

[Cite as *Goodwin v. Better Break Parts, Inc.*, 2004-Ohio-5095.]

IN THE COURT OF APPEALS  
THIRD APPELLATE DISTRICT  
ALLEN COUNTY

DAVID B. GOODWIN

PLAINTIFF-APPELLEE

CASE NO. 1-04-37

v.

BETTER BRAKE PARTS, INC.

OPINION

DEFENDANT-APPELLANT

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CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas  
Court

JUDGMENT: Judgment Reversed and Cause Remanded

DATE OF JUDGMENT ENTRY: September 27, 2004

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ATTORNEYS:

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**CUPP, J.**

{¶1} Although this appeal was originally assigned to our accelerated calendar, we have elected to issue a full written opinion in accordance with Loc.R. 12 (5).

{¶2} Defendant-appellant, Better Brake Parts, Inc., (hereinafter, “appellant”), appeals from an order of the Common Pleas Court of Allen County denying appellant’s motion for judgment as a matter of law for failure of plaintiff-appellee, David Goodwin (“Goodwin”), to prosecute his workers’ compensation claim in a timely fashion. The trial court, however, determined that it lacked jurisdiction to decide the matter and denied appellant’s motion.

{¶3} This case arises from an alleged back injury sustained by Goodwin on April 3, 2001, while working for appellant. Goodwin, thereafter, filed an application to participate in Ohio’s Workers’ Compensation Fund (“Fund”). In

November 2001, the Industrial Commission of Ohio (“Commission”) granted Goodwin participation in the Fund. Appellant, pursuant to R.C. 4123.512, filed a notice of appeal of the Commission’s order to the Court of Common Pleas of Allen County. In response, Goodwin then filed a complaint to the trial court setting forth his cause of action to participate in the Fund. See R.C. 4123.519. Appellant filed an answer to Goodwin’s complaint and discovery commenced on the matter.

{¶4} Before the matter proceeded to trial, however, Goodwin, on October 18, 2002, filed a notice of voluntary dismissal of his complaint. See Civ.R. 41(A)(1)(a).<sup>1</sup> Goodwin’s complaint was, therefore, dismissed without prejudice. Pursuant to Ohio’s Savings Statute, R.C. 2305.19, Goodwin maintained the right to refile his complaint within one year of the date on which he dismissed his original complaint. Goodwin, however, never refiled a complaint within the one-year period of the savings statute. Based upon Goodwin’s failure to prosecute his complaint in a timely fashion, appellant filed a motion with the trial court on March 31, 2004, seeking judgment as a matter of law. On April 2, 2004, the trial court determined that it lacked jurisdiction to decide the matter and denied appellant’s motion.

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<sup>1</sup> Civ.R. 41(A)(1)(a) provides that a plaintiff may dismiss a claim without order of court “by filing a notice of dismissal at any time before the commencement of trial \* \* \*.”

{¶5} It is from this judgment which appellant now appeals and sets forth one assignment of error for our review.

#### ASSIGNMENT OF ERROR NO. I

**The trial court erred as a matter of law in concluding that it did not have jurisdiction to grant appellant Better Brake Parts judgment as a matter of law when appellee failed to refile his action within one year in accordance with the governing savings statute following a voluntary dismissal without prejudice pursuant to Rule 41(A) of the Ohio Rules of Civil Procedure.**

{¶6} In its assignment of error, appellant maintains that the trial court erred in concluding that it did not have jurisdiction to decide appellant's motion for judgment as a matter of law. Appellant specifically maintains that because Goodwin failed to refile his complaint within the one year time period provided by Ohio's savings statute, R.C. 2305.19, the trial court erred by failing to grant its motion for judgment as a matter of law. For the following reasons, we find appellant's appeal well taken and reverse the judgment of the trial court.

{¶7} At the outset, we note that in reaching our decision, we have taken into account the Ohio Supreme Court's decision in *Kaiser v. Ameritemps, Inc.* (1999), 84 Ohio St.3d 411, and our decision in *Young v. Bridgestone APM Co.*, 3d Dist. No. 5-99-12, 1999-Ohio-946. Both *Kaiser* and *Young*, supra, however, are distinguishable from the case sub judice. In both *Kaiser* and *Young*, the employers therein asked the court to vacate the claimant's Civ. R. 41(A)(1)(a) notice of dismissal and to grant default judgment against the claimant *prior to* expiration of

the one year refiling period provided by R.C. 2305.19.<sup>2</sup> In the case sub judice, the motion of Better Brake Parts asking for judgment in its favor was not made to the trial court until *after* the expiration of the one year period within which Goodwin could refile his complaint.

{¶8} Neither *Kaiser* nor *Young* resolve the issue pertinent to this appeal, i.e., “[s]hould a claimant neglect to refile within one year, how does the employer proceed with the appeal?”<sup>3</sup> See *Kaiser*, supra at 416-17, (Lundberg-Stratton, J., dissenting). In order to resolve this issue, we must determine whether the trial court retains jurisdiction over the employer’s appeal so that it may enter judgment in favor of an employer *after* a claimant fails to refile his complaint within the one year period provided by R.C. 2305.19.

{¶9} This issue has been addressed by the Eighth District Court of Appeals in *Rice v. Stouffer Foods Corp.* (November 6, 1997), 8th Dist. No. 72515. The facts and issues pertaining to the instant appeal are nearly identical to those in

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<sup>2</sup> In *Young v. Bridgestone APM Co.*, 3d Dist. No. 5-99-12, 1999-Ohio-946, while the adjudication of the parties’ action extended beyond the one year period provided by R.C. 2305.19, we note that the employer therein, in response to the claimant’s Civ. R. 41(A)(1)(a) notice of dismissal, *prior* to the running of the one-year savings statute, asked the trial court to strike and vacate the claimant’s notice of dismissal, to dismiss the claimant’s complaint with prejudice, and for default judgment against the claimant.

<sup>3</sup> While our decision in *Young* contains an analysis of this issue, the holding in *Young* should not be extended to the case sub judice. To the extent that the holding herein differs from our decision in *Young*, we note that our holding in *Young* does not definitively answer the issue pertinent to this appeal. The facts and procedural history of *Young* are such that our holding therein should be limited to indicate only that after a workers’ compensation claimant voluntarily dismisses his or her complaint, the trial court, in accordance with the savings statute, R.C. 2305.19, does not have the jurisdiction to enter a final judgment in favor of the employer against the claimant *prior* to the expiration of the savings statute. That is not the situation in the case now before us. Here, the appellant did not move the trial court for judgment until approximately six months after expiration of the time in which Goodwin had to refile his complaint.

*Rice*. We, therefore, find *Rice* to be applicable and persuasive to the case sub  
judice.

{¶10} In *Rice*, the Eighth District Court of Appeals held that:

**Unlike a typical civil action, the filing of a complaint in a workers' compensation matter does not "commence" the action and confer jurisdiction. \* \* \* In a workers' compensation appeal:**

**Under Section 4123.519, Revised Code, the filing of a petition is not jurisdictional. The filing of a notice of appeal with the Industrial Commission of Ohio and the Court of Common Pleas is the only act required to perfect the appeal and vest jurisdiction in the court. [Citations omitted].<sup>4</sup>**

**\* \* \* [a] voluntary dismissal of [a] complaint does not oust the common pleas court of jurisdiction. 'The claimant's dismissal of her complaint does just that and nothing more. The complaint is dismissed, but it does not dismiss the employer's appeal or divest the common pleas court of jurisdiction.'** [Citations omitted].

**\* \* \***

**If an employee does not refile his complaint within the year's time, he can no longer prove his entitlement to participate in the workers' compensation system, as is his burden on appeal. [Citation omitted]. In that instance, the employee's failure to refile his complaint warrants judgment for the employer in the same fashion that a defendant's failure to answer a complaint warrants default judgment for the plaintiff. [Citation omitted].**

**\* \* \***

**Consequently, we hold that an employee's failure to refile his complaint within the savings statute operates as a forfeiture of his right to participate in the workers' compensation system.**

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<sup>4</sup> Within this excerpt from *Rice*, the court also cites *Thompson v. Reibel* (1964), 176 Ohio St. 258, 260 for the proposition that "[i]t is the filing of the notice of appeal which vests jurisdiction in the court and not the filing of the [complaint] by the claimant."

Having determined that the trial court retains jurisdiction over an employer's appeal, the court in *Rice* then went on to enter judgment in favor of the employer therein. We find the persuasive rationale of *Rice* to be the correct statement of the law and dispositive to the case now before us.

{¶11} Accordingly, Goodwin's failure to refile his complaint within the one year time period provided by R.C. 2305.19 operates as a forfeiture of his right to participate in the Fund and warrants judgment as a matter of law for appellant. *Id*; see also *Spencer v. Powertrain Div.* (October 9, 1998), 6th Dist. No. L-98-1164; *Smith v. Continental Airlines, Inc.*, 8th Dist. No. 81010, 2002-Ohio-4181, at ¶ 21. We, therefore, sustain appellant's assignment of error.

{¶12} Having found error prejudicial to appellant herein, in the particulars assigned and argued, we reverse the judgment of the trial court and remand the matter for further proceedings consistent with this opinion.

***Judgment Reversed and Cause Remanded.***

**SHAW, P.J. and BRYANT, J., concur.**

/jlr