

[Cite as Neill v. Ohio Bur. of Workers' Comp., 2001-Ohio-3400.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

RODNEY NEILL)	CASE NO. 00 CA 69
)	
PLAINTIFF-APPELLANT)	
)	
VS.)	<u>O P I N I O N</u>
)	
ADMINISTRATOR, BUREAU OF)	
WORKERS' COMPENSATION, ET AL.)	
)	
DEFENDANTS-APPELLEES)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from the Court of Common Pleas, Mahoning County, Ohio Case No. 99 CV 147
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JUDGMENT:	Affirmed.
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APPEARANCES:

For Plaintiff-Appellant:	Rodney Neill, Pro se 12 McKinley Street Youngstown, Ohio 44509
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For Defendant-Appellee:	Atty. Betty D. Montgomery Ohio Attorney General Atty. Mary Ann O. Rini Assistant Attorney General 615 West Superior Avenue 11 th Floor Cleveland, Ohio 44113
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JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Joseph J. Vukovich

Dated: September 26, 2001

WAITE, J.

{¶1} This timely pro se appeal arises from a jury verdict in the Mahoning County Court of Common Pleas which determined that Appellant was not entitled to participate in the Workers' Compensation Fund. Appellant essentially argues on appeal that the verdict is against the manifest weight of the evidence, but Appellant did not provide this Court with a full transcript of the dispositive hearing. Without a full transcript or its equivalent to review, the judgment of the trial court is affirmed.

{¶2} Rodney Neill ("Appellant") is the owner and sole proprietor of Neillco Security, Inc., which he operates from his home in Youngstown. Appellant injured his lower back when he was mixing concrete at home while repairing his driveway. Appellant reported his injury to the Bureau of Workers' Compensation ("BWC"). His claim was denied by the BWC and eventually denied by the Industrial Commission of Ohio. The District Hearing Officer determined that there was insufficient nexus between Appellant's employment and the activity which caused the injury. (4/13/00 Appellant's Filing, p. 13).

{¶3} On January 20, 1999, Appellant filed an administrative appeal with the Mahoning County Court of Common Pleas pursuant to R.C. §4123.512. Appellant demanded a jury trial, which was held on March 13-15, 2000. The jury rendered its verdict on March 15,

2000, denying Appellant the ability to participate in the Workers' Compensation Fund. On March 31, 2000, Appellant filed this timely pro se appeal.

{¶4} On April 13, 2000, Appellant filed a packet of documents with this Court which included a two-page "brief." The "brief" did not list any particular assignments of error. On June 9, 2000, Administrator of the BWC ("Appellee"), filed a Motion to Dismiss the appeal due to Appellant's failure to file an acceptable brief pursuant to App.R. 16 and 18.

{¶5} On July 5, 2000, this Court filed a Journal Entry holding Appellee's motion to dismiss in abeyance for 60 days in order for Appellant to file a transcript and comprehensive brief.

{¶6} On March 5, 2001, this Court overruled the June 9, 2000, Motion to Dismiss and proceeded to undertake a review on the merits, despite the fact that Appellant did not file an amended brief or full transcript.

{¶7} Appellant has not filed any formal assignments of error. His April 13, 2000, filing alleges that many irrelevant matters were discussed at trial. Appellant essentially argues that the jury verdict was against the manifest weight of the evidence. Appellant has filed only a partial transcript of the March 13-15, 2000, hearing. The partial transcript includes excerpts from Appellee's cross-examination of Appellant and Appellee's closing argument.

{¶8} "In light of the absence of a transcript or proper substitute, we hereby presume the regularity of the proceedings below." *Wirkner v. Witenreid* (Mar. 23, 2000), Carroll App. No. 694, unreported. It is well-settled that judgments supported by competent, credible evidence going to all the material elements of the case will not be reversed as being against the manifest weight of the evidence. *Gerijo v. Fairfield* (1994), 70 Ohio St.3d 223, 226. When considering whether the judgment of the trier of fact is against the manifest weight of the evidence, a reviewing court is guided by the presumption that the findings of the trier of fact are correct. *State ex rel. Phelps v. Columbiana Cty. Commr's.* (1998), 125 Ohio App.3d 414, 423. The jury is best able to view the witnesses and observe their demeanor, gestures, voice inflections and use these observations in weighing the credibility of the proffered testimony. *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80.

{¶9} Without a complete transcript, this Court cannot review issues of credibility and weight of the evidence. Although Appellant is a pro se litigant, he is bound by the same rules and procedures as litigants with counsel. *Meyers v. First Nation Bank of Cincinnati* (1981), 3 Ohio App.3d 209, 210. Although we make some allowances for pro se litigants, we cannot change the fundamental requirement that Appellant, as the party asserting that there was an error in the trial court, bears the burden in

the court of appeals to demonstrate error by reference to matters made a part of the record. *Knapp v. Edward Laboratories* (1980), 61 Ohio St.2d 197, 199.

{¶10} "If the appellant intends to urge on appeal that a finding or conclusion * * * is contrary to the weight of the evidence, the appellant shall include in the record a transcript of all evidence relevant to the findings or conclusion." App.R. 9(B).

{¶11} Because Appellant did not provide a complete transcript, we have nothing to pass upon and must affirm the decision of the trial court. *Knapp* at 199. Appellant's alleged errors are overruled, and we affirm the March 15, 2000, Judgment Entry, in full.

Donofrio, J., concurs.

Vukovich, P.J., concurs.