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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-874

Filed: 15 March 2016

N.C. Industrial Commission, I.C. No. U00529

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

No. COA15-882

Filed: 15 March 2016

N.C. Industrial Commission, I.C. No. U00248

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

No. COA15-883

Filed: 15 March 2016

N.C. Industrial Commission, No. U00421

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

Appeal by Claimant-Appellant Maye from decision and order entered 15 May 2015 by the North Carolina Industrial Commission. Appeal by Claimant-Appellant Davis from decision and order entered 14 May 2015 by the North Carolina Industrial

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Commission. Appeal by Claimant-Appellant Staggars from decision and order entered 27 May 2015 by the North Carolina Industrial Commission. Heard in the Court of Appeals 11 January 2016.

Leslie O. Wickham, Jr. for Claimants-Appellants.

Attorney General Roy Cooper, by Assistant Attorney General Marc X. Sneed, for North Carolina Department of Justice, Tort Claims Section.

McGEE, Chief Judge.

Claimant Maye (“Maye”)¹ was involuntarily sterilized in 1968; Claimant Davis (“Davis”) was involuntarily sterilized in 1946; and Claimant Staggars (“Staggars”) was involuntarily sterilized in 1974, (Staggars, together with Maye and Davis, “Claimants”). Claimants were just three people out of thousands of North Carolinians who were involuntarily sterilized between 1933, when Chapter 224 of the Public Laws of 1933 (“Eugenics Act”) was passed and the Eugenics Board of North Carolina was created, and 1977, when the Eugenics Board² was abolished by statute. 1977 N.C. Sess. Laws ch. 497. Because Claimants raise identical issues and arguments on appeal, we consolidate their appeals for review.

¹ We will use only Claimants’ last names in this opinion in order to help preserve their anonymity.

² The name of the “Eugenics Board” was changed to the “Eugenics Commission” in 1973. 1973 N.C. Sess. Laws 476, § 133.3. For consistency, we shall always refer to this entity as the “Eugenics Board.”

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In 2013, the General Assembly enacted the Eugenics Asexualization and Sterilization Compensation Program (“the Compensation Program”), N.C. Gen. Stat. § 143B-426.50 *et seq.*, in order to provide compensation to “qualified recipients” asexualized or sterilized pursuant to the Eugenics Act. The Compensation Program defined a “qualified recipient” under the Compensation Program as “[a]n individual who was asexualized involuntarily or sterilized involuntarily under the authority of the Eugenics Board of North Carolina in accordance with Chapter 224 of the Public Laws of 1933 or Chapter 221 of the Public Laws of 1937.” N.C. Gen. Stat. § 143B-426.50(5) (2013).

Claimants followed the procedures set forth in the Compensation Program, filing claims with the North Carolina Industrial Commission (“Industrial Commission”). Their claims were initially reviewed by the Industrial Commission and were denied based, in part, upon a lack of evidence that Claimants’ sterilizations were conducted “under the authority of the Eugenics Board.” N.C. Gen. Stat. § 143B-426.50(5). Claimants followed the appellate review procedures set forth in N.C. Gen. Stat. § 143B-426.53 and, ultimately, final decisions and orders were entered by the Full Commission of the Industrial Commission, in which the Full Commission found that Claimants were involuntarily sterilized, but that there was insufficient evidence to show that their involuntary sterilizations had been performed pursuant to the authority of the Eugenics Board, or that they had been performed “in accordance with

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Chapter 224 of the Public Laws of 1933 or Chapter 221 of the Public Laws of 1937.”
N.C. Gen. Stat. § 143B-426.50(5). Claimants appeal.

I.

Claimants make three arguments on appeal: (1) that their involuntary sterilizations “had to be performed under Public Law 1933, Chapter 224 in order to be performed lawfully, (2) that “[t]he Commission’s strict construction of N.C. Gen. Stat. § 143B-426.50(5) constitute[d] denial of compensation benefits to [Claimants] due to an overly strict and technical construction of the statute[,]” and (3) the “Commission violated [Claimants’] constitutional rights to equal protection and fundamental fairness by denying compensation” based upon a lack of record evidence of Eugenics Board involvement. We address each argument in turn.

II.

As this Court previously stated in *In re House*, __ N.C. App. __, __, __ S.E.2d __, __, 2016 WL 611615, *6 (Feb. 2016), “many involuntary sterilizations [were] conducted outside the parameters of the Eugenics Act – and thus [were] conducted without legal authority[.]” *Id.* As in *House*, the evidence currently before this Court strongly suggests that the involuntary sterilizations performed in the present cases was conducted without any statutory authority. However, there is no evidence that Claimants’ involuntary sterilizations were carried out under the authority of the Eugenics Board, or pursuant to either “Chapter 224 of the Public Laws of 1933 or

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Chapter 221 of the Public Laws of 1937.” N.C. Gen. Stat. § 143B-426.50(5) (2013). Unfortunately, the fact that Claimants’ involuntary sterilizations appear to have been unlawfully performed does not bring them within the ambit of the Compensation Program. *See House*, __ N.C. App. at __, __ S.E.2d at __, 2016 WL 611615 at *7.

III.

Claimants next argue that “[t]he Commission’s strict construction of N.C. Gen. Stat. § 143B-426.50(5) constitute[d] denial of compensation benefits to [Claimants] due to an overly strict and technical construction of the statute.” This argument was previously decided against Claimants in this Court’s earlier decision in *House*. *House*, __ N.C. App. at __, __ S.E.2d at __, 2016 WL 611615 at *7 (“We cannot make any holding contrary to the clear meaning of N.C. Gen. Stat. § 143B426.50(5). We must consider the words of the statute as they appear. N.C. Gen. Stat. § 143B–426.50(5) sets forth two requirements that must be proven before a claimant may be considered a qualified recipient: (1) the claimant must have been involuntarily sterilized ‘under the authority of the Eugenics Board of North Carolina,’ and (2) the claimant must have been involuntarily sterilized in accordance with the procedures as set forth in ‘Chapter 224 of the Public Laws of 1933 or Chapter 221 of the Public Laws of 1937.’ N.C. Gen. Stat. § 143B–426.50(5). In the present case, unfortunately, [the c]laimant cannot show that either of these requirements has been met.”).

IV.

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Claimants further argue that “[t]o exclude from [the] restitution program similarly-situated victims of involuntary government sterilization whose records were not maintained in the State archives is to render the statute grossly under-inclusive in violation of” provisions of both the North Carolina Constitution and the United States Constitution. However, there is no record evidence in the present case that Claimants presented this argument to the Industrial Commission, or brought it up in any manner prior to making it in their appellate briefs. Nor did Claimants petition this Court for review of these matters. “Where a party appeals a constitutional issue from the Commission and fails to file a petition for *certiorari* or fails to have the question certified by the Commission, this Court is without jurisdiction.” *Myles v. Lucas & McCowan Masonry*, 183 N.C. App. 665, 665, 645 S.E.2d 143, 143 (2007). Therefore, Claimants’ constitutional arguments must be dismissed. Further, to the extent, if any, that Claimants’ arguments contain a facial challenge to any statute based upon an alleged violation of the North Carolina Constitution or of federal law, this Court has held that it does not have jurisdiction to decide those matters. *See In re Hughes*, __ N.C. App. __, __ S.E.2d __, 2016 WL 611548 (Feb. 2016).

AFFIRMED IN PART; DISMISSED IN PART.

Judges GEER and McCULLOUGH concur.

Report per Rule 30(e).