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# Indiana's Wage Payment and Wage Claims Statutes

As I stated in last week's post, there was no question that the post needed to be dedicated to the Seventh Circuit's decision in *Butler v. Sears*. That decision was such a major one for class actions that I felt it of great importance to address. That said, there was another opinion released last week that merits discussion on the Hoosier Litigation Blog. In *Fox v. Nichter Constr. Co., Inc.*, the Indiana Court of Appeals in a split (2-1) decision provided a very valuable discussion on Indiana's Wage Payment Statute and Wage Claims Statute.

While, on the surface, these two statutes may seem extremely similar, perhaps even duplicative, they are very different creatures. Despite the fact that they appear in the same article of the Indiana Code, the statutes not only seek to accomplish different things but employ entirely different procedures in meeting out their desired goals. As the court explained in *E & L Rental Equipment, Inc. v. Bresland*:

> Claimants who proceed under the Wage Claims statute may not file a complaint with the trial court. Rather, the wage claim is submitted to the Indiana Department of Labor. The Wage Claims statute references employees who have been separated from work by their employer and employees whose work has been suspended as a result of an industrial

> dispute. By contrast, the Wage Payment statute applies to current employees and those who have voluntarily left employment, either permanently or temporarily. The Wage Payment statute does not require a claimant to submit his or her claim to the Indiana Department of Labor before filing suit.

Admittedly, to the untrained eye these differences may not seem all that major. However, when you find yourself in a situation in which you have assigned your claim to the Department of Labor through submission, things have majorly changed. This submission is accompanied by an assignment of your claim to the DOL. What this means, is that you no longer have control over the prosecution of your case. Now, that is not to say that you can never regain control over your case. Indeed, that is part of the issues discussed in *Fox*.

The facts of the *Fox* case are fairly uncomplicated. Mr. Fox left his job with Nichter Construction–there is some debate whether it was voluntary, but ultimately not important for the purposes of the court's decision. After leaving, Mr. Fox sought payment for vacation time that he believed was owed to him. He filed a claim with the Department of Labor. The DOL sent a letter to his former employer–Nichter–giving them a deadline to respond to Fox's complaint. Nichter contended that Fox was only a part-time employee and thus not eligible for vacation time. Fox, without an attorney, then filed a case in small claims court. Nichter failed to make an appearance in the case and the court entered default judgment.

Shortly thereafter, Nichter filed a motion to set aside the judgment by arguing that the court lacked "subject matter jurisdiction" to hear Fox's case. "Subject matter jurisdiction" is a legal term of art that basically means that the law allows the court to rule on a case. So when a court lacks "subject matter jurisdiction" that means that the law dictates that some other court or administrative body must hear the case instead. The basis for Nichter's argument was that because Fox had assigned his claim to the Department of Labor, he no longer had control over the claim to bring it into the small claims court. The trial court agreed with Nichter, granted its motion, and dismissed Fox's case. After a few more procedural moves, Fox appealed.

As we begin our discussion of the case, bear in mind that the court was split 2-1. That means that one judge "dissented." However, the other two judges–constituting a majority–did not agree with the dissenting judge. So, we will first discuss the majority opinion, as that is the binding opinion for now, and then later discuss the dissent.

The majority believed that the best guidance for deciding this case was from

a rather unlikely source. They believed that Justice Frank Sullivan's dissenting opinion from an order denying transfer of a case to the Indiana Supreme Court was the best source to answer the issues in Mr. Fox's case. Now let us unpack what I just said. When a person wants to appeal a case beyond the Indiana Court of Appeals it must file a "petition to transfer" with the Clerk of the Indiana Supreme Court in which that person must ask the Supreme Court to take a look at the case. Regardless of whether the court takes the case, it will issue an order stating its decision. So what we are talking about here is a situation where at least three of the Supreme Court justices did not want to hear the case but one or two of them did. Since one justice did want to hear the case, he wrote a dissent to the order explaining why he thought the court should have heard the case. To be more precise, there were actually two justices that wanted to hear the case. The other was Justice Rucker who concurred with Justice Sullivan's opinion. It is that opinion that guided the Court of Appeals in *Fox*.

Before we can dive into what Justice Sullivan thought, we must first take a brief look at the case that he thought the Supreme Court should have reviewed. The case was *Quimby v. Becovic Management Group, Inc.* In *Quimby*, a woman voluntarily left her job and filed a wage claim with the Department of Labor. The DOL found that she was owed $590.39 from her former employer. Her employer sent her a check for that amount and she deposited it. She then filed a case in court seeking recovery of unpaid wages and vacation time under the Wage Payment Statute. The trial court dismissed her claim for lack of subject matter jurisdiction. On appeal, the court agreed that because she had assigned her claim to the DOL, "she was no longer a real party in interest." The court also found, that because she had voluntarily quit her job, her claim should have been brought under the Wage Payment Statute in the first place. Had she done that, she never would have had to file a claim with the DOL. However, because she had filed a claim with the DOL and assigned her cause of action to it, she no longer was the real party in interest and thus could no longer bring her case.

After the dismissal of Miss Quimby's case was upheld by the Court of Appeals, she sought transfer to the Indiana Supreme Court. It is here that we find the important dissent by Justice Sullivan. Justice Sullivan noted that Miss Quimby's primary argument was that she could not have assigned her claim to the DOL because the DOL was not authorized to take it. The authority granted to the DOL is to pursue claims under the Wage Claims Statute only. Justice Sullivan also noted that the form signed by Miss Quimby to release her claim stated "that the claim is being assigned for 'processing in accordance with the provisions of the Wage Claims Statute." To that end, he thought there was much that the Supreme Court could have done to clarify this area of law by taking the case.

After looking at Justice Sullivan's dissent, the court looked to how the DOL actually handles wage cases. The court noted that the DOL has historically accepted and pursued both Wage Claims Statute violations and Wage Payment Statute violations. However, as of April 27, 2012, the DOL started using new forms without the assignment language. Finding that the Wage Claims Statute *allows* but does not require the assignment of claims, the court looked on approvingly to this change in the DOL procedures. However, the court was still faced with what to do with Mr. Fox who had used the old forms.

The majority found their answer by examining the procedural mechanism that was used to dismiss Mr. Fox's claim in the first place. The case was dismissed for lack of subject matter jurisdiction pursuant to Indiana Trial Rule 12(B)(1). Such a dismissal is "with prejudice." What that means is that once the case is dismissed, that is it. It cannot be brought again. However, if the claim had been dismissed pursuant to Trial Rule 12(B)(6), then it may have been without prejudice, in which case Mr. Fox could re-file his case. Now you may be thinking, well what is the point of re-filing his case if it already got dismissed once? A reasonable question. Recall that I said that just because a claim is assigned to the DOL does not mean that you can never regain control of the case. If Mr. Fox could re-file his case, then he could also seek reassignment of his claim from the DOL first.

In order for the court to determine whether the case should have been dismissed under 12(B)(1) or under 12(B)(6), it looked to what happened to the claim under the DOL's control. The court found that there had been no "adjudication"–i.e. authoritative body making a decision about the case. As such, there was no prior decision that deprived the court from the legal authority to hear the case. The only actual issue was that Mr. Fox no longer owned his claim. He had given it to the DOL. Thus, the court found that the real issue was that he had failed to state a claim upon which relief could be granted because he was not "the real party in interest" when he filed the case. Thus, the Court of Appeals reversed the trial court and ordered it to dismiss the case *without* prejudice. Thus, allowing Mr. Fox to regain control of his claim from the DOL and to re-file his case.

Tada!

Well, that would be it except there was a dissent. Judge Melissa May, believed that Mr. Fox's case so closely resembled Miss Quimby's case that the Court of Appeals could not go beyond the *Quimby* opinion, especially after the Supreme Court did not seek to overrule that decision.

I very much respect Judge May. I had the great pleasure of having her as an instructor in my Trial Practice class while in law school and more often than not

agree with her opinions. She is also the only Indiana appellate judge who, like me, is an alumna of Indiana University South Bend. That said, I must respectfully disagree with her dissent. The keystone in differentiating the two cases is that Mr. Fox did not receive an adjudication of his claim. Granted, Miss Quimby did not go through a highly formalized process in receiving a check from her former employer. However, the cashing of that check is tantamount to a settlement. Mr. Fox received neither a finding by the DOL nor anything even remotely resembling a resolution of his claims.

Moreover, on a technical level, I find it quite perplexing that the form of the argument is couched in subject matter jurisdictional terms. The real argument seems to be whether a person has "standing" to bring the claim, not whether the court has the right to hear it. I will note that once Mr. Fox retained a lawyer, that lawyer viewed the deficiency as one of standing. Further, a quick search reveals a Supreme Court of South Carolina decision that explicitly holds: "the issue of whether a party is a 'real party in interest' does not involve subject matter jurisdiction." I understand that if the DOL, as an administrative body, adjudicates the claim then it becomes *res judicata* and claim preclusion sets in. However, the DOL procedures in place–both then and now–do not appear to be even an informal adjudication. They appear to be merely a very basic review of the claim and the retention of the DOL as an advocate for the former employee. I fail to see how the DOL simply investigating a potential claim has created an adjudication that would bar judicial review.

My basic point is this. The issue here is "standing." If a person assigns his claim to the DOL, then he no longer has the claim and thus fails to possess "standing" to file that claim. Similarly, if a person seeks help through the DOL in getting money that he believes is owed to him and DOL gets him payment of those funds, then the person may no longer have damages. As it is axiomatic, that a person without damages fails to possess "standing," that too would seem to solve the *Quimby* scenario.

As the *Fox* case was joined by four *amici curiae*, was a split court, and rested upon confusion created by a dissent to a Supreme Court order refusing transfer, I fully expect the *Fox* case to find itself before the Supreme Court. Hopefully you followed most of this. If you did not, then let it serve as a reminder that the waters of exercising one's legal rights can be rather treacherous and that those waters are much more easily navigated with an experienced guide.

Join us again next time for further discussions of developments in the law.

## Sources


- *Fox v. Nichter Constr. Co., Inc.*, 978 N.E.2d 1171 (Ind. Ct. App. 2012), *reh'g denied*..
- *E & L Rental Equip., Inc. v. Bresland*, 782 N.E.2d 1068, 1070 (Ind. Ct. App. 2003).
- *Quimby v. Becovic Mgmt. Grp., Inc.*, 946 N.E.2d 30 (Ind. Ct. App. 2011), *trans. denied*, 962 N.E.2d 1199 (Ind. 2012) (Sullivan, J. *dissenting*).
- *Bardoon Props., NV v. Eidolon Corp.*, 326 S.C. 166, 170-71, 485 S.E.2d 371, 373-74 (1997).
- Indiana Wage Payment Statute: Indiana Code article 22-2-5.
- Indiana Wage Claims Statute: Indiana Code article 22-2-9.
- Ind. Trial Rule 12.