in R.C. 4123.512(B) are jurisdictional and others are not. They say that only the notice-of-appeal items listed in the first paragraph of R.C. 4123.512(B) are jurisdictional: (1) the claimant's name; (2) the employer's name; (3) the claim number; (4) the date of the order appealed from; (5) and the fact that the appellant is appealing that order. Amici Br. at 6. The requirements to name and serve the Administrator are in the second paragraph of that provision and the Amici contend that "R.C. 4123.512(B)'s text makes evident that the first paragraph speaks to what a notice of appeal 'shall include,' while the second paragraph addresses who 'shall be parties to the appeal.'" *Id.*

As a preliminary matter, the Amici's distinction is flimsy. The second paragraph still speaks to items the notice of appeal must include: the names of the required parties. More important, the distinction is irrelevant. The question in this case is which *statutory requirements* are jurisdictional—and there is no dispute that both the first *and* second paragraphs of R.C. 4123.512(B) contain the statutory requirements for appealing an order of the Industrial Commission. That these two paragraphs might reflect different *types* of requirements does not settle the matter. Instead, the question is which requirements are needed to "provid[e] sufficient information, in intelligible form, to place on notice all parties to a proceeding that an appeal has been filed." *Fisher*, 30 Ohio St. 3d at 11. The Amici ignore that critical question and peddle an empty distinction instead.

The requirements to name and serve the Administrator are not "less" jurisdictional because they appear separate from the other contents of the notice of appeal. In fact, the naming and service requirements related to the Administrator are *more* obviously jurisdictional because, as this Court recognized in *Fisher*, it is still possible to invoke jurisdiction when one or more items in paragraph one are omitted, but it is *never* possible to clear the jurisdictional hurdle—which

requires noticing all parties—when a required party is left completely in the dark. See *Fisher*, 30 Ohio St. 3d at 11.

The Amici also invoke the canon of *expressio unius est exclusio alterius*. Amici Br. at 6. Their argument goes like this: If the General Assembly intended to require parties to name the Administrator in the notice of appeal to invoke jurisdiction, it would have included the Administrator in the list of parties in paragraph one. *Id.* Because the Administrator is not listed alongside the names of the claimant and the employer, they say that the requirement to name the Administrator is not jurisdictional.

That argument fails because there is a far more logical explanation for the provision's structure. The requirements in paragraph one—to list the claimant's name, employer's name, claim number, and the date of the administrative order—all ensure that a notice of appeal provides enough information to identify the *matter* being appealed. Naming the Administrator will never help identify the matter on appeal because the Administrator is a statutorily-required party in *every* appeal under R.C. 4123.512(B). It therefore makes sense to omit the Administrator from that paragraph and to discuss the Administrator-related requirements in the next one.

Finally, the Amici are wrong in arguing that “[c]ourts are nearly universal in agreeing with the Second District that . . . failure to name the BWC is not a jurisdictional defect.” Amici Br. at 7. Although the Tenth and Eleventh Districts have held these requirements non-jurisdictional, the Fifth and Sixth Districts agree with the Administrator that these requirements *are* jurisdictional. See *Karnofel v. Cafaro Mgmt. Co.* (11th Dist. June 26, 1998), No. 97-T-0072, 1998 Ohio App. Lexis 2910, at *10; *Jarmon v. Ford Motor Co.* (10th Dist. Apr. 30, 1996), No. 95APE10-1377, 1996 Ohio App. Lexis 1769, at *9; *Olaru v. Fed Ex Custom Critical* (6th Dist.),

No. L-03-1143, 2003-Ohio-6376, at ¶ 2 & Ex. A; *Day v. Noah's Ark Learning Ctr.* (5th Dist.), No. 01-CVE-12-068, 2002-Ohio-4245, ¶ 15, ¶ 20. In short, there is no “nearly universal” consensus on this question. It is more accurate to say that there is a conflict; indeed, the Administrator urged the Court to accept jurisdiction to resolve this conflict. See Jur. Mem. at 6-7.

C. The Administrator does not improperly invoke legislative intent or public policy.

Spencer's Amici levy one final critique, arguing that the Administrator is hiding from the plain language of R.C. 4123.512(B) by focusing on legislative intent and public policy. That is wrong, and the Amici have mischaracterized the Administrator's position and misapplied the tools of statutory interpretation.

As explained above, and in his opening brief, the Administrator has always maintained that the naming and notice requirements at issue here are jurisdictional under the plain language of R.C. 4123.512(B). See Admin. Br. at 6-11. And when the Administrator discusses the purpose of the law, he does so to *confirm*—not to contradict—this plain meaning. This approach is consistent with basic principles of statutory interpretation. Far from being taboo, “purpose” is *the* fundamental inquiry when divining the meaning of a statute. “The paramount consideration in determining the meaning of a statute is legislative intent.” *State v. Jackson*, 102 Ohio St. 3d 380, 2004-Ohio-3206, ¶ 34. The Court may rely on different tools to discern a statute's purpose—for instance, statutory language, statutory context, and legislative history, see R.C. 1.49—but the goal is always to identify the General Assembly's intent.

Even when plain language is sufficient to determine a statute's meaning, courts regularly look to other sources for confirmation. Here, R.C. 4123.512(B), Chapter 4123, and this Court's jurisprudence all point to one conclusion: Naming the Administrator as a party and serving him with a copy of the notice of appeal are jurisdictional prerequisites under R.C. 4123.512(B).

The Amici also dispute the Administrator's contention that "the purpose of R.C. 4123.512 is to place all parties on notice that an appeal has been filed." Amici Br. at 3. But that is the point of *all* notices of appeal. This Court confirmed as much in *Fisher*, when it defined substantial compliance as "plac[ing] on notice all parties to a proceeding that an appeal has been filed." 30 Ohio St. 3d at 11. Indeed, the Court has recognized that purpose—and held that naming and service requirements are jurisdictional—in numerous other contexts. See Admin. Br. at 10-11. And it is particularly clear that the naming and notice requirements are jurisdictional here, in light of the Administrator's responsibilities under both R.C. 4123.512 and Chapter 4123 as a whole.

At bottom, the Administrator asks the Court to effectuate the General Assembly's policy decisions, not to usurp the legislature's policymaking role. The General Assembly's policy intentions are reflected in R.C. 4123.512(B), and in Chapter 4123 generally, and make clear that a party appealing under R.C. 4123.512 must name the Administrator as a party and serve him with the notice of appeal to invoke a court's jurisdiction.

CONCLUSION

For all these reasons, the requirements in R.C. 4123.512(B) that the Administrator be named as a party and served with a notice of appeal are jurisdictional. Because noncompliance with those requirements deprives a common pleas court of jurisdiction, the Court should reverse the Second District's decision and dismiss Spencer's case for lack of subject matter jurisdiction.

Respectfully submitted,

MICHAEL DEWINE (0009181)
Ohio Attorney General

Alexandra T. Schimmer

ALEXANDRA T. SCHIMMER* (0075732)
Solicitor General

** Counsel of Record*

ELISABETH A. LONG (0084128)

Deputy Solicitor

ELISE PORTER (0055548)

COLLEEN C. ERDMAN (0080765)

Assistant Attorneys General

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

alexandra.schimmer@ohioattorneygeneral.gov

Counsel for Defendant-Appellant
Administrator, Bureau of Workers'
Compensation

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply Brief of Defendant-Appellant, Administrator, Ohio Bureau of Workers' Compensation, was served by U.S. mail this 29th day of June, 2011, upon the following counsel:

John J. Scaccia, Esq.
Jeffrey D. Wilson, Esq.
536 West Central Avenue, 2nd Floor
Springboro, Ohio 45066

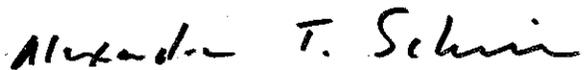
Counsel for Plaintiff-Appellee,
James Spencer

William H. Barney, Esq.
Abigail K. White
Dunlevey, Mahan & Furry
110 North Main Street, Suite 1000
Dayton, Ohio 45402

Counsel for Defendant-Appellee,
Freight Handlers, Inc.

Philip J. Fulton, Esq.
Ross R. Fulton, Esq.
Philip J. Fulton Law Office
89 East Nationwide Blvd., Suite 300
Columbus, Ohio 43215

Counsel for *Amicus Curiae*,
Ohio Association of Claimants' Council
and Ohio Association for Justice



Alexandra T. Schimmer
Solicitor General