

2022 IL App (4th) 210666WC-U
No. 4-21-0666WC
Order filed December 16, 2022

FILED
December 16, 2022
Carla Bender
4th District Appellate
Court, IL

NOTICE: This order was filed under Supreme Court Rule 23(b) and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

ELSIE LAMBRIGHT and ELSIE)	Appeal from the Circuit Court
LAMBRIGHT d/b/a LAMBRIGHT)	of Douglas County.
DISTRIBUTORS,)	
)	
Appellees,)	
)	
v.)	No. 20-MR-5
)	
THE ILLINOIS WORKERS')	
COMPENSATION COMMISSION, <i>et al.</i>)	
)	
(Illinois State Treasurer, as <i>Ex-Officio</i>)	
Custodian of the Injured Workers')	Honorable
Benefit Fund and Adlai V. Miller,)	Richard Broch,
Appellants).)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Cavanagh, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* (1) "Payment Contract" entered into to settle a notice of non-compliance action filed by the Commission for the failure to maintain workers' compensation insurance coverage was not dispositive of whether widow of deceased business owner held an ownership interest in deceased husband's business on the date of claimant's work accident; (2) the Illinois Workers' Compensation Commission's finding that widow of deceased business owner held an ownership interest in

deceased husband's business on the date of claimant's work accident was against the manifest weight of the evidence; and (3) in the absence of a final award for benefits from the Commission against claimant's employer, the trial court properly dismissed the Illinois State Treasurer, as *Ex-Officio* Custodian of the Injured Workers' Benefit Fund, as a party. Affirmed.

¶ 2

I. INTRODUCTION

¶ 3 Claimant, Adlai V. Miller, appeals from an order of the circuit court of Douglas County that set aside a decision of the Illinois Workers' Compensation Commission (Commission) awarding him benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2012)) and dismissed the Illinois State Treasurer (Treasurer), as *Ex-Officio* Custodian of the Injured Workers' Benefit Fund (Fund), as a party in this case. For the reasons set forth below, we affirm the judgment of the circuit court.

¶ 4

II. BACKGROUND

¶ 5 In January 2012, Vernon Lambright (Vernon) hired claimant to work for Lambright Distributors, a manufacturer of refrigeration units. On June 29, 2012, claimant was operating a forklift to unload a refrigerator unit from the back of a pickup truck when the forklift tipped over. As claimant attempted to exit the overturned forklift, a steel plate sliced into his right ankle. Claimant sustained a comminuted fracture to his distal tibia and fibula. Medical complications eventually led to a below-the-knee amputation of claimant's right leg.

¶ 6 On July 30, 2012, claimant filed an application for adjustment of claim seeking benefits from Lambright Distributors for the injuries he sustained on June 29, 2012. After claimant filed his application for adjustment of claim, it was discovered that Lambright Distributors did not have workers' compensation insurance coverage on the date of the alleged work accident. The lack of insurance coverage coupled with Vernon's subsequent death resulted in claimant amending his application for adjustment of claim multiple times. The following table provides a timeline of the

events relevant to this appeal:

DATE	EVENT
June 29, 2012	Claimant is injured.
July 30, 2012	Claimant files his initial application for adjustment of claim, naming Lambright Distributors as the employer/respondent.
February 26, 2013	Claimant and Vernon sign a “Mutual Release” to “resolve all disputes between them arising out of a forklift accident which occurred on June 29th, 2012.”
March 3, 2015	Claimant files an amended application for adjustment of claim, naming Lambright Distributors and the State Treasurer and <i>Ex-Officio</i> Custodian of the Injured Workers’ Benefit Fund as the employer/respondents.
June 1, 2015	Vernon dies. Vernon is survived by his wife, Elsie Lambright (Elsie), and several children, including Harold Lambright (Harold).
July 18, 2017	Elsie signs a “Payment Contract” to settle a notice of non-compliance action filed by the Commission for the failure to maintain workers’ compensation insurance coverage. The Payment Contract designates “Vernon Lambright (deceased) and Elsie Lambright, individually and as owner of Trailer Refrigeration, Inc. and as owner of Lambright Distributors” as the “Employer.”
February 6, 2018	Claimant files a second amended application for adjustment of claim, naming Vernon M. Lambright, Vernon M. Lambright d/b/a Lambright Distributors, Lambright Distributors, and the State Treasurer and <i>Ex-Officio</i> Custodian of the Injured Workers’ Benefit Fund as the

	employers/respondents.
July 9, 2018	Claimant files a third amended application for adjustment of claim, naming Lambright Distributors, Harold Lambright, Harold Lambright d/b/a Lambright Distributors, Vernon Lambright, Vernon Lambright d/b/a Lambright Distributors, and the Illinois State Treasurer and <i>Ex-Officio</i> Custodian of the Injured Workers' Benefit Fund as the employers/respondents.
November 15, 2018	Claimant files a fourth amended application for adjustment of claim, naming Lambright Distributors, Harold Lambright, Harold Lambright d/b/a Lambright Distributors, Vernon Lambright (deceased), Elsie Lambright, Elsie Lambright d/b/a Lambright Distributors, Trailer Refrigeration, Inc., Elsie Lambright d/b/a Trailer Refrigeration, Inc., and the Illinois State Treasurer and <i>Ex-Officio</i> Custodian of the Injured Workers' Benefit Fund as employers/respondents.

¶ 7 The matter was heard by arbitrator Christina Hemenway on January 16, 2019. Prior to the arbitration hearing, claimant filed a petition for attorney fees and penalties pursuant to sections 16, 19(k), and 19(l) of the Act (820 ILCS 305/16, 19(k), 19(l) (West 2012)). In addition, Elsie, Harold, and Trailer Refrigeration filed a motion to dismiss. They argued that any alleged claim against them is barred by section 6(d) of the Act (820 ILCS 305/6(d) (West 2012)) because claimant did not file his application against them within the applicable statute of limitations. The arbitrator took the motion to dismiss with the case.

¶ 8 At the beginning of the arbitration hearing, the arbitrator announced that the Treasurer was

represented by a lawyer from the Attorney General's office and the remaining respondents, with the exception of Vernon, were represented by attorney Brent Holmes. The arbitrator noted that Vernon had no representation at the hearing. In response, Holmes commented that Vernon had died on June 1, 2015, and no estate had been opened for him. Holmes stated that he cannot represent a deceased person and that he does not purport to represent "Vernon Lambright, doing business as Lambright Distributors." Thereafter, the following evidence relevant to the issues raised on appeal was presented at the arbitration hearing.

¶ 9 Claimant testified that on the date of the accident he worked "[f]or Vernon Lambright" at Lambright Distributors. Claimant stated that he began working for Lambright Distributors in January 2012 after Vernon asked him to drive trucks for the business. According to claimant, Vernon would not drive automobiles himself because, as a member of the Amish community, driving was against his personal beliefs. Claimant further testified that after driving a truck for two months, he began working in the shop. His work in the shop consisted of a variety of mechanic-type and warehouse duties, including, but not limited to (1) operating gasoline-powered vacuum pumps, (2) cleaning and refurbishing refrigeration units, (3) changing valves, (4) loading and unloading trucks, and (5) operating "SkyTraks" and forklifts. Lambright Distributors supplied all tools and equipment used in the performance of claimant's work duties. At the time claimant worked for Lambright Distributors, the business had four or five other employees, including members of the Lambright family.

¶ 10 Claimant testified that when he arrived at work each day, Vernon gave him instructions on what to do. Vernon also instructed claimant regarding his work hours. Claimant reported the hours he worked to Vernon. Claimant testified that he received his paycheck from Vernon and that Vernon signed each paycheck he received. Claimant identified several paystubs from his

employment, which were admitted into evidence. Claimant observed that the name “Lambright Distributors” was printed at the top of each paystub. The following language appeared at the bottom of each paystub: “Lambright Distributors, 35E CR 200N, Arthur, IL 61911, VERNON LAMBRIGHT.” Claimant’s W-2 form for 2012 was also admitted into evidence. On the W-2 form, the employer’s name and address were listed as “Vernon Lambright, Lambright Distributors, 35E CR 200N, Arthur, IL 61911.”

¶ 11 On cross-examination by Holmes, claimant agreed that he worked for Vernon, that Lambright Distributors was Vernon’s business, and that Vernon was the sole owner of Lambright Distributors. Claimant stated that he never worked for Elsie, Harold, or Trailer Refrigeration. Claimant further testified on cross-examination that on February 26, 2013, following the amputation of his right leg, he and Vernon signed a document entitled “Mutual Release.” Claimant noted that the first paragraph of the Mutual Release stated that he and Vernon wished “to resolve all disputes between them arising out of a forklift accident that occurred on June 29th, 2012.” In relation to signing the Mutual Release, claimant again acknowledged that Vernon was his employer on the date of the accident. Claimant noted that Elsie also signed the Mutual Release as a witness to Vernon’s signature.

¶ 12 Subsequently, upon questioning by the attorney for the Treasurer, claimant stated that it was his “understanding” that Elsie also owned Lambright Distributors. Claimant elaborated that Elsie “was also out there taking care of the book work” for Lambright Distributors. On redirect-examination, claimant was asked by his attorney whether, when working for Lambright Distributors, it was his “understanding” that he also worked for Elsie. Claimant responded, “I did not know any different. I just thought she owned—they had it joint together, but I don’t know.”

¶ 13 On recross-examination, the following colloquy occurred between claimant and Holmes:

“Q. Mr. Miller, you told us on direct examination that your boss, your employer was Vernon Lambright. That testimony is correct, isn’t it?

A. Yes.

Q. You are just speculating as to whether or not Elsie Lambright had any interest in the business; isn’t that true? You don’t know, do you?

A. I don’t know. She was out there like she, I don’t know if she was working there or was she employed or—I don’t know.

Q. You don’t know that she had any ownership in the business, correct?

A. No, sir. I don’t know nothing about that.”

¶ 14 Harold testified that he is one of nine children born to Vernon and Elsie. Harold was 16 years old on June 29, 2012, when claimant was injured. At the time of claimant’s accident, Vernon had a business named Lambright Distributors. Although Elsie did some bookkeeping work for Lambright Distributors, to the best of Harold’s knowledge, Vernon was the sole owner of the business. Harold acknowledged that he did some work for Lambright Distributors, but testified that he was not considered an employee and he did not get a paycheck. Rather, according to Harold, he was “just helping out dad.” Harold testified that Vernon passed away on June 1, 2015, and that an estate was not opened for him.

¶ 15 Harold further testified that he never had an ownership interest in Lambright Distributors and he never agreed to assume liability with regard to the injury claimant sustained on June 29, 2012. Harold did acknowledge forming a limited liability company by the name “Lambright Distributors LLC” on March 20, 2018 (for purposes of clarity, we will refer to the company formed by Harold as “Lambright LLC”). Harold testified that since its formation, Lambright LLC has not conducted any business, has not hired any employees, and has not possessed any assets or property.

Harold testified that he formed Lambright LLC “[i]n the hopes to some day have [his] own company.”

¶ 16 Harold testified that after Vernon’s death, Elsie started a business. Elsie’s business is also named “Lambright Distributors” (for purposes of clarity, we will refer to Elsie’s business as “Lambright 2”). Harold testified that, to the best of his knowledge, Elsie is the sole owner of Lambright 2. Harold testified that it was his understanding that Lambright 2 is a separate business from Lambright Distributors, the business of which Vernon had sole ownership during his lifetime. Harold noted that the business owned by Elsie and the business owned by Vernon had different tax identification numbers, different employer identification numbers, and different resale tax identification numbers. Harold testified that he has been the manager of Lambright 2 since its inception in 2015. Lambright 2 has eight employees and manufactures refrigerators, freezers, and coolers for sale at property located at 35 East 200 North in Arthur, Illinois. Harold acknowledged that Lambright Distributors manufactured refrigeration units at the same location with the same employees. However, he testified that there are several differences between Lambright Distributors and Lambright 2, including “[d]ifferent manufacturing, different freezers, coolers, [and] different designs.”

¶ 17 Harold testified that Elsie also owns Trailer Refrigeration, which is incorporated. Harold is the manager of Trailer Refrigeration. According to Harold, Trailer Refrigeration “subcontracts a driver to move equipment” on Lambright 2’s property. Harold testified that Trailer Refrigeration does not currently have any employees.

¶ 18 On cross-examination by claimant’s attorney, Harold was asked “[w]hat happened to the Lambright Distributors that was [his] dad’s following the passing of [his] father?” Harold responded that Elsie “started a new business and [they] went on from there.” Harold acknowledged

that Elsie's business has the same name as Vernon's business, the same mailing address as Vernon's business, and it is on the same premises as Vernon's business. He testified, however, that Elsie's business has "more employees" and "different employees" than Vernon's business.

¶ 19 Elsie testified that in June 2012, her husband, Vernon, owned Lambright Distributors. Although Elsie occasionally did some unpaid work for Lambright Distributors at Vernon's request, Elsie did not have any ownership interest in the business. Elsie noted that Vernon passed away on June 1, 2015, and an estate was not opened for him following his death. Elsie stated that she did not agree to assume any of the debts or liabilities of Lambright Distributors or liability for any injury to claimant while he was employed by Lambright Distributors.

¶ 20 Elsie testified that she owns two businesses, Lambright 2, which has 11 employees, and Trailer Refrigeration, which does not have any employees. Elsie recounted that she established Lambright 2 in 2015, about a month after Vernon died. Elsie testified that Lambright 2 is a sole proprietorship with the same name as Vernon's business but with new tax identification numbers. Elsie acknowledged that Lambright 2's operations are conducted on the same property as were those of Lambright Distributors and that the two business's operations are "somewhat" similar. Elsie noted that prior to Vernon's death, he owned the property upon which the businesses are located. Since Vernon's death, she owns the property.

¶ 21 Elsie testified that in July 2017, she signed a "Payment Contract," an agreement with the Commission's insurance compliance department related to the failure of Lambright Distributors to have workers' compensation insurance when Vernon owned the business. Elsie testified that she signed the agreement on behalf of Vernon, "Lambright Distributors," and Trailer Refrigeration. Elsie explained that the State of Illinois was threatening to fine her \$500 per day and take assets belonging to her. This would have put her out of business. Accordingly, Elsie

signed the agreement so that she “could continue with [her] business.” Elsie testified that the Payment Contract includes an addendum. Paragraph two of the addendum states that Elsie “reserve[s] *** the right to assert all legal and factual defenses available *** under the Act or otherwise.” Paragraph three of the addendum states that the Payment Contract was “entered into by Employer solely to resolve the pending insurance non-compliance action brought by [the Commission], and this agreement shall not be construed as an admission by Employer that it is liable to any petitioner with respect to any claim for benefits under the *** Act.” Paragraph three further states that “Employer does not admit, and this agreement shall not under any circumstances be construed as any admission by employer as to the pending claim of Adlai V. Miller in case number 12 WC 26539, and Employer specifically denies any liability and specifically reserves all defenses available to it both legally and factually should said matter be presented for hearing.” Elsie testified that she would not have signed the Payment Contract without the language included in the addendum.

¶ 22 Based on the foregoing record, the arbitrator determined that Lambright Distributors was operating under and subject to the Act on the date of claimant’s accident. The arbitrator further determined that claimant established an employee-employer relationship between him and Lambright Distributors, but failed to prove by a preponderance of the evidence that an employer-employee relationship existed between himself and either Harold or Trailer Refrigeration. Additionally, the arbitrator found that claimant sustained an accidental injury that arose out of and in the course of his employment with Lambright Distributors on June 29, 2012, that claimant’s current condition of ill-being was causally related to the injury, and that claimant provided timely notice of the accident to Lambright Distributors. The arbitrator determined that claimant was entitled to medical expenses, temporary total disability benefits, and permanent partial disability

benefits. The arbitrator also determined that claimant was entitled to penalties and attorney fees pursuant to sections 16, 19(k), and 19(l) of the Act (820 ILCS 305/16, 19(k), 19(l) (West 2012)).

¶ 23 Regarding the motion to dismiss filed by Elsie, Harold, and Trailer Refrigeration, the arbitrator concluded that the motion was moot as to Harold and Trailer Refrigeration given her finding that no employer-employee relationship existed between them and claimant. With respect to Elsie, the arbitrator noted that the motion sought dismissal of claimant's application for adjustment of claim pursuant to section 6(d) of the Act (820 ILCS 305/6(d) (West 2018)). The motion asserted that a claimant must file his or her application against the "named [r]espondent" within three years after the date of the accident or within two years after the date of the last payment of compensation. Elsie argued that since she was not named as a respondent until November 15, 2018, the claim against her is barred. The arbitrator disagreed and denied the motion to dismiss as to Elsie. The arbitrator noted that section 6(d) does not require that the application for adjustment of claim be "against the named [r]espondent" as Elsie alleged. Rather, the statute simply requires the application for adjustment of claim be "filed with the Commission within 3 years after the date of the accident, where no compensation has been paid, or within 2 years after the date of the last payment of compensation, where any has been paid, whichever shall be later." 820 ILCS 305/6(d) (West 2020). Based on the statutory language, the arbitrator concluded that section 6(d) "formally sets out the time period in which a claimant has a right to file an application before their [*sic*] claim is barred" but it does not "indicate any time limit under which additional parties may be added to an [a]pplication." The arbitrator noted that claimant's accident occurred on June 29, 2012, and claimant filed his original application for adjustment of claim on July 30, 2012. Thus, the application for adjustment of claim was timely filed.

¶ 24 Citing *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill.

App. 3d 149 (2000), the arbitrator further noted that neither the Act nor the relevant provisions of the Illinois Administrative Code detail the circumstances under which an application for adjustment of claim may be amended. As such, the arbitrator turned to section 2-616 of the Code of Civil Procedure (Code) (735 ILCS 5/2-616 (West 2012)), also known as the relation-back provision. The arbitrator noted that under section 2-616(a), an amendment is allowed at any time before final judgment “ ‘on just and reasonable terms,’ introducing any party who ought to have been joined, changing or adding new causes of action or defenses, and ‘in any matter, either of form or substance’ which may enable the plaintiff to sustain the claim for which it intended to be brought or the defendant to make a defense.” See 735 ILCS 5/2-616(a) (West 2012). Applying section 2-616 of the Code, the arbitrator reiterated that claimant’s initial application for adjustment of claim was timely filed pursuant to section 6(d) of the Act and concluded that each amended application for adjustment of claim grew out of the same occurrence, *i.e.*, claimant’s injury of June 29, 2012. Accordingly, the arbitrator concluded that claimant properly amended the applications for adjustment of claim to name Elsie.

¶ 25 The arbitrator then determined that Lambright Distributors, Elsie, and Elsie d/b/a Lambright Distributors, were liable for the payment of claimant’s award. In support of this determination, the arbitrator noted that, on the date of the accident, claimant worked for Lambright Distributors, which was owned by Vernon. The arbitrator found that Elsie was “not just the widow of [the] former owner of Lambright Distributors.” Rather, she “owns and operates the same business” as Vernon. In this regard, the arbitrator noted that Elsie’s business and Vernon’s business operate under the same name, at the same address, and with most of the same equipment and employees. Further, the arbitrator found that Elsie’s business operations “are indistinguishable from those on the date of [claimant’s] accident.” The arbitrator also relied on the Payment

Contract. The arbitrator noted that the Payment Contract states that the “[e]mployer agrees to pay all benefits due and owing to any petitioner(s) who has/have sustained compensable injuries during the period(s) of non-compliance.” The Payment Contract defines “employer” as “Vernon Lambright (deceased) and Elsie Lambright, individually and as owner of Trailer Refrigeration, Inc. and as owner of Lambright Distributors.” Given the Payment Contract’s definition of “employer,” the arbitrator reasoned that Elsie not only signed the agreement on behalf of Lambright Distributors, but she also explicitly stated that she individually agreed to pay all benefits due to any petitioner who sustained compensable injuries. Additionally, the arbitrator found the Treasurer secondarily liable to pay the award if Lambright Distributors, Elsie, or Elsie d/b/a Lambright Distributors, fails to pay the benefits due claimant.

¶ 26 The Commission affirmed and adopted the decision of the arbitrator “with explanation.” The Commission determined, *inter alia*, that the Payment Contract was dispositive on the issue of ownership. Specifically, the Commission concluded that in executing the Payment Contract, Elsie accepted potential liability for claimant’s accident and acknowledged ownership of Lambright Distributors on the date of claimant’s accident. The Commission rejected the argument that the addendum to the Payment Contract allowed Elsie to deny that she was claimant’s employer, explaining:

“The language of the addendum to the settlement contract obligates Respondents Lambright Distributors, Elsie Lambright, and Elsie Lambright d/b/a Lambright Distributors to pay all benefits due and owing to any petitioners who sustained compensable injuries during the period of noncompliance, while reserving factual and legal defenses. The addendum also specifically refers to [claimant’s] claim, while denying actual liability and reserving these Respondents’ defenses. The Commission does not interpret

the settlement contract to allow these Respondents to deny that they were [claimant's] Employers, because doing so would render these provisions of the contract a nullity.”

¶ 27 On judicial review, the trial court set aside the decision of the Commission and dismissed the Treasurer as a party in the case. The court noted that Elsie could only be liable to claimant for the injuries he sustained if the record supported a finding either that Elsie was a part owner of Lambright Distributors on the date of the accident or that she assumed liability for claimant's injuries. The court found that the testimony of the three witnesses presented at the arbitration hearing did not establish that Elsie had an ownership interest in Lambright Distributors on the date of claimant's accident or that she assumed liability for claimant's injuries. The trial court observed that claimant's testimony regarding whether Elsie had an ownership interest in Lambright Distributors was “both confusing and contradictory, and changed depending on who was asking the questions.” As such, the court determined that claimant's testimony could not, in and of itself, support a finding by a preponderance of the evidence that Elsie had any type of ownership interest in Lambright Distributors. Similarly, the court determined that neither Harold's nor Elsie's testimony supported a finding by a preponderance of the evidence that Elsie was an owner of Lambright Distributors on the date of claimant's work accident, as they both consistently testified that Elsie was not an owner of Lambright Distributors and that Elsie established a new business after Vernon's death. Likewise, the record did not establish that Elsie assumed liability for claimant's injuries.

¶ 28 Additionally, the trial court determined that the Payment Contract was properly admitted into evidence at the arbitration hearing because it was relevant to the identity of claimant's employer on the date of his accident. However, the court found that Elsie's signature on the Payment Contract did not support an admission of ownership of Lambright Distributors or liability

on Elsie's part. The trial court reasoned that Elsie signed the Payment Contract to settle a separate issue with the Commission and only did so with the express agreement that her signature would not constitute an admission of liability as to claimant's case and that she would still be able to present all lawful defenses to the allegations associated with claimant's case. Further, relying on the case of *Vernon v. Schuster*, 179 Ill. 2d 338 (1997), a supreme court case addressing whether there can be successor liability in a sole proprietorship after the death of the sole proprietor, the court determined that, despite the alleged similarities between Lambright Distributors and Lambright 2, Elsie did, in fact, establish a new business following Vernon's death. The court noted that, pursuant to *Vernon*, common identity of ownership is lacking when one sole proprietorship succeeds another. This is because a sole proprietorship has no legal identity apart from that of the individual who owns the business. Thus, the trial court concluded, Lambright 2, Elsie's sole proprietorship, was not the same entity as Lambright Distributors, Vernon's sole proprietorship.

¶ 29 Thereafter, claimant filed a motion to reconsider, modify or vacate the trial court's decision. Following a hearing, the trial court denied the motion. This appeal by claimant ensued.

¶ 30 **III. ANALYSIS**

¶ 31 On appeal, claimant argues that the trial court erred in setting aside the Commission's award of benefits and dismissing the Treasurer as a party in this case. According to claimant, the Commission correctly determined that the Payment Contract was dispositive of Elsie's ownership interest in Lambright Distributors on the date of his work accident and hence the existence of an employer-employee relationship between Elsie and him. Alternatively, claimant argues that, even if the Payment Contract is not dispositive, it is at least *prima facie* evidence that Elsie had an ownership interest in Lambright Distributors at the time of his work accident, the existence of which Elsie failed to successfully rebut. Finally, claimant argues that if this court determines that

there is sufficient evidence to support the Commission's finding that Elsie maintained an ownership interest in Lambright Distributors at the time of his injury, the Treasurer was a proper party to the action and would be secondarily liable to pay the benefits awarded to him to the extent Elsie fails to do so. Claimant posits that even if this court determines that there was not sufficient evidence of Elsie's ownership interest in Lambright Distributors at the time of his injury, the matter should be remanded to the Commission with instructions "to enter [the] award of benefits against his uninsured employers, Lambright Distributors, Vernon Lambright (deceased) as well as the [Fund]." We address each of these arguments *seriatim*.

¶ 32

A. Payment Contract

¶ 33 Claimant first argues that the Commission correctly determined that the Payment Contract was dispositive evidence that Elsie had an ownership interest in Lambright Distributors on the date of his work accident and hence the existence of an employer-employee relationship between Elsie and him. According to claimant, the Payment Contract was a binding agreement that identified Vernon *and* Elsie as the "Employer," both individually and each as owner of Lambright Distributors. Moreover, pursuant to the Payment Contract, the "Employer" agreed to pay not only fines and penalties for failing to have workers' compensation coverage but also "all benefits due and owing to any petitioner(s) who has/have sustained compensable injuries during the period(s) of non-compliance" with the Act's requirement to maintain workers' compensation insurance coverage. Claimant asserts that this promise to pay compensable claims would be rendered meaningless if Elsie were able to defend those claims by taking the contradictory position that she was not, in fact, his employer.

¶ 34 Elsie responds that the trial court properly rejected the Commission's finding that the Payment Contract was dispositive of her ownership interest, if any, in Lambright Distributors on

the date of claimant's work accident and hence the existence of an employer-employee relationship between Elsie and claimant. Elsie does not deny that she was *an* employer at the time she signed the Payment Contract, but asserts this was solely in her role as owner of Lambright 2, a business started subsequent to Vernon's death. Elsie further asserts that she did not sign the Payment Contract to establish liability to anyone who might assert a claim for compensation, but rather to settle a separate issue with the Commission. Moreover, Elsie contends that she signed the Payment Contract only with the express agreement that her signature would not constitute an admission of liability as to claimant's case and that she would still be able to present all lawful defenses to the allegations associated with claimant's case.

¶ 35 The issue whether the Payment Contract constituted dispositive evidence that Elsie had an ownership interest in Lambright Distributors on the date of claimant's work accident involves the interpretation of a contract. In interpreting a contract, the primary objective is to give effect to the intent of the parties. *Insurance Benefit Group, Inc. v. Guarantee Trust Life Insurance Co.*, 2017 IL App (1st) 162808, ¶ 38. To do this, a court will first look to the language of the contract and view the document as a whole. *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011). If the words in the contract are clear and unambiguous, they must be given their plain and ordinary meaning and the contract must be enforced as written. *Thompson*, 241 Ill. 2d at 441; *Virginia Surety Co. v. Northern Insurance Co. of New York*, 224 Ill. 2d 550, 556 (2007). If, however, the words in a contract are reasonably susceptible to more than one meaning, they are ambiguous. *In re Marriage of Grandt*, 2022 IL App (2d) 210648, ¶ 25. Where the language of a contract is ambiguous, a court may resort to extrinsic evidence to determine the parties' intent. *In re Marriage of Grandt*, 2022 IL App (2d) 210648, ¶ 25. Moreover, ambiguous language will be strictly construed against the drafter of the document. See *Central Illinois Light Co. v. Home Insurance Co.*, 213 Ill. 2d 141,

153 (2004). Contract interpretation is a question of law, which we review *de novo*. *Loyola University of Chicago v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 130984WC, ¶ 23.

¶ 36 In this case, the Commission determined that the Payment Contract was dispositive on the issue of ownership. Notably, the Commission found that Elsie specifically accepted potential liability for claimant's work accident and acknowledged ownership of Lambright Distributors when she executed the Payment Contract. The Commission erred in so finding because the Payment Contract is ambiguous. As noted earlier, the Payment Contract, which was drafted on the Commission's letterhead, designated "Vernon Lambright (deceased) and Elsie Lambright, individually and as owner of Trailer Refrigeration, Inc. and as owner of Lambright Distributors" as the "Employer." The Payment Contract was an agreement between the Commission and the "Employer" to settle a notice of noncompliance filed by the Commission for the failure to maintain workers' compensation coverage. The Payment Contract was signed by Elsie on July 18, 2017. On that date, Elsie was the owner of a sole proprietorship named "Lambright Distributors" (which we have referred to as Lambright 2 to distinguish it from the business with the same name operated by Vernon). Elsie established Lambright 2 following Vernon's death. Lambright 2 had been in existence for approximately two years prior to the date Elsie signed the Payment Contract. Although Elsie signed the Payment Contract "individually *** and as owner of Lambright Distributors," the Payment Contract does not specify whether the "Lambright Distributors" to which it refers was the business started by Vernon, the business started by Elsie after Vernon's death, or both. Stated differently, the capacity in which Elsie signed the Payment Contract is susceptible to more than one meaning, so it is ambiguous. As such, the Commission was patently incorrect in finding that the Payment Contract was dispositive of whether Elsie had an ownership

interest in the Lambright Distributors operated by Vernon at the time of claimant's work injury. We further note that since the Payment Contract was drafted on the Commission's letterhead—presumably by the Commission—it should not be construed against Elsie. See *Central Illinois Light Co.*, 213 Ill. 2d at 153.

¶ 37 Even if we did not find the Payment Contract ambiguous, however, we would still conclude that Elsie's signature on the Payment Contract did not constitute an admission of ownership of Lambright Distributors or liability on Elsie's part. As the trial court cogently observed, Elsie signed the Payment Contract to settle a separate issue with the Commission. Although Elsie testified that the agreement settled a dispute with the Commission related to the failure of Lambright Distributors to have workers' compensation insurance when Vernon owned the business, she explained that the State of Illinois was threatening to fine her \$500 per day and take assets belonging to her. This would have put her out of business. Accordingly, Elsie testified that she signed the agreement so that she "could continue with [her] business." Moreover, Elsie testified that she would not have signed the Payment Contract without the language in the addendum. Pursuant to the addendum, Elsie's signature did not constitute an admission of liability as to claimant's case and provided that she would still be able to present all lawful defenses to the allegations associated with claimant's case.

¶ 38 Claimant acknowledges that, pursuant to the amendment to the Payment Contract, Elsie expressly denied any liability to him with respect to his application for benefits under the Act and that she reserved the right to assert all legal and factual defenses available to her under the Act or otherwise. Claimant argues, however, that to interpret the Payment Contract to allow Elsie to deny that she was his employer would render the remaining provisions concerning her obligation to pay an otherwise compensable claim a nullity. We disagree. Pursuant to the Payment Contract, Elsie

agreed to pay “all benefits due and owing to any petitioner(s) who has/have sustained *compensable* injuries during the period(s) of non-compliance” with the Act’s requirement to maintain workers’ compensation insurance coverage. (Emphasis added.) However, she also reserved the right to assert all legal and factual defenses available to her under the Act. For injuries to be compensable under the Act, the claimant must demonstrate, among other things, the existence of an employer-employee relationship on the date of the injury. *Master Leakfinding Co. v. Industrial Comm’n*, 67 Ill. 2d 517, 524 (1977); *Romondo v. Industrial Comm’n*, 171 Ill. App. 3d 838, 842 (1988). Claimant attempted to establish an employer-employee relationship between Elsie and him by showing that Elsie held an ownership interest in the entity for which he worked at the time of the injury. In response, Elsie maintained that claimant did not prove that she had an ownership interest in Lambright Distributors at the time of his work injury and hence he failed to establish an employer-employee relationship. That Elsie contested claimant’s position that she held an ownership interest in Lambright Distributors or that she was claimant’s employer at the time of the injury did not render the provisions concerning her obligation to pay an otherwise compensable claim a nullity. Rather, Elsie was merely exercising her right to demonstrate that claimant’s injury was *not compensable as to her* because she neither held an ownership interest in nor was claimant’s employer at the time of the work accident. Since claimant’s injury would not be compensable absent an employer-employee relationship between Elsie and claimant, Elsie’s position that she was not claimant’s employer at the time of his injury was not inconsistent with her promise to pay *compensable* claims sustained during the period of noncompliance with the Act’s requirement to maintain workers’ compensation insurance coverage.

¶ 39 For the foregoing reasons, we reject claimant’s argument that the Commission properly determined that the Payment Contract was dispositive of Elsie’s ownership interest in Lambright

Distributors on the date of his work accident and thereby established an employer-employee relationship between Elsie and claimant.

¶ 40

B. Other Evidence of Record

¶ 41 Alternatively, claimant argues that even if the Payment Contract is not dispositive of the existence of an employment relationship between him and Elsie at the time of his work accident, we should still find that there was sufficient factual evidence to support the Commission's determination that Elsie maintained an ownership interest in Lambright Distributors at the time he was injured. In this regard, claimant asserts that the Payment Contract was at least *prima facie* evidence of Elsie's status as his employer and the owner of Lambright Distributors at the time of his work accident, thereby shifting the burden to Elsie to rebut. Claimant acknowledges that the testimony of both Elsie and Harold "tended to show" that Vernon was the sole proprietor of Lambright Distributors at the time of his work injury. Claimant also acknowledges Elsie's testimony that she signed the Payment Contract solely to avoid litigation with the Commission. Nevertheless, claimant contends that even with this evidence, the Commission could have "remained unpersuaded *** and reasonably found that this evidence was outweighed" by Elsie's execution of the Payment Contract which "tended to show the existence of an ownership interest at the time of his injury."

¶ 42 Elsie responds that the evidence was overwhelming that Elsie was not claimant's employer at the time of his injury. In support of her position, Elsie relies primarily upon *Vernon v. Schuster*, 179 Ill. 2d 338 (1997).

¶ 43 In a workers' compensation case, the claimant bears the burden of proving all elements of his or her case by a preponderance of the evidence, including the existence of an employer-employee relationship. *Master Leakfinding Co.*, 67 Ill. 2d at 524; *Pearson v. Industrial Comm'n*,

318 Ill. App. 3d 932, 935 (2001); *Romondo*, 171 Ill. App. 3d at 842. “[W]hen the evidence is conflicting and the facts are subject to diverse interpretations, it is within the province of the *** Commission to draw inferences from the evidence, ascertain the credibility of the witnesses, evaluate conflicting testimony, and resolve whether the claimant has met his burden of proof.” *Ragler Motor Sales v. Industrial Comm’n*, 93 Ill. 2d 71, 71-72 (1982). The question whether an employment relationship existed at the time of the accident is one of fact. *West Cab Co., Inc. v. Industrial Comm’n*, 376 Ill. App. 3d 396, 404 (2007). As such, the findings of the Commission will not be disturbed on appeal unless they are contrary to the manifest weight of the evidence. *Roberson v. Industrial Comm’n*, 225 Ill. 2d 159, 173 (2007). A finding is contrary to the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Ware v. Industrial Comm’n*, 318 Ill. App. 3d 1117, 1122 (2000).

¶ 44 In this case, it is not seriously disputed that claimant was an employee of Lambright Distributors at the time of his work accident. The issue in dispute is whether Elsie had an ownership interest in Lambright Distributors at the time of claimant’s injuries and is therefore liable for the payment of claimant’s award. The Commission found that Elsie did have an ownership interest in Lambright Distributors and was therefore liable for the payment of claimant’s award. In support of its finding, the Commission determined that the Payment Contract was dispositive of the issue of Elsie’s ownership interest in Lambright Distributors. However, for the reasons set forth above, the Commission’s finding in this regard was error.

¶ 45 As noted above, claimant asserts that even if the Payment Contract was not dispositive as to Elsie’s ownership interest in Lambright Distributors at the time of his injury, it was at least *prima facie* evidence of Elsie’s status as his employer and the owner of Lambright Distributors, thereby shifting the burden to Elsie to rebut these propositions. In his opening brief, claimant cites

two cases in support of this proposition—*Bassi v. Morgan*, 60 Ill. App. 3d 1 (1965), and *Pientka v. Board of Fire Commissioners of the North Maine Fire Protection District*, 125 Ill. App. 3d 124 (1984). Neither of these cases, however, support claimant’s position.

¶ 46 In *Bassi*, the plaintiff sued the defendant for injuries she sustained in a car accident. The plaintiff alleged that she was riding in the defendant’s vehicle as a “non-paying guest-passenger.” The defendant asserted as an affirmative defense that the action was barred under the Act because it arose out of and in the course of the plaintiff’s employment. During trial, the defendant sought to introduce an application for adjustment of claim that the plaintiff filed with the Commission in relation to the injury she sustained in the car accident. The trial court sustained the objection of the plaintiff to the admission of the application. Ultimately, the jury returned a verdict in the plaintiff’s favor and against the defendant. On appeal, the reviewing court held that although the application for adjustment of claim was not conclusive as to the existence of an employer-employee relationship between the defendant and the plaintiff at the time of the car accident, the application should have been admitted as it was relevant to whether the plaintiff was traveling with the defendant in the course of her employment or was a guest passenger at the time of the accident. *Bassi*, 60 Ill. App. 2d at 5-6. Thus, while the *Bassi* court determined that the application of adjustment of claim was relevant to the plaintiff’s employment status at the time of the accident, nowhere does the *Bassi* court suggest that the application constituted *prima facie* evidence of the plaintiff’s employment status. *Bassi* therefore does not support claimant’s position that the Payment Contract was *prima facie* evidence that Elsie had an ownership interest in Lambright Distributors at the time of claimant’s work accident.¹

¹ In *Korleski v. Needham*, 77 Ill. App. 2d 328, 334-35 (1966), cited by claimant in his reply

¶ 47 Similarly, *Pientka* does not support claimant's position. In *Pientka*, the plaintiff was discharged from his position as a firefighter by his employer on the ground that he had lied when he represented to the employer and the Commission that he had injured his back at work. In a separate proceeding, the plaintiff and the employer entered into a lump sum settlement contract resolving four workers' compensation claims filed by the plaintiff over the course of several years. The settlement contract specifically stated that there were "disputed questions of law and fact," that the parties "agreed to this settlement to avoid further litigation," and that the employer "claims they [*sic*] have no liability whatsoever as a result of any and all claims, known or unknown, for injuries or conditions of ill-being which occurred at work." No dollar amount was assigned to any of the four claims and no findings were made concerning their validity. After his discharge, the plaintiff filed a complaint for administrative review. The trial court determined that the employer's approval of the settlement contract constituted a judicial admission of the "facts," explaining each claim as set out in the contract and characterizing the employer's decision to discharge the plaintiff as unsupported by the manifest weight of the evidence. On appeal, the reviewing court found that the settlement contract was not a judicial admission. *Pientka*, 125 Ill. App. 3d at 129. The reviewing court determined that the trial court improperly used the settlement contract as dispositive evidence of the truth of the claims the plaintiff filed with the Commission notwithstanding that the settlement contract contained no findings of fact and included a disclaimer in which the parties indicated the purpose of the settlement, and the employer disavowed all

brief, the court held that a Commission settlement contract constituted *prima facie* evidence of an employer-employee relationship. However, *Korleski* relied on *Bassi*, which, as noted above does not support such a proposition.

liability for any work-related injuries. *Pientka*, 125 Ill. App. 3d at 129-31. Additionally, the reviewing court stated that the fact that no dollar amount was assigned to any of the four claims prevented any conclusion that each claim was found to be meritorious. *Pientka*, 125 Ill. App. 3d at 131. There is nothing in *Pientka* to suggest that the settlement contract constituted *prima facie* evidence of the plaintiff's claims. Thus, it does not support claimant's position here.

¶ 48 Even if we were to agree with claimant's argument that the Payment Contract constituted *prima facie* evidence that Elsie had an ownership interest in Lambright Distributors, we find that the testimony at trial successfully rebutted this conclusion. Significantly, both Harold and Elsie unequivocally denied that Elsie had an ownership interest in Lambright Distributors at the time of claimant's injuries. Harold testified that, to the best of his knowledge, Vernon was the sole owner of Lambright Distributors on the date of claimant's work accident. Similarly, Elsie testified that although she occasionally did some unpaid work for Lambright Distributors at Vernon's request, she had no ownership interest in the business. Although the arbitrator characterized the testimony of Elsie and Harold as "evasive and calculated," claimant presented no competent testimony that Elsie had an ownership interest in Lambright Distributors at the time of claimant's work accident. As the trial court observed, claimant's testimony regarding whether Elsie had an ownership interest in Lambright Distributors was "both confusing and contradictory, and changed depending on who was asking the questions." On cross-examination by Elsie's attorney, claimant agreed that he worked for Vernon, that Lambright Distributors was Vernon's business, and that Vernon was the sole owner of Lambright Distributors. Upon questioning from the attorney for the Treasurer, however, claimant testified that it was his understanding that Elsie was also an owner of Lambright Distributors. Later, in response to an inquiry from his own attorney, claimant testified that he thought Vernon and Elsie owned the business together, but he did not know. On recross-

examination by Elsie's attorney, claimant confirmed that he did not know if Elsie had an ownership interest in Lambright Distributors. Additionally, we note that aside from the testimony of the three witnesses, other evidence admitted at the arbitration hearing supports a finding that Elsie did not have an ownership interest in Lambright Distributors. For instance, claimant's paystubs and W-2 form list Vernon and Lambright Distributors as claimant's employer. Further, only Vernon signed the Mutual Release as a party.

¶ 49 Moreover, we agree with the trial court that, pursuant to *Vernon*, 179 Ill. 2d 338, Elsie did not have an ownership interest in Lambright Distributors. At issue in *Vernon* was the question of whether there can be successor liability in a sole proprietorship after the death of the original sole proprietor. In *Vernon*, the plaintiffs, George Vernon (George) and Nancy Baker (Nancy), contracted with Diversey Heating and Plumbing (Diversey Heating) to replace the boiler in their building. James Schuster was a sole proprietor doing business as Diversey Heating. Diversey Heating warranted portions of the boiler against cracking for 10 years. The plaintiffs paid Diversey Heating to inspect and service the boiler annually from 1990 to 1992. In September or October 1993, Nancy and James Schuster agreed that Diversey Heating would perform preseason service on the boiler. On October 20, 1993, James Schuster died. Diversey Heating then became a sole proprietorship owned and operated by the defendant, Jerry Schuster, the son of James Schuster. In late October or early November 1993, George asked Diversey Heating whether it had performed the preseason service on the boiler. The defendant informed George of his father's death and told George that Diversey Heating had not yet performed the service, but that it would do so immediately. In February 1994, the boiler stopped heating. After inspecting the boiler, the defendant determined that it was totally broken, could not be repaired, and had to be replaced. The

defendant denied any responsibility for the failure of the boiler and would not honor the warranty. After consulting a second contractor, the plaintiffs paid \$8203 for a new boiler.

¶ 50 The plaintiffs filed a four-count complaint. Count I alleged the defendant was negligent in installing and servicing the boiler and instructing the plaintiffs on caring for the boiler. Count II alleged the defendant's promise in late October or early November 1993 to service the boiler was the basis of a contract, and the defendant had breached that contract. Count III alleged Diversey Heating breached its warranty on the boiler. Count IV alleged Diversey Heating had breached its contract to install and service the boiler properly. The trial court dismissed count I based on the economic loss doctrine. See *Moorman Manufacturing Co. v. National Tank Co.*, 91 Ill. 2d 69 (1982). The trial court dismissed counts III and IV on the basis that the defendant could not be held liable for any obligations of his father's sole proprietorship. The trial court limited count II to events occurring after the death of James Schuster on October 20, 1993. The trial court found no just reason to delay appeal of the decision (see Ill. S. Ct. R. 304(a)), and the plaintiffs appealed the dismissal of counts III and IV. The appellate court reversed and remanded. *Vernon v. Schuster*, 285 Ill. App. 3d 857, 859 (1996). The appellate court held that counts III and IV stated a cause of action against the defendant because Diversey Heating, a sole proprietorship owned and operated by the defendant, was merely a continuation of the Diversey Heating owned and operated by the defendant's father. *Vernon*, 285 Ill. App. 3d at 860-63. The defendant filed a petition for leave to appeal to the supreme court, which petition was allowed. *Vernon*, 179 Ill. 2d at 341.

¶ 51 The supreme court stated that the "well-settled general rule is that a corporation is not liable for the debts or liabilities of the transferor corporation." *Vernon*, 179 Ill. 2d at 344-45. The court then noted that there are four exceptions to the general rule of successor corporate nonliability: (1) where there is an express or implied agreement of assumption; (2) where the transaction amounts

to a consolidation or merger of the purchaser or seller corporation; (3) where the purchaser is merely a continuation of the seller; or (4) where the transaction is for the fraudulent purpose of escaping liability for the seller's obligations. *Vernon*, 179 Ill. 2d at 345. Addressing only the third exception, the supreme court concluded that the defendant could not be liable under the continuation exception to the general rule of successor nonliability. *Vernon*, 179 Ill. 2d at 346-49.

The supreme court observed as follows:

“In determining whether one corporation is a continuation of another, the test used in the majority of jurisdictions is whether there is a continuation of the *corporate entity of the seller*—not whether there is a continuation of the *seller's business operation* ***. [Citations.] Thus, ‘[t]he majority of courts considering this exception emphasize a common identity of officers, directors, and stock between the selling and purchasing corporation as the key element of a “continuation.”’ [Citation.] In accord with the majority view, our appellate court has ‘consistently required identity of ownership before imposing successor liability under [the continuation exception].’ [Citation.]” (Emphasis in original.) *Vernon*, 179 Ill. 2d at 346-47.

The supreme court then explained:

“Common identity of ownership is lacking when one sole proprietorship succeeds another. It is well settled that a sole proprietorship has no legal identity separate from that of the individual who owns it. The sole proprietor may do business under a fictitious name if he or she chooses. However, doing business under another name does not create an entity distinct from the person operating the business. The individual who does business as a sole proprietor under one or several names remains one person, personally liable for all his or her obligations. [Citations.] A sole proprietor may hire others, with whom the proprietor

enters into the relation of employer and employee, or principal and agent. [Citation.] Thus, one commentator has stated: ‘There is generally no continuity of existence because on the death of the proprietor, the proprietorship obviously ends.’ [Citations.]” *Vernon*, 179 Ill. 2d at 347.

¶ 52 Applying the foregoing principles to the facts before it, the supreme court determined that, under the rule of successor nonliability, the defendant was not liable for the obligations of his father’s sole proprietorship. *Vernon*, 179 Ill. 2d at 348-49. The court explained thusly:

“In this case *** it must be remembered that ‘Diversey Heating’ has no legal existence. Diversey Heating was only a pseudonym for James Schuster. Once he died, Diversey Heating ceased to exist. Now, Diversey Heating is only a pseudonym for defendant.

Based on the obvious lack of common identity of ownership, the continuation exception to the rule of successor corporate nonliability cannot be applied to defendant. Plaintiffs alleged that James Schuster was the sole proprietor of Diversey Heating until his death and, after which, defendant became the sole proprietor of Diversey Heating. Plaintiffs did *not* allege that defendant held any type of ownership interest in James Schuster’s sole proprietorship. Indeed, by definition, defendant could not. Plaintiffs did not allege the existence of any business entity that could survive the death of James Schuster.

Once sole proprietor James Schuster died, he could not be the same sole proprietor as defendant, who became a sole proprietor after his father’s death. James Schuster and defendant, one succeeding the other, cannot be the same entity. [Citation.] Even if defendant inherited Diversey Heating from his father, defendant would not have continued

his father's sole proprietorship, but would have started a new sole proprietorship.

[Citations.]" (Emphasis in original.) *Vernon*, 179 Ill. 2d at 348-49.

¶ 53 Applying the teachings of *Vernon* to the facts in this case, we reach the same conclusion. The evidence of record establishes that Lambright Distributors was a sole proprietorship and a pseudonym for Vernon, its owner. Once Vernon died, Lambright Distributors ceased to exist. Now, Lambright 2 is only a pseudonym for Elsie. In other words, while there may have been a continuation of Vernon's business operations, there was not a continuation of the business entity. Moreover, although claimant alleged that Elsie held an ownership interest in Lambright Distributors, he failed to support this claim by a preponderance of the evidence. Accordingly, based on the lack of common identity of ownership, the continuation exception to the rule of successor nonliability cannot be applied to Elsie. We also note that claimant did not allege that Elsie falls within any of the other three exceptions to the rule of successor corporate nonliability. Claimant did not allege that Vernon and Elsie agreed that Elsie would assume Vernon's liabilities and obligations. In fact, the evidence is to the contrary. Moreover, claimant did not allege and, logically, could not allege that Elsie consolidated or merged with Vernon since Elsie did not form her business until a month after Vernon's death. Also, claimant did not allege that Vernon fraudulently transferred Lambright Distributors to Elsie to escape liability. We therefore conclude that, under the rule of successor nonliability as applied to a sole proprietorship as set forth in *Vernon*, Elsie is not liable for the obligations of her husband's sole proprietorship.

¶ 54 For the foregoing reasons, the Commission's finding that Elsie had an ownership interest in Lambright Distributors on the date of claimant's work accident was against the manifest weight of the evidence. It therefore follows that Elsie is not liable for the payment of workers'

compensation benefits to claimant for the injury he sustained on June 29, 2012, while working for Lambright Distributors.

¶ 55

C. The Treasurer as a Party

¶ 56 Finally, claimant asserts that if this court determines that there is sufficient evidence to support the Commission's finding that Elsie maintained an ownership interest in Lambright Distributors on the date of his injury, the Treasurer was a proper party to the action and would be secondarily liable to pay the benefits awarded to him to the extent Elsie fails to do so. Claimant further posits that even if this court determines that there was not sufficient evidence of Elsie's ownership interest in Lambright Distributors at the time of his injury, the matter should be remanded to the Commission with instructions "to enter [the] award of benefits against his uninsured employers, Lambright Distributors, Vernon Lambright (deceased) as well as the [Fund]."

¶ 57 Elsie responds that the trial court properly dismissed the Treasurer as a party. Elsie observes that the Act permits benefits to be paid by the Fund only to an injured employee who has obtained a final award for benefits. Claimant did not obtain a final order against her, so he is not entitled to benefits pursuant to the Fund. Elsie further asserts that this court is without authority to grant claimant the alternate relief he requests—a remand to the Commission to enter an award against Lambright Distributors and Vernon—because claimant never obtained an award against these entities, Lambright Distributors was merely a pseudonym and had no legal existence, and Vernon was deceased at the time claimant's case went to arbitration. While a harsh result, Elsie asserts that claimant is not without a legal remedy. According to Elsie that legal remedy is against claimant's attorneys who "have yet to explain or legally account for their inexplicable failure to

bring a worker's compensation claim against [claimant's] true employer within the statute of limitations."

¶ 58 The Fund is governed by section 4(d) of the Act (820 ILCS 305/4(d) (West 2012)). The Fund serves as a source of payment for injured employees when the employer has failed to provide the coverage required by law and has failed to pay the benefits due to the injured employee. 820 ILCS 305/4(d) (West 2012); *Illinois State Treasurer v. Illinois Workers' Compensation Comm'n*, 2015 IL 117418, ¶ 6; see also *Dratewska-Zator v. Rutherford*, 2013 IL App (1st) 122699, ¶ 3. The Treasurer is the custodian of the Fund, serving in that capacity *ex officio*. *Illinois State Treasurer*, 2015 IL 117418, ¶ 6. Section 4(d) provides that the monies in the Fund shall be "held and disbursed in accordance with this paragraph (d) for the purposes hereinafter stated in this paragraph (d), upon the final order of the Commission." Section 4(d) further provides that the Commission "shall make disbursements from the Fund once each year to each eligible claimant." 820 ILCS 305/4(d) (West 2012). For purposes of section 4(d), an "eligible claimant" is "an injured worker who has within the previous fiscal year obtained a final award for benefits from the Commission against the employer and the *** Fund and has notified the Commission within 90 days of receipt of such award." 820 ILCS 305/4(d) (West 2012).

¶ 59 In light of the foregoing, we agree that the trial court properly dismissed the Treasurer as a party in this case because claimant failed to obtain a final award for benefits from the Commission. Although the arbitrator and the Commission initially awarded claimant benefits and found Elsie liable for the payment of those benefits to claimant, the award was not final because Elsie sought judicial review of the Commission's decision. See 820 ILCS 305/19(f)(1) (West 2012) (providing that the decision of the Commission is "conclusive" unless a proceeding for review is timely commenced); see also *Ahlers v. Sears, Roebuck Co.*, 73 Ill. 2d 259, 266 (1978) (noting that an

order of the Commission becomes final when the rights and obligations of the parties are determined). Thereafter, the trial court set aside the award and entered judgment in favor of Elsie. Thus, there was no final award for benefits from the Commission against an employer, so there could be no liability to the Fund.

¶ 60 Moreover, we decline claimant’s request to remand the matter to the Commission with instructions “to enter [the] award of benefits against his uninsured employers, Lambright Distributors, Vernon Lambright (deceased) as well as the [Fund].” As noted earlier, a sole proprietorship has no legal identity separate from that of the individual who owns it. *Vernon*, 179 Ill. 2d at 347. In this case, Vernon was the sole proprietor who owned Lambright Distributors at the time of claimant’s work accident. However, Vernon died in June 2015, and claimant did not amend his application for adjustment of claim to name Vernon until February 2018, more than five years after the injury and two years after Vernon’s death. Under Illinois law, a deceased individual is a nonexistent entity and cannot be a party to a suit. *Relf v. Shatayeva*, 2013 IL 114925, ¶ 22; *Volkmar v. State Farm Mutual Automobile Insurance Co.*, 104 Ill. App. 3d 1149, 1151 (1982). Therefore, a proceeding instituted against a dead person is a nullity. *Relf*, 2013 IL 114925, ¶ 22; *Richards v. Vaca*, 2021 IL App (2d) 210270, ¶ 12. For these reasons, an award of benefits could not be entered against either Lambright Distributors or Vernon.

¶ 61 IV. CONCLUSION

¶ 62 For the reasons set forth above, we affirm the judgment of the circuit court of Douglas County, which set aside the decision of the Commission awarding claimant benefits under the Act and dismissed the Treasurer as a party in this case.

¶ 63 Affirmed.