

IN THE SUPREME COURT OF OHIO

Glenda L. Hill-Foster,

Appellant,

v.

Industrial Commission of Ohio,

Appellees.

Case No. 14-2253

On Appeal from the Franklin

County Court of Appeals, Tenth

Appellate District

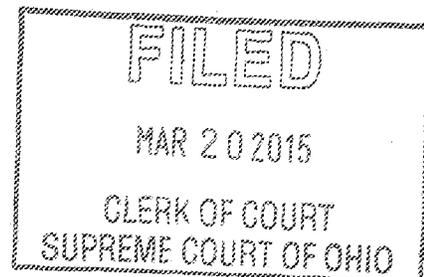
Case No. 14AP-335

MOTION OF APPELLANT FOR RECONSIDERATION

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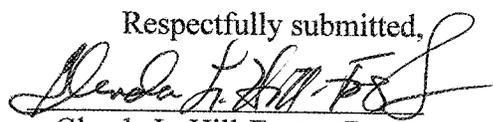
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MOTION OF APPELLANT FOR RECONSIDERATION

Pursuant to S.Ct.Prac.R. 18.02(B) (3), and for the reasons stated in the attached MEMORANDUM IN SUPPORT, Appellant respectfully requests that this Court reconsider its disposition of the present case.

Respectfully submitted,

Glenda L. Hill-Foster, Pro se
Appellant

MEMORANDUM IN SUPPORT

The Respondent-Appellee filed its MOTION TO DISMISS FOR LACK OF JURISDICTION / MEMORANDUM IN SUPPORT stating that the decision of the Magistrate is not a final judgment entry or a final appealable order and, accordingly, this Court does not have jurisdiction to hear the appeal.

This Court dismissed on March 11, 2015.

The Appellant respectfully requests that this Court reconsider its denial of jurisdiction.

Respectively, this Court's intervention is needed to bring the Tenth District back in line with the rest of the State on the proper standards for determining jurisdiction to hear an R.C. 4123.512 Appeal. 2010-2138. We cite Spencer v. Freight Handlers, Inc., Slip Opinion No. 2012-Ohio-880. Miami App. No. 09-CA-44, 2010-Ohio-5288. Judgment of the court of appeals affirmed.

Spencer appealed the common pleas court's judgment. On review, the Twelfth District Court of Appeals reversed and remanded the case to the trial court for further proceedings. The appeals court held that "failure to name the Administrator in the notice of appeal or to serve the Administrator with the notice of appeal does not deprive a court of common pleas of subject matter jurisdiction to hear an R.C. 4123.512 appeal."

Writing for the court's decision, Justice Lanzinger noted that Spencer, the prevailing party in the court of appeals, did not file an appellee brief with the Supreme Court, but the court did receive amicus curiae (friend of the court) briefs supporting the Twelfth District's decision from the Ohio Association of Claimants' Counsel and the Ohio Association for Justice. She wrote that resolution of the case hinged on which of two conflicting interpretations of R.C. 4123.512(B) the court found more persuasive.

Justice Lanzinger wrote: "The statute ... sets forth, in the first paragraph of R.C. 4123.512(B) (which consists of one sentence), what a valid notice of appeal must contain: 'The notice of appeal shall state the names of the claimant and the employer, the number of the claim, the date of the order appealed from, and the fact that the appellant appeals therefrom.' The next paragraph of subsection (B) states: 'The administrator of workers' compensation, the claimant, and the employer shall be parties to the appeal and the court, upon the application of the commission, shall make the commission a party. The 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.'"

"The amici in this case assert that the first paragraph of R.C. 4123.512(B) lists the jurisdictional items: (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. They contend that the second paragraph, which states that the administrator must be a party to the appeal and that the party filing the appeal must serve a copy of the notice of appeal on the administrator, is not a paragraph addressing jurisdiction."

"The appellant, the administrator, argues that both subsection (A) and subsection (B) of R.C. 4123.512 are jurisdictional because those subsections contain the statutory requirements that must be fulfilled before one may appeal an order of the Industrial Commission. He maintains that while subsection (A) sets forth the act required to vest jurisdiction—the act of filing the appeal, the first sentence of subsection (B) relates to the matter being appealed, and paragraph two of subsection (B) relates to the naming and notice requirements of the notice of appeal. According to the administrator, a notice of appeal that omits any of the subsection (A) or (B) requirements is statutorily defective and thereby deprives the court of jurisdiction."

"The amici's position is more persuasive. ... The second paragraph of R.C. 4123.512(B) provides a variety of instructions that are directed at multiple parties: 'The administrator of workers' compensation, the claimant, and the employer shall be parties to the appeal and the court, upon the application of the commission, shall make the commission a party. The 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. The administrator shall notify the employer that if the employer fails to become

an active party to the appeal, then the administrator may act on behalf of the employer and the results of the appeal could have an adverse effect upon the employer's premium rates.”

“The second paragraph of subsection (B), when read in context, is not a continuation of the first paragraph, dictating additional items that must be included in a notice of appeal. Instead, the second paragraph lists a number of things that are required in addition to or subsequent to a notice of appeal. Because the statute's jurisdictional requirements are explicitly limited to filing a notice of appeal, the additional requirements in the second paragraph of subsection (B) are not jurisdictional.”

Justice Lanzinger concluded that, because Spencer's notice of appeal contained all the information required by the first paragraph of R.C. 4123.512(B), it invoked the jurisdiction of the common pleas court. Accordingly, Justice Lanzinger wrote, “(w)e therefore affirm the judgment of the court of appeals and remand the case to the Miami County Court of Common Pleas for further proceedings.”

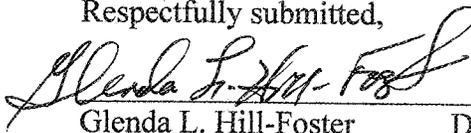
In rendering today's decision, Justice Lanzinger emphasized the ambiguity in the current statutory scheme that allowed Spencer's appeal to invoke a court's jurisdiction without immediate notice to the BWC. She urged the General Assembly “to clarify the jurisdictional requirements for initiating a workers' compensation appeal.”

R.C. 4123.512(A) allows either a claimant or an employer to appeal an order of the Industrial Commission other than a decision as to the extent of disability “to the court of common pleas Of the county in which the injury was inflicted.”

For the reasons discussed above, this case involves matters of public and great general interest.

The appellant requests that this court accept jurisdiction in this case so that the important issues presented will be reviewed based on the merits.

Respectfully submitted,

 3-20-15

Glenda L. Hill-Foster

Date

Pro Se -Appellant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served Via U.S. Mail, this 20th day of March, 2015, to:

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A handwritten signature in cursive script, reading "Glenda L. Hill-Foster". The signature is written in black ink and is positioned above the printed name and title.

Glenda L. Hill-Foster,
Pro se Appellant