

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2594

September Term, 2016

WESTERN MARYLAND HEALTH
SYSTEMS, et al.

v.

CRYSTAL D. KESSEL

Meredith,
Arthur,
Leahy,

JJ.

Opinion by Meredith, J.

Filed: March 14, 2018

This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises out of a claim before the Maryland Workers' Compensation Commission (the "Commission"). On July 24, 2015, Crystal D. Kessel, appellee, filed a claim for workers' compensation benefits against her employer, Western Maryland Health Systems ("Western Maryland"), appellant. Ms. Kessel alleged that, in December 2010, she suffered a work-related injury to her neck and back after sustaining a fall in Western Maryland's parking lot. Western Maryland contested the claim's validity and raised statute of limitations as a defense. In response, Ms. Kessel asserted that Western Maryland should be estopped from raising the statute of limitations as a defense to her claim.

The Commission held a hearing to address the statute of limitations issue on November 9, 2015. On December 7, 2015, the Commission issued an order which stated: "ORDERED: that the claimant's case is not barred by the Statute of Limitations and ORDERED that the Commission will reserve on all other issues. Average weekly wage \$1,060.72."

Before any further proceedings were conducted by the Commission, Western Maryland filed a petition for judicial review in the Circuit Court for Allegany County. In the circuit court, Western Maryland argued that the commission had erred in failing to rule that Ms. Kessel's claim was barred by limitations because, the employer contended, "there is no factual dispute Claimant failed to file a claim for benefits before the Maryland Workers' Compensation Commission within two (2) years of the date of accidental injury as required under § 9-709(3)." On December 2, 2016, the parties

appeared for a bench trial *de novo* in the circuit court. At the outset of the trial in the circuit court, the parties explained that they had agreed how they would proceed:

THE COURT: [. . .] This is a uh, petition for judicial review of a decision of the Workers' Compensation Commission, and I gather . . . the . . . issues have been bifurcated so that we're just considering limitations this morning?

[COUNSEL FOR WESTERN MARYLAND]: Yes, Your Honor. That's correct.

THE COURT: Alright. Proceed.

[COUNSEL FOR WESTERN MARYLAND]: Well the parties have spoken uh, before trial. We've agreed, Your Honor, to submit the transcript to you in lieu of any further live testimony. Parties agreed that nothing new would be submitted in terms of testimony different from what was presented to the [C]ommission.

* * *

[COUNSEL FOR WESTERN MARYLAND]: Well, we haven't reached accidental injury, Your Honor. The only issue that's before the Court right now . . .

THE COURT: Oh, I understand that.

[COUNSEL FOR WESTERN MARYLAND]: [. . .] is, is limitations. The . . . the [C]ommission's made no decision on any other issue.

THE COURT: Then it would, it'd get remanded, and . . .

[COUNSEL FOR WESTERN MARYLAND]: Yes sir.

THE COURT: Okay.

* * *

[COUNSEL FOR WESTERN MARYLAND]: But [what] we intend to do today, Your Honor, is to consider this trial *de novo*, and in lieu of putting

on any live testimony, direct your attention to the transcript, which you have before you.

We're also providing you with pertinent exhibits, which have been handed up to you, and it's the agreement between the parties that we'll argue that applicable law and facts to you, and you could consider that closing argument from both of us.

THE COURT: Okay.

Counsel for each party then made "closing arguments" addressing the merits of the Commission's ruling on statute of limitations. Neither party addressed the authority of the circuit court to consider an interlocutory ruling made by the Commission. The court held the matter open for the parties to file post-trial memoranda, and thereafter, by order dated January 27, 2017, the circuit court rejected the employer's arguments and ordered "that the December 7, 2015 Order of the Maryland Workers' Compensation Commission in the matter of *Crystal Kessel v. Western Maryland Health System*, claim number W068164, be and is hereby AFFIRMED," and further ordered "that this matter be REMANDED to the Maryland Workers' Compensation Commission for further proceedings"

Western Maryland then noted the present appeal, and briefed the following two questions:

1. Is the claim for workers' compensation benefits barred by the statute of limitations?
2. Is the defense of statute of limitations barred by the doctrine of estoppel?

But we shall not reach the merits of the questions raised by Western Maryland because we conclude that the petition for judicial review was filed prematurely, and the petition should have been dismissed by the circuit court. Although neither party raised the timeliness of the petition, this is an issue that the court will address ““sua sponte even though not raised by any party.”” *Montgomery County v. Ward*, 331 Md. 521, 526 n.6 (1993), quoting *Bd. of Ed. for Dorchester Co. v. Hubbard*, 305 Md. 774, 787 (1986). *Accord Renaissance Centro Columbia, LLC v. Broida*, 421 Md. 474, 487 (2011); *Priester v. Baltimore County*, 232 Md. App. 178, 190 (2017).

As the Court of Appeals observed in the *Ward* case,

it is well-established that the “decision” of the Commission which is subject to judicial review under the statutory language [*i.e.*, Labor and Employment Article § 9-737] is the final decision or order in a case. *Murray International v. Graham*, 315 Md. 543, 553, 555 A.2d 502, 507 (1989) (defining a final order or final action of the Commission for purposes of judicial review); *Paolino v. McCormick & Co.*, 314 Md. 575, 582, 552 A.2d 868, 871 (1989); *Big Vein Coal Co. v. Leasure*, 192 Md. 435, 437, 64 A.2d 563, 564 (1949); *Tobacco Company v. Goslin*, 163 Md. 74, 78, 160 A. 804, 806 (1932) (“by ‘decision’ is obviously meant the order by which [the Commission] disposes of the case”). *See Holiday Spas v. Montgomery County*, 315 Md. 390, 395, 554 A.2d 1197, 1199 (1989) (“As a general rule, an action for judicial review of an administrative order will lie only if the administrative order is final”); *Md. Comm’n on Human Rel. v. B.G. & E. Co.*, 296 Md. 46, 51, 459 A.2d 205, 209 (1983) (“Generally, a party can resort to a court only when there is a final order in the administrative proceeding”). *See also Gold Dust Corp. v. Zabawa*, 159 Md. 664, 666-667, 152 A. 500, 501 (1930).

331 Md. at 526-27.

The Court of Appeals emphasized in *Willis v. Montgomery County*, 415 Md. 523 (2010), that there is no right to seek judicial review of a ruling of the Commission unless

the ruling is one that grants or denies a benefit: “A decision of the Commission that does not grant or deny a benefit necessarily is an interlocutory or interim order not subject to immediate judicial review.” *Id.* at 547. Clearly, the interlocutory ruling of the Commission that is the subject of this appeal did not grant or deny a benefit. Counsel for Western Maryland acknowledged in the circuit court that the only decision that had been made by the Commission was a denial of the employer’s argument that Ms. Kessel’s claim was barred by the statute of limitations. The Commission expressly “reserve[d] on all other issues.” And, at the trial in the circuit court, counsel for the employer told the court: “The sole issue before you today is whether this case is barred by the statute of limitations.” Under these circumstances, the circuit court was obligated to dismiss the petition for judicial review without reaching the merits of the issue Western Maryland sought to raise.

Prior to any oral argument in this case, we issued an order for the appellant to show cause why the interlocutory order of the Commission was immediately subject to judicial review. Western Maryland responded that “the order is dispositive as to the threshold issue of statute of limitations. Had the Commission ruled in favor of Appellants there would have been no further issues for the agency to decide.” But the fact that a ruling theoretically could have been dispositive if it had been decided in a manner other than the way it was actually decided in a case does not make that ruling immediately appealable. Here, the Commission’s ruling on statute of limitations was an interlocutory ruling that was not subject to immediate judicial review. Accordingly, the panel

concluded that oral argument would not be of assistance to this Court, and directed that the appeal be considered on briefs without oral argument. *See* Maryland Rule 8-523(b)(1).

We are guided by the action that was taken by the Court of Appeals under similar circumstances in *Ward, supra*, 331 Md. at 529, where the *Ward* Court stated: “As the Commission’s order was not final, the judgments of the courts below must be vacated and the case remanded to the circuit court with instructions to dismiss the action.” *Accord Renaissance Centro, supra*, 421 Md. at 491-92; *Priester, supra*, 232 Md. App. 218.

**JUDGMENT OF THE CIRCUIT
COURT FOR ALLEGANY COUNTY
VACATED, AND CASE
REMANDED TO THAT COURT
WITH DIRECTIONS TO DISMISS
THE ACTION. COSTS TO BE PAID
BY APPELLANT.**