

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

GREGORY SCOTT VIALL,	:		
	:	Case No.	13 CVD-01-446
Plaintiff,	:	Judge:	Guy L. Reece, II
v.	:		
	:		
OHIO STATE UNEMPLOYMENT COMPENSATION REV.,	:		
	:		
Defendant.	:		

**DECISION AND ENTRY
GRANTING DIRECTOR, OHIO DEPARTMENT OF JOB
AND FAMILY SERVICES' MARCH 1, 2013 MOTION TO DISMISS**

REECE, J.

This matter is before the Court on Director, Ohio Department of Job and Family Services' ("ODJFS") March 1, 2013 Motion to Dismiss. As of the date of this Decision and Entry, said motion remains unopposed.

ODJFS urges the Court to dismiss this appeal filed by Plaintiff Gregory Scott Viall ("Plaintiff"), *pro se*, on January 11, 2013. ODJFS explains that, pursuant to R.C. §4141.282(D), with respect to an appeal of a decision issued by the unemployment benefits review commission, 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." ODJFS argues it was not listed as a defendant in this action, nor was it served with a copy of the notice of appeal as required by R.C. §4141.282(E).

Indeed, the record reveals Plaintiff, on January 11, 2013, filed a letter addressed "Dear Sirs," setting forth his "response to the denial of [his] UCRC decision based on the hearing held

on 01/02/13 Docket # H-2012029032.” The letter makes no mention ODJFS, let alone identify it as a party to this action.

The Court acknowledges that Plaintiff is a *pro se* litigant, but notes that parties ““who choose to represent themselves in judicial proceedings are entitled to no greater constitutional protections than those who choose to be represented by counsel.”” *Tunison v. AG*, 10th Dist. No. 03AP-457, 2004-Ohio-1062, ¶5, citing *Franklin County Dist. Bd. of Health v. Sturgill*, 10th Dist. No. 99AP-362, 1999 Ohio App. LEXIS 5984 (Dec. 14, 1999), quoting *Justice v. Kolb*, 10th Dist. No. 79AP-768, 1980 Ohio App. LEXIS 10849 (June 3, 1980).

The Ohio Revised Code and the Ohio Rules of Civil Procedure apply equally to all litigants, and *pro se* litigants “are presumed to have knowledge of the law and legal procedures and *** they are held to the same standard as litigants who are represented by counsel.” *State ex rel. Fuller v. Mengel*, 100 Ohio St.3d 352, 2003-Ohio-6448, 800 N.E.2d 25, ¶10, quoting *Sabouri v. Ohio Dept of Job & Family Services*, 145 Ohio App.3d 651, 654, 763 N.E.2d 1238 (10th Dist. 2001). Therefore, the Court must apply all procedural rules to all parties equally, regardless of whether the parties are represented by counsel or not.

The Court finds Plaintiff has failed to comply with the requirements of R.C. §4141.282. As the Ohio Supreme Court explained in *In re Claim of King*, 62 Ohio St.2d 87, 403 N.E.2d 200 (1980), while quoting from its decision in *Zier v. Bureau of Unemployment Compensation*, 151 Ohio St. 123, 84 N.E.2d 746 (1949),

“An appeal, the right to which is conferred by statute, can be perfected only in the mode prescribed by statute. The exercise of the right conferred is conditional upon compliance with the accompanying mandatory requirements.” We held further in the second paragraph of the syllabus 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. ***” See, also, *Todd v. Garnes* (1975), 44 Ohio St. 2d 56. It is, therefore, well-established that where a statute confers a right of appeal, as in the instant cause, strict adherence to the statutory conditions is essential for the enjoyment of that

right. *American Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147, paragraph one of the syllabus.

In order to perfect an appeal under R. C. 4141.28(O), the statute explicitly requires that the party appealing serve all other interested parties with notice. Appellee herein failed to follow this directive when he failed to serve notice on appellant. Therefore, this court finds that the Court of Common Pleas lacked subject-matter jurisdiction in this matter. The lack of subject-matter jurisdiction is not a waivable defense and may be raised for the first time on appeal. *Jenkins v. Keller* (1966), 6 Ohio St. 2d 122, paragraph six of the syllabus.

In re Claim of King, 62 Ohio St.2d at 88-89.

Plaintiff having failed to comply with the requirement of R.C. §4141.282(D) that it name ODJFS as an interested party to this appeal, the Court finds that, in light of *In re Claim of King*, it lacks subject-matter jurisdiction over the appeal. ODJFS's March 1, 2013 Motion to Dismiss is hereby **GRANTED**.

IT IS SO ORDERED.

Copies To:

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Plaintiff

Michelle T. Sutter (electronically)
Attorney General's Office
Counsel for ODJFS

Franklin County Court of Common Pleas

Date: 01-17-2014

Case Title: GREGORY SCOTT VIALL -VS- OHIO STATE UNEMPLOYMENT
COMPENSATION REV

Case Number: 13CV000446

Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge Guy L. Reece, II

Court Disposition

Case Number: 13CV000446

Case Style: GREGORY SCOTT VIALI -VS- OHIO STATE
UNEMPLOYMENT COMPENSATION REV

Motion Tie Off Information:

1. Motion CMS Document Id: 13CV0004462013-03-0199980000

Document Title: 03-01-2013-MOTION TO DISMISS

Disposition: MOTION GRANTED