

[Cite as *Kljun v. Admin., Ohio Bur. of Workers' Comp.*, 2017-Ohio-7724.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105340

JEFFREY KLJUN, ET AL.

PLAINTIFFS-APPELLEES

vs.

**ADMINISTRATOR, OHIO BUREAU OF WORKERS'
COMPENSATION, ET AL.**

DEFENDANTS-APPELLANTS

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-13-803120

BEFORE: Kilbane, J., E.A. Gallagher, P.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: September 21, 2017

ATTORNEYS FOR APPELLANTS

Mike DeWine
Ohio Attorney General
Jeffrey B. Duber
Mark E. Mastrangelo
Assistant Attorneys General
615 West Superior Avenue - 11th Floor
Cleveland, Ohio 44113

Cheryl J. Nester
Assistant Attorney General
150 E. Gay Street - 22nd Floor
Columbus, Ohio 43215

ATTORNEYS FOR APPELLEES

Richard F. Brian
Brian & Brian
81 Maplecrest Street, SW
North Canton, Ohio 44720

Paul W. Flowers
Paul W. Flowers Co., L.P.A.
Terminal Tower, Suite 1910
50 Public Square
Cleveland, Ohio 44113

Frank L. Gallucci
Plevin & Gallucci Co., L.P.A.
55 Public Square - Suite 2222
Cleveland, Ohio 44113

MARY EILEEN KILBANE, J.:

{¶1} Defendants-appellants, Sarah Morrison, Administrator, Ohio Bureau of Workers' Compensation ("BWC") and the Industrial Commission of Ohio (collectively referred to as "defendants"), appeal from the trial court's judgment in favor of plaintiffs-appellants, Jeffrey Kljun, Reginald D. Humphrey, Robert Grable, Michael J. Dunlap, Jonathan J. Marazza, and Louis Cataldo, Sr. (collectively referred to as "plaintiffs"), following our mandate in *Kljun v. Morrison*, 2016-Ohio-2939, 55 N.E.3d 10 (8th Dist.) ("*Kljun I*"). For the reasons set forth below, we affirm.

{¶2} This is the second appeal in this case. In *Kljun I*, this court set forth the facts underlying the prior appeal and plaintiffs' claims. Succinctly stated, the plaintiffs filed their complaint against defendants seeking a declaration that amendments in H.B. 487 to R.C. 4123.57(B) violate the Ohio Constitution, Article II, Section 15(D) (known as the "one-subject rule"). Plaintiffs also sought a permanent injunction against any further enforcement of the invalid provisions. In response, defendants filed a motion to dismiss and change of venue arguing that: (1) only Franklin County courts are competent to adjudicate actions against state officials; and (2) plaintiffs failed to allege a claim for declaratory or injunctive relief.

{¶3} In *Kljun I*, plaintiffs appealed from the trial court's grant of summary judgment in favor of defendants. Plaintiffs argued that the trial court erred when it determined that H.B. 487 complied with the one-subject rule and granted summary

judgment in favor of defendants. We agreed. We reversed the trial court’s judgment and remanded “with instructions for the trial court to enter judgment, as a matter of law, in favor of plaintiffs.” *Id.* at ¶ 35.

{¶4} Following our decision in *Kljun I*, defendants did not move for reconsideration with this court, nor did defendants pursue an appeal in the Ohio Supreme Court. Instead, the matter returned to the trial court where, for the next two months, neither party submitted any filings. The trial court then properly complied with this court’s mandate by issuing the following entry:

Pursuant to the order of the 8th District Court of Appeals, judgment is hereby entered in favor of plaintiff and against defendant. The section of H.B. 487 that amends the period for paying scheduled loss benefits [to] injured workers under R.C. 4123.57(B) is unenforceable. Defendants are enjoined from refusing to issue lump-sum payments of loss benefits due once the claim is finalized.

{¶5} It is from this order that defendants now appeal, raising the following single assignment of error for review:

Assignment of Error

The trial court’s entry following remand is contrary to this Court’s determination that H.B. 487’s amendment of R.C. 4123.57(B) violated the Ohio Constitution’s “one-subject rule” as the trial court’s entry prohibits BWC from complying with R.C. 4123.57(B) as it existed before its purported amendment.

{¶6} Defendants argue that the trial court exceeded the scope of our mandate in *Kljun I* when the court stated in the last sentence of its judgment entry that: “[d]efendants are enjoined from refusing to issue lump-sum payments of loss benefits due once the claim is finalized.” Defendants contend that the “injunction” could not be

reviewed because the plaintiffs did not plead this relief in the trial court. Defendants contend that the appropriate remedy for the unconstitutionality of H.B. 487 is to sever the offending portions and revert to the pre-amendment version of R.C. 4123.57.¹ Plaintiffs, on the other hand, argue that the law of the case doctrine is implicated and prohibits defendants from arguing issues that were available to be pursued in the first appeal — *Kljun I*. We find plaintiffs’ argument to be exactly on point.

{¶7} The law of the case doctrine precludes a litigant from raising arguments “which were fully pursued, or available to be pursued, in a first appeal.” *Hubbard ex rel. Creed v. Sauline*, 74 Ohio St.3d 402, 404-405, 1996-Ohio-174, 659 N.E.2d 781. Under this doctrine, “the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels.” *Clinton v. MetroHealth Sys.*, 8th Dist. Cuyahoga No. 104957, 2017-Ohio-4073, ¶ 9, quoting *Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 462 N.E.2d 410 (1984).

The doctrine has been deemed necessary “to ensure consistency of results in a case, to avoid endless litigation by settling the issues, and to preserve the structure of superior and inferior courts as designed by the Ohio Constitution.” *Id.*, quoting *Nolan*.

{¶8} In the instant case, the trial court properly followed the law of this case, determining that the section of H.B. 487 that amends the period for paying scheduled loss benefits to injured workers under R.C. 4123.57(B) is unenforceable, and defendants are

¹We note that at appellate oral argument the defendants agreed with this court’s finding in *Kljun I* that H.B. 487 violated the one-subject rule.

enjoined from refusing to issue lump-sum payments of loss benefits due once the claim is finalized.

{¶9} The declaration of unconstitutionality was only one part of the judgment plaintiffs sought, which was presented in Count I of their complaint. In Count II, plaintiffs specifically raised a claim for injunctive relief prohibiting defendants “from enforcing any aspect of H.B. 487 that is found to violate the Ohio Constitution.” Defendants were aware of the injunctive relief sought by the plaintiffs and acknowledged plaintiffs’ request in its motion to “dismiss plaintiffs’ complaint and/or change venue.” Defendants stated:

The Complaint asks for two forms of relief. First, it asserts that H.B. 487 violates the one-subject prohibition in Section 15(D), Article II of the Ohio Constitution, and requests a declaration that the amendment to R.C. 4123.57(B) violates that section, and that is therefore unenforceable. Comp. at Count 1. *Second, the Complaint demands an injunction restraining the Defendants from enforcing any aspect of H.B. 487 that is found to violate the Ohio Constitution. Comp. at Count 2.*

(Emphasis added.)

{¶10} Plaintiffs also requested in their motion for summary judgment that the trial court’s judgment award declaratory relief as well as injunctive relief, “enjoining and restraining [d]efendants * * * from refusing to issue lump-sum payments of the readily calculable scheduled loss benefits due once the claim is final.” The issue of injunctive relief was also addressed in *Kljun I. Id.* at ¶ 4.

{¶11} The defendants were aware of both types of relief sought by the plaintiffs and acknowledged the same in its motion to dismiss. If the defendants disagreed with

the imposition of judgment in favor of plaintiffs as set forth in *Kljun I*, defendants should have pursued reconsideration with this court or sought further review with the Ohio Supreme Court. Defendants chose to do neither.

{¶12} Our decision in *Kljun I* disposed of the issue that defendants now raise in the instant appeal. Accordingly, the law of the case precludes defendants' attempt to revisit the "injunction issue" in this appeal and precludes any modification to the trial court's judgment.

{¶13} Therefore, the sole assignment of error is overruled.

{¶14} Judgment is affirmed.

It is ordered that appellees recover of appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, JUDGE

EILEEN A. GALLAGHER, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR