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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-937-2

Filed: 21 November 2017

N.C. Industrial Commission, I.C. No. U00540

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

Appeal by Claimant-Appellant Zimmerman from decision and order entered 21 May 2015 by the North Carolina Industrial Commission. Heard originally in the Court of Appeals 25 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.

*Leslie O. Wickham, 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.

Claimant Zimmerman ("Claimant") sought compensation for his alleged involuntary sterilization pursuant to the Eugenics Asexualization and Sterilization

Program (“the Compensation Program”), N.C. Gen. Stat. § 143B–426.50 *et seq.* This matter was first decided by this Court on 5 April 2016. *In re Zimmerman*, \_\_ N.C. App. \_\_, 785 S.E.2d 186, 2016 WL 1359095 (2016) (unpublished) (“*Zimmerman I*”).<sup>1</sup>

In *Zimmerman I*, Claimant presented three issues on appeal:

(A) that his 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 \*1. This Court held Claimant could not demonstrate that he was a qualified recipient of the Compensation Program, and affirmed the 21 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.”

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<sup>1</sup> See *Zimmerman I* for the factual and procedural background of this case.

IN RE ZIMMERMAN

*Opinion of the Court*

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 21 May 2015 decision and order of the Full Commission.

AFFIRMED.

Judges MURPHY and ARROWOOD concur.

Report per Rule 30(e).