

[Cite as *State ex rel. Ado Staffing, Inc. v. Indus. Comm.*, 2011-Ohio-1485.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Ado Staffing, Inc., :
Relator, :
v. : No. 10AP-225
Industrial Commission of Ohio : (REGULAR CALENDAR)
and Pamela Lavelle, :
Respondents. :
:

D E C I S I O N

Rendered on March 29, 2011

Schottenstein, Zox & Dunn, Robert M. Robenalt and Jennifer M. McDaniel, for relator.

Michael DeWine, Attorney General, and *Andrew J. Alatis*, for respondent Industrial Commission of Ohio.

Robert Bridges, for respondent Pamela Lavelle.

IN MANDAMUS
ON OBJECTIONS TO MAGISTRATE'S DECISION

TYACK, J.

{¶1} Ado Staffing, Inc. ("Ado"), has filed this action in mandamus, seeking a writ to compel the Industrial Commission of Ohio ("commission") to overturn its order authorizing payment for surgery for Pamela Lavelle.

{¶2} In accord with Loc.R. 12, the case was referred to a magistrate to conduct appropriate proceedings. The parties stipulated the pertinent evidence and filed briefs. The magistrate then issued a magistrate's decision containing detailed findings of fact and conclusions of law, which is appended to this decision. The magistrate's decision includes a recommendation that we deny the request for a writ.

{¶3} Ado has filed objections to the magistrate's decision. The case is now before the court for review.

{¶4} Pamela Lavelle was injured on April 24, 2008. Her workers' compensation claim was originally allowed for "sprain of right pelvis, inguinal; tenosynovitis right hip." After her pain continued, she was referred to Thomas J. Ellis, M.D., for further treatment. Dr. Ellis reported that Lavelle also suffered from a traumatic labral and chondral tear in the area of her right hip. Ado has fought the recognition of these additional conditions all the way to the Court of Common Pleas for Logan County.

{¶5} After initially denying payment for hip replacement surgery for Lavelle, eventually hearing officers with the commission authorized the payment for the surgery after it had been performed. Because the final decision as to whether or not the condition which necessitated the hip replacement surgery should be recognized for purposes of workers' compensation has not been made, our magistrate found the issue regarding payment for the surgery not to be ripe for review.

{¶6} Ado makes a significant issue of the fact that Lavelle went ahead and had the hip replacement surgery before the commission had authorized it. Her decision is

completely understandable. There is no rational reason for a person to undergo months or even years of pain while the bureaucracy of the workers' compensation system addresses the issue of who pays for the surgery. Apparently, Lavelle had medical coverage through her husband, so the debate has been who pays for the surgery—a private insurance carrier or a self-insured employer in the workers' compensation system. An argument that the payment issue should be decided based upon the timing of the surgery is not persuasive.

{¶7} Counsel for Ado argues that the magistrate's findings of fact do not "adequately reflect the history of the claim presented for review." We find the magistrate's findings of fact to adequately apprise the court of the issues to be considered. This first objection is overruled.

{¶8} Counsel for Ado asserts that the magistrate should have applied the doctrine of res judicata. However, the commission clearly has the ability to exercise continuing jurisdiction, especially when earlier denials of payment for surgery are based upon an apparent shallow understanding of the medical terminology used by Lavelle's surgeon, Dr. Ellis. An error of fact was recognized by the commission and revisited.

{¶9} Ado's third objection asserting res judicata is overruled.

{¶10} For similar reasons and those expressed in the magistrate's decision, we find that the commission was within its discretion to invoke continuing jurisdiction and change its orders with respect to payment. After Dr. Ellis more clearly explained himself,

the deputy hearing officer could see why the previous orders on behalf of the commission were in error. The second objection is overruled.

{¶11} Finally, the authorization for payment is based upon the recognition of medical conditions Ado contests. To that extent, the issue is not ripe for review. If a jury in Logan County finds for Ado and that verdict is upheld on appeal, then Ado should not have to pay for the surgery. In the meantime, the order of the commission for Ado to pay for the surgery stands.

{¶12} The fourth objection is overruled.

{¶13} All the objections having been overruled, we adopt the findings of fact and conclusions of law contained in the magistrate's decision. We therefore deny the request for a writ of mandamus.

Objections overruled; writ denied.

CONNOR, J., concurs.
BRYANT, P.J., concurs separately.

Bryant, P.J., concurring separately,

{¶14} Being unable to agree fully with the majority opinion, I write separately.

{¶15} The magistrate appropriately determined the issues in the case are not ripe for review pursuant to *State ex rel. Elyria Foundry Co. v. Indus. Comm.* (1998), 82 Ohio St.3d 88. The remainder of the magistrate's decision is advisory, as the issues may not arise if the staff hearing officer's decision to allow the additional condition is reversed on appeal pursuant to R.C. 4123.512.

{¶16} Accordingly, I would apply *Elyria Foundry* and would deny the writ for the reason that relator's complaint lacks the necessary ripeness to allow this court to determine the remaining issues.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Ado Staffing, Inc.,	:	
	:	
Relator,	:	
	:	
v.	:	No. 10AP-225
	:	
Industrial Commission of Ohio	:	(REGULAR CALENDAR)
and Pamela Lavelle,	:	
	:	
Respondents.	:	
	:	

MAGISTRATE'S DECISION

Rendered on January 24, 2011

Schottenstein, Zox & Dunn, Robert M. Robenalt and Jennifer M. McDaniel, for relator.

Michael DeWine, Attorney General, and Andrew J. Alatis, for respondent Industrial Commission of Ohio.

Robert Bridges, for respondent Pamela Lavelle.

IN MANDAMUS

{¶17} Relator, Ado Staffing, Inc., has filed this original action requesting that this court issue a writ of mandamus ordering respondent Industrial Commission of Ohio

("commission") to vacate its order retroactively authorizing surgery for respondent Pamela Lavelle's ("claimant") allowed conditions and ordering the commission to deny that request in the same manner in which it was previously denied.

Findings of Fact:

{¶18} 1. Claimant sustained a work-related injury on April 24, 2008, and her claim was originally allowed for "sprain of right pelvis, inguinal; tenosynovitis right hip."

{¶19} 2. Claimant continued to have pain as well as difficulty rotating her hip.

{¶20} 3. Claimant's treating physician, Peter R. Hoy, D.O., referred her to Thomas J. Ellis, M.D., for further evaluation. In his October 31, 2008 report, Dr. Ellis noted that, despite conservative therapy, claimant continued to have constant pain in the lateral aspect of her hip as well as her groin. Following his physical examination, Dr. Ellis opined that claimant's pain was coming from her hip joint and theorized that claimant had a "traumatic labral and chondral tear of the hip." Dr. Ellis opined that claimant had two options: "right hip arthroscopy or right hip replacement." Dr. Ellis opined that the best course of treatment would be a hip replacement.

{¶21} 4. In December 2008, claimant filed a motion seeking to have her claim additionally allowed for traumatic labral/chondral tear of the hip. Claimant also sought authorization for surgery. Dr. Ellis listed the currently allowed conditions as necessitating surgery and not the newly requested conditions.

{¶22} 5. While the motion was pending, Dr. Ellis proceeded with surgery on January 7, 2009. Dr. Ellis listed the following diagnosis both pre- and post-operative: "Osteoarthritis, right hip."

{¶23} 6. Claimant's motion seeking to have her claim additionally allowed and for authorization of the surgery was heard before a district hearing officer ("DHO") on January 27, 2009. The DHO denied claimant's motion in its entirety finding that claimant failed to meet her burden of proving that the requested additional allowance was causally related to the industrial injury. Specifically, the DHO noted:

* * * Firstly, the District Hearing Officer finds that the objective medical studies (two MRI reports of the right hip, dated 05/23/2008 and 06/11/2008) do not reveal the presence of the requested additional allowance. Secondly, the Injured Worker had the requested surgery performed by Dr. Ellis on 01/04/2009 and Dr. Ellis's operative report reveals only "osteoarthritis, right hip" as the pre-operative and post-operative diagnosis.

{¶24} 7. Claimant appealed and submitted as further evidence the February 27, 2009 report from Dr. Ellis. Dr. Ellis explained:

Pamela Lavelle had a traumatic labral tear with acetabular articular injury sustained on the job. When one has damage to the articular cartilage, this is also called arthritis. This was confirmed with our intraoperative findings. This was not a pre-existing condition. The injury caused the above noted articular injury. The decision to perform a hip replacement and not a hip arthroscopy was based on her age and her need to rehab quickly. The results of hip arthroscopy in patients over 45 years of age are poor, so the best, most efficient treatment for her was a total hip replacement. She did not have a pre-existing condition in her hip. The need for

a hip replacement was entirely due to the articular injury she sustained at the time of the injury.¹

{¶25} 7. Claimant's appeal was heard before a staff hearing officer ("SHO") on March 3, 2009. The SHO vacated the DHO's order and allowed claimant's claim as follows:

Based on the mechanism of injury, the 10/31/2008 and 2/27/2009 reports of T. Ellis, M.D., and the C-9 (Physician's Request for Medical Services) dated 11/11/2008 from P. Hoy, D.O., this Staff Hearing Officer finds the requested additional allowance is causally related to the injury upon which this claim is predicated.

Therefore, the claim is ordered specifically, **ADDITIONALLY ALLOWED** for LABRAL/CHONDRAL TEAR, RIGHT HIP.

(Emphasis sic.)

{¶26} 8. However, the SHO denied the requested surgery as not related to the newly allowed conditions:

Based upon the 2/27/2009 report of Dr. Ellis, this Staff Hearing Officer finds the requested right hip replacement surgery is not causally related to the allowed conditions, but rather is related to the non-allowed "acetabular articular injury," also called "arthritis" per Dr. Ellis. Therefore, authorization is denied for the right hip replacement surgery.

{¶27} 9. Both relator and claimant appealed; however, the commission refused both appeals.

¹ In the first sentence, Dr. Ellis described claimant's injury as "traumatic labral tear with acetabular articular injury" and explained further that when "one has damage to the articular cartilage, this is also called arthritis." The word "acetabular" refers to the "acetabulum" defined in Taber's Cyclopedic Medical Dictionary (20th ed.2005) as: "The cavity or depression on the lateral surface of the innominate bone (hip bone) that provides the socket into which the head of the femur fits." Further according to Taber's, "articular" comes from the Latin word "articulatio," which is defined as "The Latin term for a joint (an articulation): the site of union or junction of two bones."

{¶28} 10. Relator appealed the decision to grant the additional condition of labral/chondral tear of the right hip to the Logan County Court of Common Pleas. At this time, that case is still pending.

{¶29} 11. Claimant took no further action challenging the commission's finding that the surgery was not related to the condition of labral/chondral tear, right hip. Instead, claimant filed two motions seeking to have her claim allowed for additional conditions. Specifically: "right hip joint arthritis either by way of direct causation or aggravation of pre-existing condition" and "pre-existing right hip osteoarthritis." Claimant again requested retroactive authorization of the surgery based both on the currently allowed conditions as well as the newly requested conditions. Claimant also requested the payment of temporary total disability ("TTD") compensation.

{¶30} 12. In support of her motion, claimant resubmitted the February 27, 2009 report of Dr. Ellis, as well as his June 29, 2009 report, wherein he stated as follows:

Ms. Pamela Lavelle (IW #08-829739) sustained an on-the-job injury to her right hip on April 24, 2008. Her pain was in her groin and the lateral aspect of her hip. When I saw her in October, 2008, she was still having significant hip pain. Her history and her exam were classic for intraarticular hip pain. Prior to her injury in April, 2008, she did not have hip pain. After the injury, she had hip pain and this pain was non-responsive to rest, physical therapy, and medications. Her radiographs revealed that she had a deep hip socket (protrusion) without significant joint space narrowing. MRI did not reveal any evidence of avascular necrosis or a tumor. In this setting, the most common diagnosis is a labral tear of the hip with an associated cartilage (chondral) injury. They can be either related to a specific traumatic event or it can occur insidiously. In Ms. Lavelle's case, it was a traumatic event that initiated her hip pain. Most commonly, in patients

with a labral tear there is an associated cartilage (chondral) injury. They also have severe pain that is non-responsive to rest, medications and therapy, as was the situation in her case.

It was absolutely clear to me that based on her history, exam, and clinical findings that she had an intraarticular hip lesion (labral and chondral injury) due to the injury she sustained on April 24, 2008. * * * She had a traumatic intraarticular injury that resulted in a labral tear and a chondral injury. A chondral injury is an early form of arthritis, since it is damaged articular cartilage. Based on my assessment, she had two options: hip arthroscopy or hip replacement. The best results for hip arthroscopy are in younger patients. The worst results are in women over 45 years of age. I felt that Ms. Lavelle would likely not obtain sustained relief from a hip arthroscopy to address the labral tear and chondral injury. In patients her age with the objective findings she had, the most predictable, reliable, and best operation is a hip replacement. That is why I recommended a hip replacement in her case.

* * * The on-the-job injury resulted in a labral and chondral injury that I felt should be treated as an arthritic condition, since the chondral injury is a predictable injury pattern found in an arthritic joint. * * *

(Emphases added.)

{¶31} 13. The motions were heard before a DHO on July 23, 2009. The DHO additionally allowed claimant's claim for "substantial aggravation of pre-existing right hip arthritis" based on the reports from Dr. Ellis. Further, based on those same reports, the DHO granted retroactive authorization/reimbursement for claimant's right total hip replacement surgery performed by Dr. Ellis.

{¶32} 14. Relator appealed and the matter was heard before an SHO on August 27, 2009. The SHO agreed with the DHO and concluded that claimant's claim

should be additionally allowed for "substantial aggravation of pre-existing right hip arthritis." Further, the SHO authorized the right total hip replacement surgery and ordered reimbursement. Specifically, the SHO stated:

* * * The Staff Hearing Officer further orders the authorization and payment for the right total hip replacement performed by Dr. Ellis on 01/07/2009. The Staff Hearing Officer finds the procedure to be medically appropriate and necessary for the treatment of the allowed condition in this claim. The Staff Hearing Officer further orders the payment of temporary total disability compensation benefits upon submission of appropriate medical evidence documenting the Injured Worker's disability to be due to the allowed conditions in this claim. This order is based upon the medical [reports] of Dr. Hoy dated 03/18/2009 and Dr. Ellis dated 02/27/2009 and 06/29/2009.

{¶33} 15. Relator appealed and the matter was heard before a deputy on December 16, 2009. The deputy exercised continuing jurisdiction pursuant to R.C. Sections 4121.03, 4123.511 and 4123.52. The deputy disallowed the claim for "substantial aggravation of pre-existing right hip arthritis." However, the deputy found that the total right hip replacement surgery was related to the labral/chondral tear and granted retroactive authorization for that surgery as follows:

The request for retro-authorization of the total right hip replacement arthroplasty performed by Thomas J. Ellis, M.D., on 01/07/2009 is GRANTED. This authorization is based on the reports of Dr. Ellis, dated 02/27/2009 and 06/29/2009, which explained the medical rationale and medical appropriateness of performing the total right hip replacement. Dr. Ellis opines that the need for hip replacement was entirely due to the labral/chondral tear which Ms. Lavelle sustained at the time of her injury. Dr. Ellis' recommendation was a total right hip replacement

instead of a right hip arthroscopy based on Ms. Lavelle's age and objective findings.

(Emphasis sic.)

{¶34} 16. Thereafter, relator filed the instant mandamus action in this court.

Conclusions of Law:

{¶35} In this mandamus action, relator argues that the commission abused its discretion by authorizing the right hip replacement surgery. Relator's argument focuses solely on the commission's determination that the right hip replacement surgery was causally related to the allowed condition of labral/chondral tear, right hip.

{¶36} The commission and claimant argue that the present action is not ripe for review. Both argue that, inasmuch as relator filed an appeal pursuant to R.C. 4123.512 challenging the commission's determination that claimant's claim should be allowed for labral/chondral tear, right hip and because the surgery was predicated upon that condition, the action does not yet present a judicable controversy appropriate for review by this court.

{¶37} The magistrate finds that this court should deny relator's request for a writ of mandamus as more fully explained.

{¶38} The magistrate finds the Supreme Court of Ohio's decision in *State ex rel. Elyria Foundry Co. v. Indus. Comm.* (1998), 82 Ohio St.3d 88, to be helpful. In that case, L.B. Woolbright filed an occupational disease claim which was allowed for silicosis. Woolbright was also awarded TTD compensation. That order was administratively affirmed, and the employer, Elyria Foundry, objected to the allowance

of the claim in its entirety because it believed that Woolbright had contracted his silicosis with an earlier employer. Pursuant to R.C. 4123.512, Elyria Foundry appealed the allowance of the claim to the Lorain County Court of Common Pleas.

{¶39} While the common pleas court action was pending, Elyria Foundry commenced a mandamus action in this court challenging the commission's award of TTD compensation based upon the allowance of the claim for silicosis. This court denied the writ finding that Elyria Foundry's common pleas appeal provided it with an adequate remedy at law.

{¶40} Elyria Foundry appealed and the Supreme Court likewise denied the writ; however, it did so for different reasons. Specifically, the court stated:

We find that the controversy presented by [Elyria Foundry]'s mandamus action lacks ripeness. Ripeness "is peculiarly a question of timing." Regional Rail Reorganization Act Cases (1974), 419 U.S. 102, 140, 95 S.Ct. 335, 357, 42 L.Ed.2d 320, 351. The ripeness doctrine is motivated in part by the desire "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies * * *." Abbott Laboratories v. Gardner (1967), 387 U.S. 136, 148, 87 S.Ct. 1507, 1515, 18 L.Ed.2d 681, 691. As one writer has observed:

"The basic principle of ripeness may be derived from the conclusion that 'judicial machinery should be conserved for problems which are real or present and imminent, not squandered on problems which are abstract or hypothetical or remote.' * * * [T]he prerequisite of ripeness is a limitation on jurisdiction that is nevertheless basically optimistic as regards the prospects of a day in court: the time for judicial relief is simply not yet arrived, even though the alleged action of the defendant foretells legal injury to the plaintiff."

Comment, Mootness and Ripeness: The Postman Always Rings Twice (1965), 65 Colum.L.Rev. 867, 876.

[Elyria Foundry] is asking us to address the abstract and the hypothetical. The allowance of claimant's entire workers' compensation claim is in dispute, as are the medical conditions allegedly related to it. Therefore, [Elyria Foundry] is effectively asking us to answer the question, if the claim is allowed, and if it is allowed only for silicosis, is claimant entitled to temporary total disability compensation? This is an inappropriate question for review.

Id. at 89. (Emphases sic.)

{¶41} As in *Elyria Foundry*, relator is asking this court to address an abstract and hypothetical question. The allowance of claimant's claim for labral/chondral tear, right hip is in dispute. The commission's retroactive authorization of the surgery based upon that disputed allowed condition is not ripe for review.

{¶42} As explained in the findings of fact, the commission additionally allowed claimant's claim for labral/chondral tear, right hip. Relator has challenged claimant's right to participate in the workers' compensation system for that specific condition, and the common pleas court action is currently pending and has yet to be resolved. If claimant loses, the issue herein is moot and relator would be entitled to reimbursement. On the other hand, should claimant prevail, relator can challenge the commission's decision to retroactively authorize the surgery based on that allowed condition.

{¶43} However, relator argues that the real issue is res judicata and not ripeness. Specifically, relator points to the SHO's order of March 3, 2009. In that order, claimant's claim was additionally allowed for labral/chondral tear, right hip; however, the

SHO refused to retroactively authorize the surgery. Specifically, the SHO relied on the February 27, 2009 report of Dr. Ellis and indicated that Dr. Ellis did not attribute the need for surgery to the allowed conditions, "*but rather * * * to the non-allowed 'acetabular articular injury,' also called 'arthritis.'*" (Emphasis added.) Because the SHO determined that the need for surgery is based on this nonallowed condition, "acetabular articular injury, also called arthritis," relator argues that the commission cannot now find that the surgery was actually related to the allowed condition of labral/chondral tear, right hip.

{¶44} In the December 16, 2009 order, the deputy specifically referenced R.C. 4123.52, the continuing jurisdiction statute, as a reason for consideration. Pursuant to R.C. 4123.52, "[t]he jurisdiction of the industrial commission and the authority of the administrator of workers' compensation over each case is continuing, and the commission may make such modification or change with respect to former findings or orders with respect thereto, as, in its opinion is justified." In *State ex rel. B & C Machine Co. v. Indus. Comm.* (1992), 65 Ohio St.3d 538, 541-42, the court examined the judicially-carved circumstances under which continuing jurisdiction may be exercised, and stated as follows:

R.C. 4123.52 contains a broad grant of authority. However, we are aware that the commission's continuing jurisdiction is not unlimited. See, e.g., *State ex rel. Gatlin v. Yellow Freight System, Inc.* (1985), 18 Ohio St.3d 246, 18 OBR 302, 480 N.E.2d 487 (commission has inherent power to reconsider its order for a reasonable period of time absent statutory or administrative restrictions); *State ex rel. Cuyahoga Hts. Bd. of Edn. v. Johnston* (1979), 58 Ohio St.2d 132, 12 O.O.3d

128, 388 N.E.2d 1383 (just cause for modification of a prior order includes new and changed conditions); *State ex rel. Weimer v. Indus. Comm.* (1980), 62 Ohio St.2d 159, 16 O.O.3d 174, 404 N.E.2d 149 (continuing jurisdiction exists when prior order is clearly a mistake of fact); *State ex rel. Kilgore v. Indus. Comm.* (1930), 123 Ohio St. 164, 9 Ohio Law Abs. 62, 174 N.E. 345 (commission has continuing jurisdiction in cases involving fraud); *State ex rel. Manns v. Indus. Comm.* (1988), 39 Ohio St.3d 188, 529 N.E.2d 1379 (an error by an inferior tribunal is a sufficient reason to invoke continuing jurisdiction); and *State ex rel. Saunders v. Metal Container Corp.* (1990), 52 Ohio St.3d 85, 86, 556 N.E.2d 168, 170 (mistake must be "sufficient to invoke the continuing jurisdiction provisions of R.C. 4123.52"). Today, we expand the list set forth above and hold that the Industrial Commission has the authority pursuant to R.C. 4123.52 to modify a prior order that is clearly a mistake of law. * * *

{¶45} The commission does have continuing jurisdiction under R.C. 4123.52 to sua sponte reconsider its prior orders. See *State ex rel. Manns v. Indus. Comm.* (1988), 39 Ohio St.3d 188, and *State ex rel. Gatlin v. Yellow Freight Sys., Inc.* (1985), 18 Ohio St.3d 246. Given the confusion/misreading of Dr. Ellis' report, the magistrate finds that the exercise of continuing jurisdiction in this instance does not constitute an abuse of discretion. As such, the same ripeness rationale continues to apply and, because the common pleas court appeal can resolve this issue, the magistrate finds that it is not ripe for review in mandamus.

{¶46} In spite of the fact that this issue is not ripe for review, the magistrate, nevertheless, believes that further discussion of the issue is useful.

{¶47} Claimant's claim is allowed for labral/chondral tear, right hip². In his reports, Dr. Ellis refers to this condition by its formal medical name. Specifically, Dr. Ellis noted that claimant had a "traumatic labral tear with acetabular articular injury." As noted in the findings of fact, the acetabulum is the depression on the hip bone which provides the socket into which the head of the femur fits. Cartilage holds the head of the femur in place on the acetabulum. The cartilage here is identified as the labrum. When claimant sustained her injury, the cartilage (labrum) attaching the head of the femur to the hip bone at the place of the acetabulum was torn. This is also called a labral/chondral tear. When Dr. Ellis indicates that when "one has damage to the articular cartilage, this is also called arthritis," he is not referring to a different condition. As he tried to make clear in his June 29, 2009 report, claimant "had a traumatic intraarticular injury that resulted in a labral tear and a chondral injury. A chondral injury is an early form of arthritis, since it is damaged articular cartilage."

{¶48} As such, the magistrate believes that when the SHO denied the surgery on March 3, 2009 because Dr. Ellis attributed the need for surgery to a nonallowed condition, the SHO misread Dr. Ellis' report. Although he used former medical terms, the acetabular articular injury is the same as the allowed condition of labral/chondral tear, right hip. The deputy corrected this error by exercising continuing jurisdiction and authorizing the surgery. The authorization of the surgery for the allowed condition of

² According to Stedman's Medical Dictionary, Third Unabridged Lawyers' Edition, "labrum" is defined as "1. A lip. 2. A lip-shaped structure." Further, regarding the "1. acetabula're," it means "acetabular lip; circumferential cartilage; a fibrocartilaginous rim attached to the margin of the acetabulum of the os coxae." Further, "chondral" is defined as "[r]elating to cartilage."

labral/chondral tear could be rendered moot by the common pleas court action. As such, the magistrate finds this issue is not ripe for review.

{¶49} Based on the foregoing, it is this magistrate's decision that relator's request for a writ of mandamus should be denied.

/s/Stephanie Bisca Brooks
STEPHANIE BISCA BROOKS
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).