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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-920

Filed: 5 April 2016

North Carolina Industrial Commission, I.C. No. U00443

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

Appeal by Claimant-Appellant Blackmon from decision and order entered 19 May 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-Appellant.

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 Blackmon¹ (“Claimant”) was involuntarily sterilized in 1972. Claimant was just one

out of thousands of North Carolinians who were

¹ We will only use Claimant’s last name in this opinion in order to help preserve her anonymity.

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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^[2] was abolished by statute.

In re Maye, __ N.C. App. __, __ S.E.2d __, 2016 WL 1012877 (Mar. 2016) (unpub.).

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 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).

Claimant followed the procedures set forth in the Compensation Program and submitted claims for compensation to the North Carolina Industrial Commission (“Industrial Commission”). Her claim was initially reviewed by the Industrial Commission and was denied based upon insufficient evidence that Claimant’s sterilization procedure occurred under the authority of the Eugenics Board. N.C. Gen. Stat. § 143B-426.50(5). Claimant, following appellate review procedures

² 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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pursuant to N.C. Gen. Stat. § 143B-426.53, filed notices of appeal to the Full Commission of the Industrial Commission. The Full Commission found that on 26 January 1972, Claimant's parents "signed a sterilization permit, authorizing the performance of a tubal ligation on [Claimant]. The sterilization permit was also signed by [Claimant], who at the time was thirteen years old." The permit authorized and directed a physician "to perform a tubal ligation and any other procedure that judgment may dictate during the operation." On 1 February 1972, Claimant's father signed a petition alleging that Claimant was in need of sterilization and that such a procedure would be in Claimant's best interest and welfare. Further, the Full Commission found as follows:

5. In response to the petition, a Juvenile Order was filed by a Mecklenburg County Judge on February 7, 1972. The Order found as fact that [Claimant] "is thirteen years of age and is severely retarded." The Order further found as fact that a sterilization operation would be in the best interest and welfare of [Claimant]. Under the authority of North Carolina General Statute Chapter 90, Article 19-272, the Judge ordered the matter be referred to Charlotte Memorial Hospital for a sterilization operation.

On 22 March 1972, a physician at Charlotte Memorial Hospital performed a total abdominal hysterectomy on Claimant. The Office of Justice for Sterilization Victims did not find any records from the Eugenics Board pertaining to Claimant and Claimant failed to produce documentation demonstrating that her sterilization procedure was performed under the authority of the Eugenics Board. The Full

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Commission found that although Claimant was involuntarily sterilized, the evidence failed to show that she was sterilized “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). Moreover, the Full Commission concluded that the 7 February 1972 Juvenile Order was filed under the authority of North Carolina General Statute Chapter 90, Article 19-272 which provided as follows:

Any such physician or surgeon may perform a surgical interruption of vas deferens or Fallopian tubes upon any unmarried person under the age of twenty-one years when so requested in writing by such minor and in accordance with the conditions and requirements set forth in [N.C. Gen. Stat. §] 90-271, provided that the juvenile court of the county wherein such minor resides, upon petition of the parent or parents, if they be living, or the guardian or next friend of such minor, shall determine that the operation is in the best interest of such minor and shall enter an order authorizing the physician or surgeon to perform such operation.

N.C. Gen. Stat. § 90-272 (1963). Based on the foregoing, the Full Commission concluded that Claimant was not entitled to receive compensation payments pursuant to N.C. Gen. Stat. § 143B-426.51. Claimant appeals.

II. Discussion

Claimant presents two issues on appeal: (A) that her involuntary sterilization under N.C. Gen. Stat. § 90-272 was to effectuate the same policies established by Public Law 1933, Chapter 224, and therefore, she should be considered a “qualified

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recipient” under the Compensation Program and (B) that the “Industrial Commission violated [Claimant’s] 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.

Claimant first argues that her involuntary sterilization pursuant to N.C. Gen. Stat. § 90-272 was to effectuate the same policies established by Public Law 1933, Chapter 224, and therefore, she should be considered a “qualified recipient” under the Compensation Program. We disagree.

“[W]hen construing a statute, our primary task is to ensure that the purpose of the legislature, the legislative intent, is accomplished. . . . [L]egislative purpose is first ascertained from the plain words of the statute. When the words are unambiguous, they are to be given their plain and ordinary meanings.” *Dawson v. N.C. Dep’t of Env’t & Natural Res.*, 204 N.C. App. 524, 529, 694 S.E.2d 427, 430-31 (2010) (citations and quotation marks omitted).

As this Court previously held in *In re House*, __ N.C. App. __, 782 S.E.2d 115 (2016), the language of N.C. Gen. Stat. § 143B-426.50(5) is “clear and without ambiguity. . . 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.” *Id.* at __, 782 S.E.2d 120. N.C. Gen. Stat. § 143B-426.50(5) sets forth two

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requirements that must be proven before a claimant may be considered a qualified recipient under the Compensation Program: (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 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 case *sub judice*, Claimant is unable to demonstrate that either of these requirements have been met. Therefore, we affirm the Full Commission’s conclusion that Claimant is not entitled to receive compensation payments pursuant to N.C. Gen. Stat. § 143B-426.51.

B.

Next, Claimant argues that the “Industrial Commission violated [Claimant’s] constitutional rights to equal protection and fundamental fairness by denying compensation” based upon a lack of record evidence of Eugenics Board involvement.

Claimant failed to present this argument to the Industrial Commission and has 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 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.

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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).