

In the
Supreme Court of Ohio

ORIGINAL

MARK A. BENNETT,

Plaintiff-Appellant,

v.

ADMINISTRATOR,
OHIO BUREAU OF WORKERS'
COMPENSATION,

Defendant-Appellee,

and

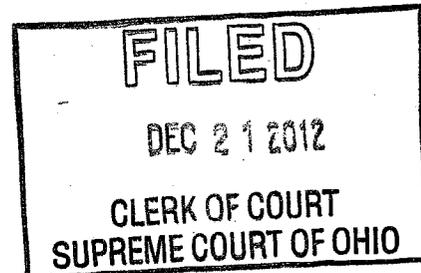
GOODREMONT'S INC.,

Defendant-Appellee.

Case No. 2011-0902

On Appeal from the
Lucas County Court of Appeals,
Sixth Appellate District,

Court of Appeals
Case No. L-10-1185



MEMORANDUM OF DEFENDANT-APPELLEE
ADMINISTRATOR, OHIO BUREAU OF WORKERS' COMPENSATION OPPOSING
RECONSIDERATION

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MEMORANDUM OPPOSING RECONSIDERATION

A motion for reconsideration is not an opportunity for “reargument of a case.” Sup. Ct. Prac. R. 11.2(B). But Mark Bennett seeks exactly that, claiming unpersuasively that the Court “misperceived his argument.” Motion 1. In reality, Bennett’s motion offers nothing more than the same arguments he offered previously and that this Court soundly rejected. He presents nothing new, and his motion should be denied.

First, Bennett argues reconsideration is appropriate because the scope of an “R.C. 4123.512 proceeding is limited to a determination of the issue(s) decided in the industrial commission order appealed.” Motion 1-2. Because the administrative order denying his claim was a “validity” denial based on application of the coming-and-going rule, he says, that was the only issue presented in his 512 proceeding. *Id.* But this is the same argument Bennett made in his initial briefing. *See* Bennett Opening Br. 4-6; Bennett Reply Br. 1. And as the Court explained, Bennett’s arguments concerning the “scope of his R.C. 4123.512 appeal” premised on the fact that the administrative denial of his claim “went solely to what he refers to as [its] basic ‘validity’” “fail to take into account the unique features of an R.C. 4123.512 appeal that differentiate it from other types of administrative appeals.” Slip Op. ¶¶ 15-16. Because they are “*de novo*,” 512 proceedings by definition “put[] in issue all elements of a claimant’s right to participate in the workers’ compensation fund.” *Id.* ¶ 2.

Bennett disagrees with this outcome, but he offers no sound reason for this Court to reconsider its decision. He offers no authority for his claim that “validity” determinations are unique and therefore that the Court applied the wrong “body of law” in its opinion, Motion 2, and the Court already rejected this false distinction. Bennett points to the dissent’s observation that the words “*de novo*” do not appear in R.C. 4123.512, but that argument changes nothing. *See* Motion 2 (citing Slip Op. ¶ 50). The *de novo* nature of a 512 proceeding is “long-

established” in this Court’s precedent, and the Court’s opinion correctly applied that longstanding rule. Slip Op. ¶ 17 (collecting cases).

Second, Bennett seizes on the Court’s use of the word “remand” to say that the Court misunderstood his argument. It did not. Bennett explains that he does not seek “remand” but merely to “have his claim administratively proceed from the point of error.” Motion 2-3. Disputes over terminology aside, the Court understood exactly what Bennett’s position was and rejected it after a thorough analysis of the *de novo* nature of a 512 proceeding. Slip Op. ¶¶ 17-30. “R.C. 4123.512 required Bennett to establish his right to participate in the fund, including the injury-related and causation aspects of his claim relevant to that question, in the common pleas court.” *Id.* ¶ 30.

Third, Bennett cites R.C. 4123.95’s command that the workers’ compensation statutes be liberally construed in favor of claimants and objects that the Court’s opinion “does not explain how this decision . . . is favorable to claimants.” Motion 3. But R.C. 4123.95 is merely an interpretative canon that guides statutory construction; it does not “empower [courts] to read into a statute something that cannot reasonably be implied from” its text. *State ex rel. Williams v. Colasurd*, 71 Ohio St. 3d 642, 644 (1995); *see also Szekely v. Young*, 174 Ohio St. 213, syl. ¶ 2 (1963). Bennett already argued in his original briefing that R.C. 4123.95 compelled a finding in his favor. Bennett Reply Br. 9. And this Court already disagreed. A liberal construction requirement does not mean that claimants *always win*. And as the Administrator’s brief explained, it is not clear that Bennett’s preferred interpretation would in fact be in the interests of claimants generally, since it would permit workers’ compensation claims to bounce back and forth between the BWC and the courts. *See* Administrator’s Br. 14-15.

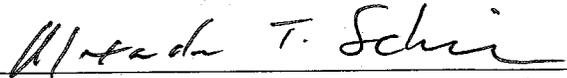
In sum, Bennett’s motion presents nothing new or persuasive and should be denied.

CONCLUSION

For these reasons, the Court should deny reconsideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum of Defendant-Appellee Administrator, Ohio Bureau of Workers' Compensation Opposing Reconsideration was served by U.S. mail this 20th day of December, 2012, upon the following counsel:

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