

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

WILLIAM E. TORBETT,	:	
	:	
Appellant,	:	CASE NO. 12CV-09-11111
	:	
vs.	:	JUDGE HOLBROOK
	:	
OHIO STATE DEPARTMENT OF JOB	:	
AND FAMILY SERVICES,	:	
	:	
Appellees.	:	

DECISION AND JUDGMENT ENTRY
GRANTING MOTION TO DISMISS
AND
NOTICE OF FINAL APPEALABLE ORDER

HOLBROOK, JUDGE

This case was filed by *pro se* appellant William E. Torbett. Appellant's filing, which has been accepted as a Notice of Appeal, states in significant part that he is appealing "the decision made by the Ohio Unemployment Compensation Review Commission" stemming from his being fired on February 5, 2012 by Strom Engineering "for insubordination." See September 1, 2012 Notice of Appeal. On October 23, 2012, the Director of the Ohio Department of Job and Family Services ("Director") filed a motion to dismiss appellant's appeal based upon his failure to name his former employer, Strom Engineering Corporation, as an appellee, as required by R.C. 4141.282(D). Upon review, appellee Director's Motion to Dismiss is well-founded and this case must be dismissed due to appellant's failure to invoke the subject matter jurisdiction of this Court.

Ohio case law continues to hold that *pro se* litigants are held to the same standards as a practicing attorney. *Justice v. Lutheran Social Services*, Franklin Cty. No. 92AP-1153, unreported, 1993 Ohio App. LEXIS 2029 at *6 (10th Dist.). The *pro se* litigant is to be treated

the same as one trained in the law as far as the requirement to follow procedural law and adhere to court rules, and are presumed to have knowledge of the law and of correct legal procedure. *Kessler v. Kessler*, 2010-Ohio-2369, ¶8 (10th Dist.); *Meyers v. First Natl. Bank*, 3 Ohio App.3d 209, 210 (1st Dist.1981); *Erie Ins. Co. v. Bell*, 2002-Ohio-6139 (4th Dist.). *Pro se* civil litigants are also bound by the same rules and procedures as those litigants who retain counsel. *White v. Fifth Third Bank*, 2010-Ohio-4611, ¶13 (10th Dist.), citing *Zukowski v. Brunner*, 125 Ohio St.3d 53, 2010-Ohio-1652; *Raccuia v. Kent State Univ.*, 2010-Ohio-3014, ¶13 (10th Dist.); *Copeland v. Rosario*, Summit Cty. No. 18452, 1998 Ohio App. LEXIS 260 at *7 (9th Dist.). If the Court treats a *pro se* litigant differently, the Court begins to depart from its duty of impartiality and prejudices the handling of the case as it relates to other litigants represented by counsel. Accordingly, under Ohio law, *pro se* litigants are not accorded greater rights and must accept the results of their mistakes and errors. *Kilroy v. B.H. Lakeshore*, 111 Ohio App.3d 357, 363 (8th Dist.1996); *Harris v. Housing Appeals Board*, 2003-Ohio-724, 11 (9th Dist.).

Additionally, “[i]t is elementary that an appeal, the right to which is conferred by statute, can be perfected only in the mode prescribed by statute. . . .” *Zier v. Bureau of Unemployment Compensation*, 151 Ohio St. 123, syllabus para.1 (1949). The Ohio Supreme Court has further held that “. . . [c]ompliance with these specific and mandatory requirements governing the filing of such notice is essential to invoke jurisdiction of the Court of Common Pleas. . . .” *Id.* at paragraph two of the syllabus. With regard to appellant’s notice of appeal, appellee Director correctly notes that the appellant named the Director as the sole appellee. Appellant failed to name his former employer, Strom Engineering Corporation, as an appellee. *See* September 1, 2012 Notice of Appeal.

Pursuant to R.C. 4141.282(D), “[t]he appellant shall name all interested parties as appellees in the notice of appeal.” A failure to name one’s employer in the notice of appeal constitutes a failure to comply with the mandatory requirements of R.C. 4141.282(D). *Luton v. Rev. Comm.*, 2012-Ohio-3963, ¶14 (8th Dist.). *See also In re Claim of King*, 62 Ohio St.2d 87, 87 (1980) (court determined that because appellee failed to name his employer as a party to the appeal, appellee failed to follow the directives of the statute, and therefore, the court of common pleas lacked subject matter jurisdiction to proceed). “Substantial compliance” with the statute does not vest jurisdiction with the reviewing court. *Luton, supra* at ¶¶15-16.

Here, appellant failed to name all interested parties. Specifically, appellant failed to name former employer as an appellee in his notice of appeal. “An incorrect notice of appeal does not vest jurisdiction in the court of common pleas.” *Sydenstricker v. Donato's Pizzeria, L.L.C.*, 2010-Ohio-2953, at *5 (11th Dist.). *See* R.C. 4141.282(C). Appellant has not complied with the mandatory requirements of R.C. 4141.282(D).

Additionally, the appeal filed by the *pro se* appellant does not identify the order from which he is appealing, which is required by R.C. 4141.282(C). *See* R.C. 4141.282 (“The notice of appeal shall identify the decision appealed from.”). The notice of appeal simply consists of one paragraph, without a caption, that describes how appellant previously filed for and was denied unemployment benefits. The notice indicates that appellant is appealing “the decision made by the Ohio Unemployment Compensation Review Commission.” There is no date provided for the decision or indicated that it is a decision that in any way relates to appellant. Simply put, the notice of appeal does not state what, if any, decision appellant is appealing this Court.

Appellant has not met his burden of identifying the order from which he is appealing as required by R.C. 4141.282, and the September 1, 2012 document filed by appellant as a “notice of appeal” cannot be construed as a notice of his intention to appeal the Unemployment Compensation Review Commission’s August 8, 2012 Decision. *See Moore v. Foreacher*, 156 Ohio St. 255, at syllabus (1951) (“notice of appeal” from a decision of the board of review is sufficient “where the notice of appeal clearly and without any ambiguity or uncertainty identifies . . . the decision from which the appeal is taken”); *Altizer v. Bd. of Review*, unreported, 10th Dist. No. 95APE10-1310, 1996 Ohio App. LEXIS 951, at *6 (10th Dist.1996)(a valid appeal requires “a written notice indicating a desire for review of a previous determination”). Consequently, the Court’s jurisdiction has not been invoked to review any decision of the Unemployment Compensation Review Commission with regard to appellant.

Accordingly, appellee’s motion to dismiss is **GRANTED**. The appeal herein is **DISMISSED** based on the fact that the appellant has not invoked the jurisdiction of this Court.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

(B) Notice of filing. When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY.

THIS IS A FINAL APPEALABLE ORDER. Pursuant to Civil Rule 58, the Clerk of Court shall serve notice upon all parties of this judgment and its date of entry.

IT IS SO ORDERED.

Copies To:

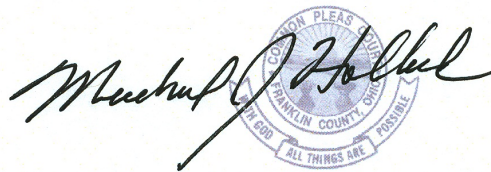
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Franklin County Court of Common Pleas

Date: 10-26-2012
Case Title: WILLIAM E TORBETT -VS- OHIO STATE DEPARTMENT JOB &
FAMILY SERVI
Case Number: 12CV011111
Type: DISMISSAL ORDER CASE

It Is So Ordered.

A handwritten signature in black ink, reading "Michael J. Holbrook", is written over a blue circular official seal. The seal contains the text "COMMON PLEAS", "FRANKLIN COUNTY, OHIO", and "ALL THINGS ARE POSSIBLE".

/s/ Judge Michael J. Holbrook

Court Disposition

Case Number: 12CV011111

Case Style: WILLIAM E TORBETT -VS- OHIO STATE DEPARTMENT JOB &
FAMILY SERVI

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 12CV0111112012-10-2399980000
Document Title: 10-23-2012-MOTION TO DISMISS
Disposition: MOTION GRANTED