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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-909

Filed: 5 April 2016

North Carolina Industrial Commission, I.C. No. U00178

IN THE MATTER OF WARE, Claim for Compensation Under the North Carolina Eugenics Asexualization and Sterilization Compensation Program, Claimant-Appellant.

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No. COA15-923

Filed: 5 April 2016

North Carolina Industrial Commission, I.C. No. U00556

IN THE MATTER OF COLVARD, Claim for Compensation Under the North Carolina Eugenics Asexualization and Sterilization Compensation Program, Claimant-Appellant.

Appeal by Claimant-Appellant Ware from decision and order entered 11 May 2015 by the North Carolina Industrial Commission. Appeal by Claimant-Appellant Colvard from decision and order entered 22 June 2015 by the North Carolina Industrial Commission. Heard in the Court of Appeals 11 January 2016.

*The Bollinger Law Firm, PC, by Bobby L. Bollinger, Jr., for Claimant-Appellants.*

*Attorney General Roy Cooper, by Assistant Attorney General Marc X. Sneed, for the North Carolina Department of Justice, Tort Claims Section.*

McCULLOUGH, Judge.

I. Background

Claimant Ware (“Ware”)<sup>1</sup> was involuntarily sterilized in 1962 and Claimant Colvard (“Colvard”) was involuntarily sterilized in 1972 (collectively referred to as “Claimants”). Claimants were just two people

out of thousands of North Carolinians who were involuntarily sterilized between 1933, when Chapter 224 of the Public Laws of 1933 (“Eugenics Act”) was passed and the Eugenics Board of North Carolina was created, and 1977, when the Eugenics Board<sup>[2]</sup> was abolished by statute.

*In re Maye*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_, 2016 WL 1012877 (Mar. 2016) (unpub.). Because Claimants advance identical issues and arguments on appeal, we consolidate their appeals for review.

In 2013, the North Carolina General Assembly enacted the Eugenics Asexualization and Sterilization Program (“the Compensation Program”), N.C. Gen. Stat. § 143B-426.50 *et seq.*, in order to provide compensation to individuals asexualized or sterilized pursuant to the Eugenics Act. A “qualified recipient” under the Compensation Program was defined as “[a]n individual who was asexualized

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<sup>1</sup> We will use only Claimants’ last names in this opinion in order to help preserve their anonymity.

<sup>2</sup> The name of the “Eugenics Board” was changed to “Eugenics Commission” in 1973. 1973 N.C. Sess. Laws 476, § 133.3. For consistency, we shall always refer to this entity as the “Eugenics Board.”

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involuntarily or sterilized involuntarily under the authority of the Eugenics Board of North Carolina in accordance with Chapter 224 of the Public Laws of 1933 or Chapter 221 of the Public Laws of 1937.” N.C. Gen. Stat. § 143B-426.50(5) (2013).

In the present case, Claimants followed the procedures set forth in the Compensation Program and submitted claims for compensation to the North Carolina Industrial Commission (“Industrial Commission”). Their claims were initially reviewed by the Industrial Commission and were denied based upon insufficient evidence that Claimants’ sterilization procedures occurred under the authority of the Eugenics Board. N.C. Gen. Stat. § 143B-426.50(5). Claimants, following appellate review procedures pursuant to N.C. Gen. Stat. § 143B-426.53, filed notices of appeal to the Full Commission of the Industrial Commission. In each case, the Full Commission found that although Claimants were involuntarily sterilized, there was insufficient evidence to establish that their involuntary sterilizations were performed “under the authority of the Eugenics Board of North Carolina in accordance with Chapter 224 of the Public Laws of 1933 or Chapter 221 of the Public Laws of 1937.” N.C. Gen. Stat. § 143B-426.50(5). The Full Commission concluded that Claimants were not entitled to receive compensation pursuant to N.C. Gen. Stat. § 143B-426.51. Claimants appeal.

II. Discussion

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Claimants present three issues on appeal: (A) that their involuntary sterilizations “had to be performed under Public Law 1933, Chapter 224 in order to be performed lawfully[;]” (B) that the “Full Commission’s strict construction of N.C. Gen. Stat. § 143B-426.50(5) constitute[d] denial of compensation benefits to [Claimants] due to an overly strict and technical construction of the statute[;]” and, (C) that the “Industrial Commission violated [Claimants’] constitutional rights to equal protection and fundamental fairness by denying compensation” based upon a lack of record evidence of Eugenics Board involvement. We address each argument in turn.

A.

Claimants first argue that their involuntary sterilizations “had to be performed under Public Law 1933, Chapter 224 in order to be performed lawfully.”

We believe that our recent holding in *In re Maye; In re Davis; In re Staggers*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_, 2016 WL 1012877 (Mar. 2016) (unpub.), controls the outcome here. Similar to the circumstances surrounding Claimants, in *Maye*, three individuals filed claims under the Compensation Program. The Industrial Commission found that the individuals were involuntarily sterilized, “but that there was insufficient evidence to show that their involuntary sterilizations had been performed pursuant to the authority of the Eugenics Board or that they had been performed in accordance with Chapter 224 of the Public Laws of 1933 or Chapter 221

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of the Public Laws of 1937.” *Id.* at \_\_, \_\_ S.E.2d at \_\_. The individuals in *Maye* appealed to our Court and presented the same three issues.

The *Maye* Court noted that the evidence “strongly suggested that the involuntary sterilizations performed in the present cases was conducted without any statutory authority.” *In re Maye*, \_\_ N.C. App. at \_\_, \_\_ S.E.2d at \_\_. However, our Court held that because there was no evidence that the three individuals’ sterilizations were carried out under the authority of the Eugenics Board, or pursuant to either Chapter 224 of the Public Laws of 1933 or Chapter 221 of the Public Laws of 1937, “the fact that [the three individuals] involuntary sterilizations appear to have been unlawfully performed does not bring them within the ambit of the Compensation Program.” *In re Maye, Id.* at \_\_, \_\_ S.E.2d at \_\_. Similarly, we reject Claimants’ assertions that their involuntary sterilizations were performed within the ambit of the Compensation Program.

B.

In their second issue on appeal, Claimants contend that the “Full Commission’s strict construction of N.C. Gen. Stat. § 143B-426.50(5) constitute[d] denial of compensation benefits to [Claimants] due to an overly strict and technical construction of the statute.”

This argument was previously decided against Claimants in *In re House*, \_\_ N.C. App. \_\_, 782 S.E.2d 115 (2016). The Court in *House* held that the language of

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N.C. Gen. Stat. § 143B-426.50(5) is “clear and without ambiguity.” *Id.* at \_\_\_, 782 S.E.2d at 120. Furthermore, our Court stated as follows:

We cannot make any holding contrary to the clear meaning of N.C. Gen. Stat. § 143B-426.50(5). We must consider the words of the statute as they appear. N.C. Gen. Stat. § 143B-426.50(5) sets forth two requirements that must be proven before a claimant may be considered a qualified recipient: (1) the claimant must have been involuntarily sterilized “under the authority of the Eugenics Board of North Carolina,” and (2) the claimant must have been involuntarily sterilized in accordance with the procedures as set forth in “Chapter 224 of the Public Laws of 1933 or Chapter 221 of the Public Laws of 1937.” N.C. Gen. Stat. § 143B-426.50(5). In the present case, unfortunately, [the c]laimant cannot show that either of these requirements has been met.

*Id.* Likewise, we must consider the words of the statute as they appear and conclude that Claimants are unable to demonstrate that either of these requirements has been met.

C.

In their third and final issue on appeal, Claimants argue that the “Industrial Commission violated [Claimants’] constitutional rights to equal protection and fundamental fairness by denying compensation” based upon a lack of record evidence of Eugenics Board involvement.

Claimants failed to present this argument to the Industrial Commission and have failed to petition this Court for review of these matters. This Court has held that, “[w]here a party appeals a constitutional issue from the Commission and fails

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to file a petition for *certiorari* or fails to have the question certified by the Commission, this Court is without jurisdiction.” *Myles v. Lucas & McCowan Masonry*, 183 N.C. App. 665, 665, 645 S.E.2d 143, 143 (2007). Accordingly, we hold that we are without jurisdiction to hear this issue and dismiss this argument.

AFFIRMED IN PART; DISMISSED IN PART.

Chief Judge McGEE and Judge GEER concur.

Report per Rule 30(e).