

**IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

POLLY A. NIEMANN,	□	CASE NUMBER 12CV-7715
]]	
APPELLANT,	□	JUDGE CAIN
]]	
vs.	□	MAGISTRATE MCCARTHY
]]	
MACY'S RETAIL HOLDINGS	□	
]]	
APPELLEE	□	

DECISION AND JUDGMENT ENTRY OF DISMISSAL

This matter comes before the court on appellee's motion to dismiss this administrative appeal for the reason that this court lacks subject matter jurisdiction over this controversy. This action involves an appeal from a decision of the Unemployment Compensation Review Commission that disallowed appellant's request for a review of a decision that denied her claim for unemployment benefits. To institute the appeal, appellant filed with this court a notice of appeal naming as the sole appellee the entity of Macy's Retail Holdings, appellant's former employer.

To support his unopposed motion to dismiss, the Director of Job and Family Services contends that the notice of appeal filed herein is insufficient to provide this court with subject matter jurisdiction over this proceeding. Appellee bases its motion on the provisions of R.C. 4141.282. In pertinent part, that statute provides:

(A) THIRTY-DAY DEADLINE FOR APPEAL

Any interested party, within thirty days after written notice of the final decision of the unemployment compensation review commission was sent to all interested parties, may appeal the decision of the commission to the court of common pleas.

(B) WHERE TO FILE THE APPEAL

An appellant shall file the appeal with the court of common pleas of the county where the appellant, if an employee, is a resident or was last employed or, if an employer, is a resident or has a principal place of business in this state.

(C) PERFECTING THE APPEAL

The timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court. The notice of appeal shall identify the decision appealed from.

(D) INTERESTED PARTIES

The commission shall provide on its final decision the names and addresses of all interested parties. The appellant shall name all interested parties as appellees in the notice of appeal. **The director of job and family services is always an interested party and shall be named as an appellee in the notice of appeal.**

(E) SERVICE OF THE NOTICE OF APPEAL

Upon filing the notice of appeal with the clerk of the court, the clerk shall serve a copy of the notice of appeal upon all appellees, including the director

(F) DUTIES OF THE COMMISSION

The commission, within forty-five days after a notice of appeal is filed, shall file with the clerk a certified transcript of the record of the proceedings at issue before the commission. The commission also shall provide a copy of the transcript to the appellant's attorney or to the appellant, if the appellant is not represented by counsel, and to any appellee who requests a copy. (Emphasis added.)

* * *

In support of its contention that this court is without subject matter jurisdiction in the instant action, appellee places reliance on recent case law reemphasizing the necessity of strictly adhering to the statutory requirements for appealing an adjudicative order. Particularly noted is R.C. 4141.282(D) which expressly requires appellant to name all interested parties, particularly the Director of Job and Family Services, as appellees in the notice of appeal. Here,

as was noted, appellant has failed to name the director as an appellee in this action.

The Director of Job and Family Services urges dismissal of this suit due to the failure to follow the relevant statutory dictates. In this regard, it is instructive to note the case of *Berus v. Ohio Dep't of Admin. Servs.*, 2005 Ohio 3384, 2005 Ohio App. LEXIS 3113 (Ohio Ct. App., Franklin County, June 30, 2005). In *Berus*, the Franklin County Court of Appeals admonished:

When the right to appeal is conferred by statute, the appeal can be perfected only in the mode prescribed by statute. *Ramsdell v. Ohio Civil Rights Comm.* (1990), 56 Ohio St. 3d 24, 27.

And see, *Griffith v. J. C. Penney Co.* (1986), 24 Ohio St. 3d 112, 113, citing *McCruiter v. Bd. of Review* (1980), 64 Ohio St. 2d 277, 279; *Holmes v. Union Gospel Press* (1980), 64 Ohio St. 2d 187, 188, 18 O.O. 3d 405, 406; *Zier v. Bur. of Unemployment Comp.* (1949), 151 Ohio St. 123, 125.

In the recent case of *Luton v. State Unemployment Revision Commission*, 2012 Ohio 3963, 2012 Ohio App. LEXIS 3494, (Ohio Ct. App., Cuyahoga County Aug. 30, 2012) a very similar factual pattern was presented for review. In *Luton*, the appellant neglected to name his employer as an appellee in the appeal. As noted above, all "interested parties" must be named in the administrative appeal. Clearly, both the employer and the administrative director are interested parties. The court in *Luton*, recognizing that strict statutory compliance is required in administrative appeals, upheld the lower court decision dismissing the appeal for lack of subject matter jurisdiction. The court ruled: ". . . the timely filing of an incorrect notice of appeal does not vest the court of common pleas with

jurisdiction.” Citing *Sydenstricker v. Donato's Pizzeria*, 11th Dist. No. 2009-L-149, 2010 Ohio 2953, 2010 WL 2557705.

Thus, upon consideration, it is found that appellant has failed to comply with the mandatory requirements of the law¹ and, as a consequence, this court has failed to acquire subject matter jurisdiction over this proceeding.² This cause is hereby dismissed. Costs to be paid by appellant.

Copies to:

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Counsel for Appellee

¹ The requirements of the law were not secreted from appellant, only to be found in a multi-volume set of law books. The requirements were plainly made known to appellant and set forth in the Unemployment Compensation Review Commission's May 17, 2012 communication to appellant wherein it was said, "The appellant must name all interested parties as appellees in the notice of appeal, including the Director of the Department of Job and Family Services."

² Because this court has not been imbued with subject matter jurisdiction, it is unable to rule on appellant's motion for leave to amend.

Franklin County Court of Common Pleas

Date: 10-19-2012

Case Title: POLLY A NIEMANN -VS- MACYS RETAIL HOLDINGS

Case Number: 12CV007715

Type: DECISION

It Is So Ordered.



/s/ Judge David E. Cain

Court Disposition

Case Number: 12CV007715

Case Style: POLLY A NIEMANN -VS- MACYS RETAIL HOLDINGS

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 12CV0077152012-07-0999980000

Document Title: 07-09-2012-MOTION TO DISMISS

Disposition: MOTION GRANTED