

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

G & J Pepsi-Cola Bottlers, Inc.,	:	
Appellant-Appellant,	:	
v.	:	No. 11AP-444
Ohio State Department of Job and Family Services et al.,	:	(C.P.C. No. 10CVF-11-16857)
Appellees-Appellees.	:	(ACCELERATED CALENDAR)
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D E C I S I O N

Rendered on December 27, 2011

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*Porter, Wright, Morris & Arthur, and Christopher C. Russell,*  
for appellant.

*Michael DeWine, Attorney General, and Patria V. Hoskins,*  
appellee Ohio State Department of Job and Family Services.

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APPEAL from the Franklin County Court of Common Pleas.

BRYANT, P.J.

{¶1} Appellant-appellant, G & J Pepsi-Cola Bottlers, Inc., appeals from a judgment of the Franklin County Court of Common Pleas that affirmed a decision of the Unemployment Compensation Review Commission disallowing appellant's request for a review. Appellant assigns a single error:

The Trial Court Erred In Affirming a Determination That Appellee Carl Jones Was Entitled to Unemployment

Compensation Benefits After Appellee Jones Previously Negotiated a "Full and Final Settlement Agreement and Release of All Claims" With Pepsi, Which Included a Settlement of Any Unemployment Compensation Claim.

Because the common pleas court properly concluded the settlement agreement between appellant and appellee-appellee, Carl L. Jones, its former employee, does not preclude payment of unemployment compensation benefits to Jones, we affirm.

### I. Facts and Procedural History

{¶2} On January 24, 2008, Jones suffered an industrial injury during the course of his employment with appellant, and Jones initiated a workers' compensation claim. Although Jones' physician released Jones to return to light-duty work, appellant had no work available within the restrictions Jones' physician prescribed. Jones and appellant ultimately settled the workers' compensation claim and memorialized it with a settlement agreement dated January 15, 2010.

{¶3} Pursuant to the terms of the agreement, appellant agreed to pay Jones \$25,000, and Jones agreed "that any and all of his workers' compensation claims, and any and all other claims that he could assert against [appellant] in any forum, are settled, concluded and released." In a subsequent paragraph, the settlement agreement more fully described the release, stating Jones "does hereby **RELEASE, REMISE, AND FOREVER DISCHARGE** [appellant] \* \* \* from any and all claims, demands, rights, actions and causes of actions of whatever type or nature \* \* \* including those that have been asserted or that could have been asserted before any local, state or federal court, administrative agency or commission." (Emphasis sic.)

{¶4} Appellant subsequently filed an application for unemployment compensation benefits. The director of appellee-appellee, Ohio State Department of Job and Family Services, determined Jones was discharged without just cause and awarded benefits. Appellant appealed the director's determination, contending Jones waived all claims against appellant, including administrative claims, through the settlement agreement. The director's redetermination affirmed the award of benefits to Jones.

{¶5} On appellant's appeal, the matter was transferred to the Unemployment Compensation Review Commission where a hearing officer conducted a hearing by telephone on September 27, 2010. In the hearing, appellant again urged that, due to the settlement agreement, Jones could not receive unemployment compensation benefits, an argument the hearing officer rejected. The hearing officer noted the history on Jones' workers' compensation claim, his release to light-duty work, and appellant's inability to provide light-duty work for him. Although the hearing officer acknowledged appellant paid Jones \$25,000 to release appellant from "any future claims that the claimant may file against the employer," the hearing officer concluded that "one cannot contract away their rights to claim unemployment benefits."

{¶6} In the end, the hearing officer determined Jones became unemployed on the date of the settlement agreement, January 15, 2010; on that date appellant no longer had work available within Jones' physical limitations, and Jones ended his employment when he signed the settlement to release appellant from future liability. Concluding Jones became unemployed due to a lack of work, not because he was discharged without just cause, the hearing officer modified the director's redetermination to so reflect and

determined Jones was entitled to Unemployment Compensation benefits. Appellant appealed, but the request for review was denied.

{¶7} Appellant filed a notice of appeal in the common pleas court from the decision disallowing appellant's request for review. After the parties fully briefed the issue in the common pleas court, the court issued a decision and entry noting appellant did not contest the hearing officer's conclusion that Jones became unemployed due to lack of work. Rather, appellant asserted Jones waived any right to unemployment compensation benefits in signing the settlement agreement. The court pointed to R.C. 4141.32, distinguished the case in which appellant primarily relied, and determined the commission's decision was not unlawful, unreasonable or against the manifest weight of the evidence. Accordingly, the court affirmed the commission's decision disallowing request for review. Appellant appeals, reasserting its contention that the settlement agreement precludes Jones' receipt of unemployment compensation benefits.

## **II. Applicable Law**

{¶8} The statute governing an award of unemployment benefits provides that "[e]ach eligible individual shall receive benefits as compensation for loss of remuneration due to involuntary total or partial unemployment in the amounts and subject to the conditions stipulated in this chapter." R.C. 4141.29 (delineating eligibility for unemployment compensation benefits). In that context, an individual is entitled to unemployment compensation benefits if he or she becomes unemployed due to a lack of work. See, e.g., *Central Ohio Joint Vocational School Dist. Bd. of Edn. v. OBES* (1986), 21 Ohio St.3d 5.

{¶9} Upon appeal of decisions of the Unemployment Compensation Review Commission, "a court of law may reverse such decisions only if they are unlawful, unreasonable, or against the manifest weight of the evidence." *Irvine v. Unemployment Compensation Bd. of Rev.* (1985), 19 Ohio St.3d 15, 17-18; *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St.3d 694, paragraph one of the syllabus. The facts underlying appellant's appeal are not disputed. Rather, appellant's assigned error asserts the decision is unlawful in that it fails to recognize the preclusive effect of the settlement agreement on Jones' claim for unemployment compensation benefits.

### **III. Assignment of Error—Unemployment Compensation and Settlement Agreement**

{¶10} Appellant contends Jones waived his right to unemployment compensation benefits when he entered into the January 15, 2010 settlement agreement that released any and all claims, administrative or otherwise, against appellant. Central to appellant's argument is R.C. 4141.32 and the Summit County Common Pleas Court's decision in *Twinsburg Twp. Bd. of Trustees v. Hill* (1988), 46 Ohio Misc.2d 9.

{¶11} R.C. 4141.32 provides that, with exceptions not applicable here, "[n]o agreement by an employee to waive his rights to benefits is valid, nor shall benefits be assigned, released, or commuted." In *Twinsburg*, Dennis Hill was separated from his employment with the Twinsburg Township Police Department. In resolving some litigation relating to the separation, Hill and the Twinsburg Township Board of Trustees reached an agreement to settle their dispute and entered into a consent order, which the judge of the common pleas court approved. Pursuant to its terms, Hill agreed to terminate his employment and forego seeking unemployment compensation benefits. In return, he

received severance pay and other benefits to which the township believed he otherwise was not entitled.

{¶12} On receiving his final severance payment from the township, Hill applied for unemployment compensation benefits, which were granted. After exhausting its administrative remedies, the board of trustees appealed to the common pleas court. The court in *Twinsburg* framed the issue as "whether a party who is represented by counsel in a litigated proceeding and who agree[d] to settle the dispute by forgoing his right to unemployment compensation benefits in return for other benefits may repudiate his agreement, which was adopted by the court as its order, and receive unemployment compensation benefits." In resolving the issue, the court concluded R.C. 4141.32 did not apply because the case did not involve a "waiver," prohibited under R.C. 4141.32, but a judicially approved settlement. As *Twinsburg* explained, "[t]his case involves court proceedings over which a judge presided and during which Hill's interests were protected by counsel. R.C. 4141.32 does not invalidate the court's order."

{¶13} The common pleas court, in addressing appellant's appeal, properly concluded *Twinsburg* is not persuasive; as the common pleas court noted, it is factually distinguishable because it involved a "judicially sanctioned settlement, in which the claimant was represented by counsel in a litigated proceeding." (Common Pleas Court Decision & Entry, 4.) Instead, the common pleas court correctly applied *Lorain Cty. Auditor v. Ohio, Unemployment Rev. Comm.*, 9th Dist. No. 09CA009694, 2010-Ohio-1924.

{¶14} In that case, Carolyn Brown was discharged from employment on March 18, 2008. She filed an application for unemployment compensation benefits, but

the Ohio Department of Job and Family Services determined she was discharged for just cause. Brown appealed, and the director's redetermination affirmed the disallowance of benefits. After the matter was transferred to the Unemployment Compensation Review Commission, Brown signed a release stating that she "covenant[ed] not to sue, file, or pursue any administrative action, appeal, charge, or grievance." *Id.* at ¶5. Following a subsequent hearing, a hearing officer awarded benefits, and the commission issued a decision disallowing the request for review. On appeal to the common pleas court, the court affirmed.

{¶15} In the court of appeals, the auditor contended the commission erred in failing to enforce the settlement with Brown. Rejecting the argument, the Ninth District noted the case before it, unlike *Twinsburg*, did not include any evidence that the release was judicially approved or made part of a court order in an action in the common pleas court. The court further observed that *Twinsburg*, a case from the Summit County Common Pleas Court, was not appealed to the Ninth District. Appellant's appeal is factually parallel to *Lorain Cty. Auditor*: the language of the settlement agreement is comparable, and the factors that distinguish *Lorain Cty. Auditor* from *Twinsburg* are present here as well.

{¶16} Appellant nonetheless contends that, although R.C. 4141.32 precludes Jones from waiving his rights, he did waive them. Rather Jones settled with appellant, a distinction drawn in *Twinsburg*. R.C. 4141.32, however, specifies that benefits shall not be assigned, released or commuted. The settlement agreement between the parties specifically states that in exchange for the payment of \$25,000, Jones agrees that any and all of his workers' compensation claims, as well as any and all other claims he could

assert against appellant in any forum, "are settled, concluded and released." Accordingly, by the terms of the settlement agreement, Jones released his claims against appellant, something R.C. 4141.32 on its face prohibits.

{¶17} Because the common pleas court properly concluded that the settlement agreement between appellant and Jones does not preclude the award of unemployment compensation benefits, we overrule appellant's single assignment of error and affirm the judgment of the common pleas court.

*Judgment affirmed.*

BROWN and TYACK, JJ., concur.

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