

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

WENDMIDDLE, LLC,	:	
	:	
Appellant,	:	CASE NO. 13CVF-02-1306
	:	
vs.	:	JUDGE HOLBROOK
	:	
OHIO STATE UNEMPLOYMENT	:	
COMPENSATION REVIEW,	:	
	:	
Appellees.	:	

**DECISION AND ENTRY
DISMISSING APPEAL FOR LACK OF JURISDICTION**

HOLBROOK, JUDGE

This case was filed by *pro se* appellant Wendmiddle, LLC. Appellant’s letter to the Court, which has been accepted as a Notice of Appeal, states in significant part that the company “would like to file an administrative appeal for the unemployment case of Tessa Young” as the company does not believe that she should be eligible for benefits. *See* February 4, 2013 Notice of Appeal. One of the exhibits to the Notice of Appeal is a copy of a December 6, 2012 Decision Disallowing Request for Review from the Unemployment Compensation Review Commission in Case Docket No.: C2012-024407, which denied appellant’s request for a review of the Hearing Officer’s decision allowing appellee’s Application for Determination of Benefit Rights. Upon review, this case must be dismissed due to appellant’s failure to invoke the subject matter jurisdiction of this Court.

The Court is compelled to address the issue of whether appellant’s notice of appeal comports with the requirements of R.C. 4141.282. “It 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. In this case, the pertinent portion of R.C. 4141.282, being the statute governing the appeal procedure involved herein, states:

(D) 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.

The Unemployment Compensation Review Commission (“Review Commission”) complied with the applicable section of R.C. 4141.282(D). The December 6, 2012 Decision states in “Appeals Rights” on page 4 of 5 that “[a]n appeal from this decision may be filed to the Court of Common Pleas of the county where the appellant, if an employee, is resident or was last employed . . ., within thirty (30) days from the date of mailing of this decision, as set forth in Section 4141.282, Revised Code of Ohio. 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.” *See* Exhibit A to Notice of Appeal, p. 4. The December 6, 2012 Decision also provided the names and addresses of all interested parties, including appellant, the appellee and the Director of the Ohio Department of Job and Family Services (“ODJFS”). *Id.* p. 4-5.

The statute at issue also unequivocally states that appellant must name all interested parties as appellees in the notice of appeal, including the Director of ODJFS. Appellant failed to name all interested parties, specifically the Director of ODJFS. “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, a corporation cannot maintain litigation in propria persona, or appear in court through an officer of the corporation or an appointed agent not admitted to practice law. *Union Sav. Ass.'n v. Home Owners Aid, Inc.*, 23 Ohio St.2d 60 (1970); *Rowland v. Cal. Men's Colony*, 506 U.S. 194, 202 (1993). Pursuant to R.C. 1701.01(G), a limited liability company is a legal "person." R.C. 4705.01 prohibits anyone from practicing law, commencing, conducting or defending any action or proceeding in which the person is not a party, unless the person has been admitted to the bar by order of the Supreme Court of Ohio. This rule applies not only to corporations, but also to limited liability companies. *Disciplinary Counsel v. Kafel*, 108 Ohio St.3d 283, 2006-Ohio-904.

In this appeal, Cathleen Markiewicz, an employee of Wendmiddle, LLC, filed a notice of appeal on behalf of Wendmiddle, LLC, identifying herself in the Notice of Appeal simply as the "Payroll Clerk" for appellant. Because appellant Wendmiddle, LLC was acting as *pro se* appellant improperly through its Payroll Clerk and not through licensed counsel, the notice was not adequate to perfect Wendmiddle, LLC's appeal. See *Becker v. Montgomery*, 532 U.S. 757, 763-68 (2001) (finding notice of appeal defective for lack of proper signature of a licensed attorney); *Fuller & Associates v. Am. Home Health Care, Inc.*, 2004-Ohio-4342, ¶ 9 (5th Dist.).

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 Ohio Department of Job and Family Services' Motion to

Dismiss for Lack of Subject Matter Jurisdiction filed on April 15, 2013 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:

Wendmiddle, LLC
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Appellant

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Appellee

Franklin County Court of Common Pleas

Date: 04-16-2013
Case Title: WENDMIDDLE LLC -VS- OHIO STATE UNEMPLOYMENT
COMPENSATION REVIEW
Case Number: 13CV001306
Type: ENTRY

It Is So Ordered.

A handwritten signature in black ink, which appears to read "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: 13CV001306

Case Style: WENDMIDDLE LLC -VS- OHIO STATE
UNEMPLOYMENT COMPENSATION REVIEW

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 13CV0013062013-04-1599980000

Document Title: 04-15-2013-MOTION TO DISMISS

Disposition: MOTION GRANTED