

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

| | | |
|---------------------------------------|---|--|
| Brian Frederic Griffin, M.D., | : | |
| Appellant-Appellant, | : | |
| v. | : | No. 11AP-1126 (C.P.C. No. 11CVF-08-10389) |
| Ohio Bureau of Workers' Compensation, | : | (REGULAR CALENDAR) |
| Appellee-Appellee. | : | |

D E C I S I O N

Rendered on August 14, 2012

Dinsmore & Shohl LLP, Thomas W. Hess and Simi Z. Botic,
for appellant.

Michael DeWine, Attorney General, and Cheryl J. Nester, for
appellee.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Appellant, Brian Frederic Griffin, M.D., appeals a judgment of the Franklin County Court of Common Pleas that vacated a judgment ordering appellee, the Ohio Bureau of Workers' Compensation ("BWC"), to reinstate him as a certified healthcare provider in the BWC's Health Partnership Program. For the following reasons, we reverse and remand.

{¶ 2} In a letter dated April 30, 2010, the BWC informed Griffin that it intended to revoke his certification as a provider in the Health Partnership Program because he pleaded guilty to two criminal offenses in 1993. Griffin requested and received a hearing. Thereafter, the hearing examiner issued a report recommending that the BWC decertify Griffin. The BWC adopted the hearing examiner's report and recommendation, and it issued an order denying Griffin continued certification in the Health Partnership Program.

{¶ 3} On August 19, 2011, Griffin filed a notice of appeal of that order with the trial court. According to R.C. 119.12:

Within thirty days after receipt of a notice of appeal from an order in any case in which a hearing is required by sections 119.01 to 119.13 of the Revised Code, the agency shall prepare and certify to the court a complete record of the proceedings in the case. Failure of the agency to comply within the time allowed, upon motion, shall cause the court to enter a finding in favor of the party adversely affected.

Griffin filed a motion pursuant to this provision on September 27, 2011. In that motion, Griffin represented that a certified record was due on September 19, 2011. However, as of the date Griffin filed his motion, the docket maintained by the Franklin County Clerk of Courts ("clerk") did not contain any entries showing that the BWC had submitted either the certified record or a motion to extend the time to file the certified record. Because the BWC had missed the filing deadline, Griffin requested that the trial court enter judgment in his favor. The BWC did not respond to Griffin's motion.

{¶ 4} On October 26, 2011, the trial court granted Griffin's motion and ordered the BWC to reinstate Griffin as a certified provider in the Health Partnership Program. That same day, the BWC filed a Civ.R. 60(B) motion for relief from judgment. In its motion, the BWC represented that it had certified the record and filed it with the clerk on September 20, 2011. Apparently, an error in the clerk's office resulted in no record of that filing appearing on the case docket. The BWC requested that the trial court vacate its October 26, 2011 judgment on the basis of mistake and excusable neglect. Secondly, the BWC asked the trial court to retroactively extend the deadline for filing the certified record by one day to compensate for the BWC's failure to submit the certified record on the September 19, 2011 due date. In a judgment entered December 1, 2011, the trial court granted the BWC's motion in its entirety, reinstated the appeal, and ordered the parties to proceed on the merits.

{¶ 5} Griffin appeals from the December 1, 2011 judgment, and he assigns the following error:

The court of common pleas erred in granting the BWC's Motion for Relief from Judgment because Civ.R. 60(B) does not apply to administrative appeals.

{¶ 6} The Ohio Rules of Civil Procedure, "to the extent that they would by their nature be clearly inapplicable, shall not apply to procedure (1) upon appeal to review any judgment, order or ruling * * * [and] (7) in * * * special statutory proceedings." Civ.R. 1(C). There is no provision in R.C. Chapter 119 permitting a trial court to grant relief from a final judgment it entered on an R.C. 119.12 appeal. Rather, R.C. 119.12 states that "[t]he judgment of the [trial] court shall be final and conclusive unless reversed, vacated, or modified on appeal." This provision renders Civ.R. 60(B) "clearly inapplicable" to R.C. 119.12 appeals. *Hous. Advocates, Inc. v. Am. Fire & Cas. Co.*, 8th Dist. No. 86444, 2006-Ohio-4495, ¶ 30; *McConnell v. Admr., Ohio Bur. of Emp. Servs.*, 10th Dist. No. 96APE03-360 (Sept. 3, 1996); *Buchler v. Ohio Dept. of Commerce, Div. of Real Estate*, 110 Ohio App.3d 20-21 (8th Dist.1996); *In re Helen's, Inc.*, 10th Dist. No. 90AP-1027 (May 14, 1991); *In re Application for D-1 Liquor Permit Filed with the Ohio Dept. of Liquor Control by Stover*, 10th Dist. No. 84AP-1085 (July 2, 1985). Errors must be corrected by further appeal, not through the grant of Civ.R. 60(B) relief. *Hous. Advocates, Inc.* at ¶ 30; *Garfield Hts. City School Dist. v. State Bd. of Edn.*, 85 Ohio App.3d 117, 121 (10th Dist.1992); *Tozzi v. Bur. of Motor Vehicles*, 8th Dist. No. 37495 (June 8, 1978).

{¶ 7} The BWC cites three cases for the proposition that a motion for Civ.R. 60(B) relief is a "proper" method for challenging a final judgment in an R.C. 119.12 appeal. However, in the cases the BWC cites, the parties did not argue, and the courts did not consider, the issue before this court. These cases, therefore, neither control nor influence the outcome of this appeal. Instead, we follow the prior precedent of this court, in which we have explicitly held that Civ.R. 60(B) does not apply to administrative appeals. *McConnell*; *Garfield Hts. City School Dist.* at 121; *In re Helen's Inc.*; *In re Application for D-1 Liquor Permit*. Accordingly, we conclude that the trial court erred in granting the BWC's motion for Civ.R. 60(B) relief.

{¶ 8} For the foregoing reasons, we sustain the sole assignment of error, and we reverse the judgment of the Franklin County Court of Common Pleas. We remand this matter to that court so it may reenter judgment in Griffin's favor.

Judgment reversed; cause remanded with instructions.

FRENCH and CONNOR, JJ., concur.
