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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-909-2

Filed: 21 November 2017

North Carolina Industrial Commission, I.C. No. U00178

IN THE MATTER OF WARE, Claim for Compensation Under the North Carolina Eugenics Asexualization and Sterilization Compensation Program, Claimant-Appellant.

Appeal by Claimant-Appellant Ware from decision and order entered 11 May 2015 by the North Carolina Industrial Commission. Heard originally in the Court of Appeals 11 January 2016, and opinion filed 5 April 2016. Petition for discretionary review was allowed by the North Carolina Supreme Court for the limited purpose of reversing the Court of Appeals' dismissal of Claimant's "constitutional claims." The case was remanded to the Court of Appeals for expedited consideration of Claimant's "constitutional claims" on the merits.

The Bollinger Law Firm, PC, by Bobby L. Bollinger, Jr., for Claimant-Appellant.

Attorney General Joshua H. Stein, by Assistant Attorney General Marc X. Sneed, for the North Carolina Department of Justice, Tort Claims Section.

McGEE, Chief Judge.

IN RE WARE
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Claimant Ware (“Claimant”) was involuntarily sterilized in 1962. This matter was first decided by this Court on 5 April 2016. *In re Ware*, __ N.C. App. __, 785 S.E.2d 186, 2016 WL 1335377 (2016) (unpublished) (“*Ware I*”).¹ In *Ware I*, Claimant presented three issues on appeal:

(A) that [her] involuntary sterilization[] “had to be performed under Public Law 1933, Chapter 224 in order to be performed lawfully[;]” (B) that the “Full Commission’s strict construction of N.C. Gen. Stat. § 143B–426.50(5) constitute[d] denial of compensation benefits to [Claimant] due to an overly strict and technical construction of the statute[;]” and, (C) that the “Industrial Commission violated [Claimant’s] constitutional rights to equal protection and fundamental fairness by denying compensation” based upon a lack of record evidence of Eugenics Board involvement.

Id. at *2. This Court held Claimant could not demonstrate that she was a qualified recipient of the Eugenics Asexualization and Sterilization Compensation Program, and affirmed the 11 May 2015 decision and order of the Full Commission.

Our Supreme Court granted Claimant’s petition for discretionary review, along with three additional petitions from different claimants, by order entered 28 September 2017, stating: “The petitions for discretionary review . . . are allowed for the limited purpose of reversing the Court of Appeals’ dismissal of claimants’ constitutional claims. These cases are remanded to the Court of Appeals for expedited consideration of the constitutional claims on the merits.”

¹ See *Ware I* for the factual and procedural background of this case.

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Claimant's arguments are the same as those this Court rejected in *In re Davis*, __ N.C. App. __, __ S.E.2d __ ("*Davis II*"), which is filed simultaneously with the present opinion. We adopt our reasoning in *Davis II*, reject Claimant's arguments, and affirm the 11 May 2015 decision and order of the Full Commission.

AFFIRMED.

Judges MURPHY and ARROWOOD concur.

Report per Rule 30(e).