

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio ex rel. Gregory T. Howard, :
Relator, :
v. : No. 09AP-1091
Ohio Industrial Commission, Administrator : (REGULAR CALENDAR)
of the Ohio Bureau of Workers'
Compensation and Franklin County :
Court of Common Pleas, :
Respondents. :
:

D E C I S I O N

Rendered on June 3, 2010

Gregory T. Howard, pro se.

Richard Cordray, Attorney General, and *Allan K. Showalter*,
for respondents Industrial Commission of Ohio and
Administrator of the Ohio Bureau of Workers' Compensation.

IN MANDAMUS/PROCEDENDO
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

KLATT, J.

{¶1} Relator, Gregory T. Howard, commenced this original action in mandamus/procedendo seeking an order compelling respondents, the Industrial Commission of Ohio ("commission") and the Ohio Bureau of Workers' Compensation ("BWC") to reconsider the denial of his application for permanent total disability ("PTD")

compensation. Relator also seeks a writ of procedendo to compel respondent, Judge John P. Bessey of the Franklin County Court of Common Pleas, to vacate his March 14, 2008 order denying several outstanding motions filed by relator, and to compel him to rule on certain outstanding motions.

{¶2} Pursuant to Civ.R. 53 and Loc.R. 12(M) of the Tenth District Court of Appeals, this matter was referred to a magistrate who issued a decision, including findings of fact and conclusions of law, which is appended hereto. The magistrate found that relator was declared a vexatious litigator in January 2006. Therefore, relator is subject to the requirements of R.C. 2323.52 before he can file an action in either the common pleas court or the appellate court. The magistrate determined that relator failed to comply with the requirements of R.C. 2323.52.

{¶3} Specifically, the magistrate found that relator's application for leave to pursue an action against the commission and the BWC constitutes an abuse of process and there are no reasonable grounds for this application. The magistrate made a similar finding with respect to relator's application for leave to pursue an action against Judge Bessey and the Franklin County Court of Common Pleas.¹ Therefore, the magistrate has recommended that this court sua sponte dismiss relator's action.

{¶4} Relator, appearing pro se, has filed objections to the magistrate's decision. Relator first argues that, contrary to the magistrate's finding, he seeks to litigate a new issue in connection with claim No. L246280-22. He contends that claim No. L246280-22

¹ We note that Judge Bessey has recused himself from case No. 05CVH-398. He has been replaced by Judge Cocroft.

"does not expire until May 13, 2012 and that he is eligible to file subsequent meritorious PTD applications." We disagree.

{¶5} In *State ex rel. Howard v. Indus. Comm.*, 10th Dist. No. 07AP-1085, 2008-Ohio-3289, this court denied relator the opportunity to extend the time to adjudicate any issue relating to claim No. L246280-22. In dismissing relator's previous action, this court effectively held that there is not a reasonable basis to support continued requests for workers' compensation benefits under claim No. L246280-22. Because claim No. L246280-22 is again the basis for relator's current motion for leave, we agree with the magistrate's determination that relator has not presented a reasonable basis to support his mandamus/procedendo action. Therefore, we overrule this aspect of relator's objection.

{¶6} Relator also objects to the portion of the magistrate's decision that addresses his purported claims against Judge Bessey and the Franklin County Court of Common Pleas. For the reasons set forth in the magistrate's decision, we agree with the magistrate's decision that these purported claims constitute an abuse of process. Relator has not demonstrated that there is any reasonable basis to pursue an action against Judge Bessey or the Franklin County Court of Common Pleas. Therefore, we overrule the remainder of relator's objections.

{¶7} Following an independent review of this matter, we find that the magistrate has properly determined the facts and applied the appropriate law, except for the magistrate's finding that relator filed his application on November 23, 2008. We note that relator filed his complaint on November 23, 2009 and his application for leave to file an amended complaint on November 24, 2009. Therefore, we adopt the magistrate's

decision as our own, including the findings of fact (with the noted correction) and conclusions of law contained therein. In accordance with the magistrate's decision, we sua sponte dismiss relator's action for failure to comply with R.C. 2323.52. We further deny relator's "application for leave to file the attached notice of motion for the court to state separately its findings of fact and conclusions of law."

Case dismissed; relator's motion denied.

FRENCH and McGRATH, JJ., concur.

APPENDIX A

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio ex rel. Gregory T. Howard,	:	
	:	
Relator,	:	
	:	
v.	:	No. 09AP-1091
	:	
Ohio Industrial Commission, Administrator	:	(REGULAR CALENDAR)
of the Ohio Bureau of Workers'	:	
Compensation and Franklin County	:	
Court of Common Pleas,	:	
	:	
Respondents.	:	
	:	

MAGISTRATE'S DECISION

Rendered on December 23, 2009

Gregory T. Howard, pro se.

Richard Cordray, Attorney General, and Allan K. Showalter, for respondents Industrial Commission of Ohio and Administrator of the Ohio Bureau of Workers' Compensation.

IN MANDAMUS/PROCEDENDO
ON SUA SPONTE DISMISSAL

{¶8} Relator, Gregory T. Howard, has filed an application for leave to file a mandamus complaint against the Industrial Commission of Ohio ("commission") and the Ohio Bureau of Workers' Compensation ("BWC") compelling those respondents to reconsider the denial of his application for permanent total disability ("PTD") compensation. Relator also seeks a writ of procedendo to compel respondent Judge

John P. Bessey of the Franklin County Court of Common Pleas to vacate the March 14, 2008 order which denied several outstanding motions filed by relator and to compel him to rule on certain outstanding motions.

Findings of Fact:

{¶9} 1. Relator was declared a vexatious litigator in January 2006.

{¶10} 2. Because he has been declared a vexatious litigator, relator must follow the requirements of R.C. 2323.52 before he can file and pursue a cause of action in either the common pleas court or appellate court.

{¶11} 3. On November 23, 2008, relator sought leave from this court to pursue a mandamus action against the commission and BWC and a procedendo action against Judge Bessey.

{¶12} 4. Relator has also filed motions requesting the following: to proceed in forma pauperis; to file a proposed supplemental pleading; to file an affidavit in support of a forthcoming motion for summary judgment; the affidavit in support of the forthcoming motion; to file a reply to the commission's and BWC's motion to dismiss; to file a motion for a mandatory writ of mandamus against the commission and BWC; and seeking a preliminary injunction against the Franklin County Court of Common Pleas.

{¶13} 5. The commission and the BWC have filed a motion to dismiss the portion of relator's application which applies to the commission and BWC.

{¶14} 6. The matter is currently before the magistrate for determination of whether or not relator has met the requirements of R.C. 2323.52.

Conclusions of Law:

{¶15} For the reasons that follow, it is this magistrate's decision that this court should deny relator's application for leave to proceed against all parties.

{¶16} Relator was denied PTD compensation approximately ten years ago. Since that time, relator has continued to challenge the commission's determination in an attempt to overturn the denial as well as the decisions affirming that denial. Relator's application for leave to file another action against the commission and BWC again stems from this very denial. Relator contends that the commission's order denying him PTD compensation does not comply with *State ex rel. Noll v. Indus. Comm.* (1991), 57 Ohio St.3d 203, and its progeny.

{¶17} In *State ex rel. Howard v. Indus. Comm.*, 10th Dist. No. 07AP-1085, 2008-Ohio-3289, this court denied relator's application to pursue another action against the commission and the BWC challenging the denial of his PTD application. In the instant case, relator again simply seeks to relitigate an issue which has long since been determined.

{¶18} Under R.C. 2323.52, this court "shall not grant a person found to be a vexatious litigator leave for * * * the making of an application in, legal proceedings in the court of appeals unless the court of appeals is satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds for the proceedings or application." The magistrate finds that relator's application for leave to pursue another action against the commission and BWC constitutes an abuse of process of this court and further that there are no reasonable grounds for this application.

{¶19} In the action against the common pleas court, relator contends that the court has yet to rule on the following applications/motions: March 27, 2008 application for leave to contest a judgment of the Lucas County Court of Common Pleas, Division of Domestic Relations; October 16, 2008 application for leave to appeal the commission's orders denying him PTD compensation, to vacate Judge Bessey's March 14, 2008 entry denying earlier applications for leave to file certain actions and leave to bring an action against Judge Bessey individually; February 10, 2009 application for leave to pursue a new lawsuit against the department of public utilities claiming that they caused him emotional distress and damage to his credit rating; February 4, 2009 application for leave to file a motion asking Judge Bessey to recuse himself; and November 6, 2009 application for leave to continue the legal proceedings in the Lucas County Court of Common Pleas, Division of Domestic Relations.

{¶20} With the exception of the application to file a motion to recuse Judge Bessey, the other applications relator has filed have been filed previously and been denied in the trial court's March 14, 2008 decision and entry. To the extent that relator again seeks to relitigate these issues, the magistrate finds that action constitutes an abuse of process and that there are no reasonable grounds for the application. It is clearly an abuse of process for relator to continue to file one motion after another in the trial court. Further, to the extent that relator seeks to vacate the common pleas court's March 14, 2008 decision and entry denying his motions, the magistrate finds that too constitutes an abuse of process of the court and that there are no reasonable grounds for the application.

{¶21} Furthermore, to the extent that relator seeks to force Judge Bessey to recuse himself from these proceedings, it must be remembered that this action was originally assigned to Judge Travis. When Judge Travis was appointed to this court, Judge Sheeran took over his docket. Judge Sheeran recused himself and the matter was transferred to Judge Bender. Because relator sought to sue Judge Bender individually, Judge Bender also recused himself. Judge Bessey is the judge to whom the action is currently assigned. In reality, relator wants Judge Bessey removed from the case in hopes that a newly appointed judge will rule in favor of his motions. The magistrate finds that this application likewise constitutes an abuse of process of this court and that relator has not demonstrated any reasonable grounds for permitting that application to proceed.

{¶22} Because the magistrate finds that relator's application for leave to pursue a mandamus action against the commission and BWC, as well as a procedendo action against the Franklin County Court of Common Pleas, constitutes an abuse of process of this court and contains no reasonable grounds for permitting the applications to proceed, it is this magistrate's decision that this court should sua sponte dismiss relator's action.

s/s Stephanie Bisca Brooks
STEPHANIE BISCA BROOKS
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).