

Workers' Compensation Appeals and Ohio Civ.R. 41(A): Will the Privileges of a Claimant's Plaintiff Status be Restored with *Ferguson v. State*?ⁱ

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Workers' compensation appeals into courts of common pleas are unique in a number of ways. They must concern the right to participate in the fund (rather than the extent of one's disability);ⁱⁱ they are initiated by filing a notice of appeal pursuant to the requirements under R.C. 4123.512; the trial is *de novo*;ⁱⁱⁱ and claimants always carry the burden of proof and the burden of going forward—regardless if they won administratively.^{iv}

The Symbiotic Relationship between R.C. 4123.512 and the Civil Rules

While R.C. 4123.512 governs workers' compensation appeals, the Ohio Supreme Court has made clear that “the Civil Rules are applicable to a R.C.4123.512 appeal”^v and that the relationship between the latter and the Civil Rules is “symbiotic.”^{vi} Accordingly, many of the Civil Rules apply to workers' compensation appeals unless they “are clearly inapplicable.”^{vii}

Following this reasoning, the Ohio Supreme Court held in *Kaiser v. Ameritemps, Inc.*^{viii} that claimants could voluntarily dismiss their complaints in employer-initiated appeals pursuant to Ohio Civ.R. 41(A)(1)(a).^{ix} Although Appellee-Employer argued that the decision would unfairly burden employers as the procedural mechanism would allow a claimant to delay the proceedings while continuing to receive benefits, the Court was not persuaded: “the employer ultimately suffers no prejudice, as any illegitimate benefits paid during the interim between the original filing and the refiling of a voluntarily dismissed action are repaid if the employee's claim does not prevail.”^x As such, the Court afforded claimants all of the privileges of a plaintiff's status under the Civil Rules even if it was the employer who filed the notice of appeal.^{xi}

The Impact of Senate Bill 7

Amid ongoing employer complaints about claimants delaying the prosecution of R.C. 4123.512 appeals and thus having to pay benefits for a longer period of time, the 126th General Assembly amended R.C. 4123.512(D) in 2006, which now reads:

Further pleadings shall be had in accordance with the Rules of Civil Procedure . . . provided that the claimant may not dismiss the complaint without the employer's consent if the employer is the party that filed the notice of appeal to court pursuant to this section.

While the Ohio Supreme Court has not yet addressed whether amended R.C. 4123.512 is constitutional, it may be time as the Eighth District Court of Appeals recently held in *Ferguson v. State* that “the 2006 amendment to R.C. 4123.512(D) [is] unconstitutional because it conflict[s] with Civ.R. 41(A)(1)(a) and violate[s] the basic principles of separation of powers, due process, and equal protection.”^{xii}

Ferguson v. State

In *Ferguson v. State*, a claimant sustained work-related injuries that were allowed administratively and his employer filed a notice of appeal into the court of common pleas. Claimant subsequently moved to voluntarily dismiss his complaint without prejudice when his expert was unavailable. Claimant also moved to amend his complaint to add a declaratory judgment action, arguing that amended R.C. 4123.512(D) was unconstitutional because it required the claimant to obtain employer's approval before dismissing his complaint pursuant to Civ.R. 41(A). The trial court denied both motions but claimant subsequently filed a separate declaratory judgment action against the state, seeking a determination that R.C. 4123.512(D) was unconstitutional because it: "(1) conflicts with Civ.R. 41(A)(1) and improperly intrudes into the Ohio Supreme Court's power to govern courtroom procedure; (2) violates the Equal Protection Clause contained in the Ohio Constitution; and (3) deprives the injured worker of due process of law."^{xiii}

The trial court ultimately declared amended R.C. 4123.512(D) unconstitutional and the court of appeals affirmed. The State has now appealed to the Ohio Supreme Court, requesting that the Court decide whether the amendment is constitutional.

Analysis

It is likely that the Court will accept the appeal as it involves a substantial constitutional question, and it may be just as likely that the statute is struck down as unconstitutional. The Ohio Supreme Court has specifically stated that "the Ohio Rules of Civil Procedure, which were promulgated by the Supreme Court pursuant to Section 5(B), Article IV of the Ohio Constitution, must control over subsequently enacted inconsistent statutes purporting to govern procedural matters."^{xiv} The Ohio Supreme Court has also made clear that claimants are considered plaintiffs in employer-initiated R.C. 4123.512 appeals,^{xv} and that the Rules of Civil Procedure apply.^{xvi} It is evident that amended R.C. 4123.512(D) and Civ.R. 41(A)(1)(a) directly conflict: the rule allows plaintiffs to voluntarily dismiss their complaint indiscriminately while the statute restricts plaintiffs from doing the same in employer-initiated appeals absent an employer's consent.

Last, Civ.R. 41(A) must control because its effect is procedural rather than substantive: it permits a plaintiff to file a motion to dismiss without prejudice but does not impact the underlying appeal (the complaint must be refiled within a year pursuant to the savings statute or the claim is denied) or the merits of the claim.^{xvii} Pursuant to Section 5(B), Article IV of the Ohio Constitution and *Kaiser v. Ameritemps, Inc.*, R.C. 4123.512(D) should be held unconstitutional.

This holding would finally restore all of a plaintiff's privileges to claimants in R.C. 4123.512 appeals initiated by the employer. Right now, a court can involuntarily dismiss an action when the plaintiff fails to prosecute pursuant to Civ.R. 41(B)(1), but that same plaintiff cannot dismiss the action without the employer's consent if it is an employer's appeal. In the same vein,

The claimant files a complaint, pleads all jurisdictional facts, presents a claim for relief, appears in the caption of the complaint as plaintiff, opens and closes the

case, has the burden of production and persuasion, and has the duty to prosecute the action.^{xviii}

Yet that same claimant cannot unilaterally dismiss their complaint if it was an employer who filed the notice of appeal. *Ferguson v. State* presents an opportunity for the Supreme Court of Ohio to finally restore the privileges of a plaintiff's status to claimants who already shoulder the burdens of a plaintiff's status in R.C. 4123.512 appeals.

ⁱ 8th Dist. Cuyahoga No. 102553, 2015-Ohio-4499.

ⁱⁱ R.C. 4123.512(A).

ⁱⁱⁱ *State ex rel. Federated Dept. Stores, v. Brown*, 165 Ohio St. 521 (1956).

^{iv} *Swift & Co. v. Wreede*, 110 Ohio App. 252 (1959).

^v *Kaiser v. Ameritemps, Inc.*, 84 Ohio St.3d 411, 414 (1999).

^{vi} *Robinson v. B.O.C. Group*, 81 Ohio St.3d 361, 369 (1998).

^{vii} Civ. R. 1(C); *Price v. Westinghouse*, 70 Ohio St.2d 131, 133 (1982).

^{viii} 84 Ohio St.3d 411(1999).

^{ix} Civ. R. 41(A)(1)(a) states, in relevant part: "A plaintiff, without order of court, may dismiss all claims asserted by that plaintiff against a defendant by . . . filing a notice of dismissal at any time before the commencement of trial . . ."

^x *Id.* at 415.

^{xi} *Id.*

^{xii} *Ferguson v. State*, 8th Dist. Cuyahoga No. 102553, 2015-Ohio-4499.

^{xiii} *Id.* at ¶ 6.

^{xiv} *Rockey v. 84 Lumber Co.*, 66 Ohio St.3d 221, 224-225 (1993).

^{xv} *Robinson v. B.O.C. Group*, 81 Ohio St.3d 361, 369 (1998).

^{xvi} *Id.*

^{xvii} See *Alexander v. Buckeye Pipe Line*, 49 Ohio St.2d 158 (1977) (finding that the effect of Civ.R.54(B) is purely procedural because it permits the separation of claims for purposes of appeal but does not affect either the substantive right to appeal or merits of the claims).

^{xviii} *Robinson v. B.O.C. Group*, 81 Ohio St.3d 361, 367 (1998).