



**LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY JUSTICE CENTER
225 COURT STREET
ELYRIA, OHIO 44035**

PATRICK MACQUEENEY
OHIO ATTORNEY GENERAL'S OFFICE
615 W SUPERIOR AVE, 11TH FLOOR
CLEVELAND, OH 44113-1899

CASE NO. **13CV181864**
Hon. Judge John R Miraldi

DARREN MORALES
VS.
AVON LANDSCAPING INC

*** * * * * NOTICE * * * * ***

Pursuant to Civil Rule 58 (B), **Notice** is hereby given that judgment was rendered in the above captioned case and was entered upon the journal of the Court on 7-1-14 .

Distribution: All parties or attorneys of record.

Online case information may be found at:
<http://www.loraincounty.com/clerk/>



**IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO**

DARREN MORALES,

Appellant,

vs.

AVON LANDSCAPING, INC.,

Appellee.

CASE NO. 13-CV-181864

JUDGE JOHN R. MIRALDI

FINAL JUDGMENT ENTRY OF DISMISSAL

This case came on for consideration pursuant to the *Motion to Dismiss* that was filed by the Ohio Department of Job and Family Services (ODJFS), on June 2, 2014 and the *Motion to Dismiss* that was filed by Appellee, Avon Landscaping, Inc. (ALI) on June 23, 2014.

This case arises as a statutory unemployment compensation appeal filed by Appellant Darren Morales (Morales), on October 30, 2013 under R.C. 4141.282. Morales appeals from the final *Decision* of the Unemployment Compensation Review Commission (UCRC) that denied his claim for unemployment benefits on the basis that he was discharged from his employment by Appellee ALI for just cause under R.C. 4141.29(D)(2)(a).

As a preliminary matter, R.C. 4141.282(A) and R.C. 4141.282(D) provide as follows with respect to the mandatory jurisdictional requirement that: 1) a notice of appeal shall be filed in the common pleas court within 30 days after the final decision of the UCRC has been sent to the parties; and 2) the appellant *shall name all interested parties as appellees* in the notice of appeal:

R.C. 4141.282(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.

R.C. 4141.282(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.

In addition, R.C. 4141.282(E) states as follows regarding the procedure to be followed by the clerk of court with respect to service of a notice of appeal that is filed by an appellant in the common pleas court pursuant to R.C. 4141.282:

R.C. 4141.282(E) // SERVICE OF THE NOTICE OF APPEAL

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

On August 22, 2013, a *Decision* was issued by the hearing officer of the UCRC that denied the claim on the basis that Morales was discharged from his employment by ALI for just cause under R.C. 4141.29(D)(2)(a).

On September 12, 2013, Morales filed a *Request for Review* of the adverse *Decision* of the hearing officer of the UCRC dated August 22, 2013 pursuant to R.C. 4141.281.

On October 1, 2013, a final *Decision* was issued by the full UCRC that disallowed the *Request for Review* that was filed by Morales under R.C. 4141.281(C)(5).

Pursuant to the statutory and jurisdictional appeal period of thirty (30) days that is set forth in R.C. 4141.282, Morales was required by law to file a *valid* notice of appeal of the *Decision* of the UCRC dated *October 1, 2013* in the Lorain County Court of Common Pleas by *October 31, 2013*. Specifically, according to R.C. 4141.282(D), Morales was required by law to ***name all interested parties*** identified in the *Decision* of the UCRC dated October 1, 2013 as appellees in his *Notice of Appeal* to be filed in the Lorain County Court of Common Pleas by *October 31, 2013*. According to R.C. 4141.282(D), ODJFS “**is always an interested party and shall be named as an appellee in the notice of appeal**” (See R.C. 4141.282(D)) (See *Appeal Rights* set forth on page 2 of final *Decision* of the UCRC dated October 1, 2013).

However, the Court hereby finds that Morales filed a legally defective *Notice of Appeal* in the Lorain County Court of Common Pleas on October 30, 2013 in violation of R.C. 4141.282. Specifically, in the caption of the *Notice of Appeal* filed by Morales in the Lorain County Court of Common Pleas on October 30, 2013, Morales erroneously named his former employer (ALI) as the *sole party-appellee* in the case and Morales *failed to name ODJFS as a mandatory party-appellee in violation of R.C. 4141.282(D)*.

Therefore, based upon the fact that the *Notice of Appeal* that was filed by Morales in the Lorain County Common Pleas Court on October 30, 2013 was *legally defective and void* under Ohio law, the Court hereby finds that this statutory unemployment compensation case must be dismissed for lack of subject matter jurisdiction under R.C. 4141.282 because:

1) Morales *failed to name ODJFS* as a mandatory party-appellee in the *Notice of Appeal* that he filed in the Lorain County Court of Common Pleas on October 30, 2013 in violation of the jurisdictional requirements of R.C. 4141.282;

2) the 30-day statutory appeal period for Morales to file a legally valid notice of appeal of the *Decision* of the UCRC dated October 1, 2013 in the Lorain County Court of Common Pleas *already expired on October 31, 2013* under R.C. 4141.282;

3) a statutory unemployment compensation case that is filed under R.C. 4141.282 is classified as a "special statutory proceeding" that is *not governed by the Ohio Rules of Civil Procedure* pursuant to Civ. R. 1(C)(7); and

4) any "amended" notice of appeal that Morales might attempt to file in this case *after October 31, 2013* would be *untimely filed* in violation of R.C. 4141.282 because the 30-day statutory appeal period to file a *valid notice of appeal* of the *Decision* of UCRC dated October 1, 2013 under R.C. 4141.282 *already expired on October 31, 2013*. See *Dikong v. UCRC*, 1st Dist. No. C120057, 2013-Ohio-33; *Luton v. ODJFS*, 8th Dist. No. 97996, 2012-Ohio-3963; *Mattice v. ODJFS*, 2nd Dist. No. 25718, 2013-Ohio-3941; *Sydenstricker v. Donato's Pizzeria*, 11th Dist. No. 2009-L-149, 2010-Ohio-2953; *Griffith v. J.C. Penney*, 24 Ohio St. 3d 112 (1986); *Fowler v. Summa Health*, 9th Dist. No. CA22091, 2004-Ohio-6740.

In *Dikong v. UCRC*, 1st Dist. No. C120057, 2013-Ohio-33, the First District Court of Appeals recently relied upon controlling legal authority from the Supreme Court of Ohio and held that the appealing party in a statutory unemployment case filed under R.C. 4141.282 must *strictly comply* with the mandate of *R.C. 4141.282(D)* to name all interested parties as appellees and affirmed the judgment of the trial court to dismiss the case for lack of subject matter jurisdiction under R.C. 4141.282.

In *Luton v. ODJFS*, 8th Dist. No. 97996, 2012-Ohio-3963, the Eighth District Court of Appeals recently relied upon controlling legal authority from the Supreme Court of Ohio and *Sydenstricker v. Donato's Pizzeria*, 11th Dist. No. 2009-L-149, 2010 Ohio 2953, and held that the appealing party in a statutory unemployment case that is filed under R.C. 4141.282 must *strictly comply* with the mandate under *R.C. 4141.282(D)* to name all interested parties as appellees and affirmed the judgment of the trial court to dismiss the case for lack of subject matter jurisdiction under R.C. 4141.282.

In *Mattice v. ODJFS*, 2nd Dist. No. 25718, 2013-Ohio-3941, the Second District Court of Appeals recently relied upon controlling legal authority from the Supreme Court of Ohio and held that the appealing party in a statutory unemployment compensation case that is filed under R.C. 4141.282 must *strictly comply* with the mandate under *R.C. 4141.282(D)* to name all interested parties as appellees and affirmed the judgment of the trial court to dismiss the case for lack of subject matter jurisdiction under R.C. 4141.282.

In *Sydenstricker v. Donato's Pizzeria*, 11th Dist. No. 2009-L-149, 2010-Ohio-2953, the Eleventh District Court of Appeals relied upon controlling case law from the Supreme Court of Ohio and held that the appealing party in a statutory unemployment case filed under R.C. 4141.282 must *strictly comply* with the mandate under *R.C. 4141.282(D)* to name all interested parties as appellees and affirmed the judgment of the trial court to dismiss the case for lack of subject matter jurisdiction under R.C. 4141.282.

Based upon the foregoing, the Court hereby GRANTS the *Motion to Dismiss* that was filed by ODJFS on June 2, 2014 and the *Motion to Dismiss* filed by Appellee ALI on June 23, 2014 and hereby ORDERS that this case be DISMISSED with prejudice for lack of subject matter jurisdiction under R.C. 4141.282 because:

1) Morales *failed to name ODJFS* as a mandatory party-appellee in the *Notice of Appeal* that he filed in the Lorain County Court of Common Pleas on October 30, 2013 in violation of the jurisdictional requirements of R.C. 4141.282 (See R.C. 4141.282(D) and *Appeal Rights* set forth on page 2 of final *Decision* of the UCRC dated October 1, 2013); and

2) Morales has no right to amend his defective *Notice of Appeal* because the 30-day statutory appeal period to file a valid notice of appeal of the final *Decision* of the UCRC dated October 1, 2013 *already expired on October 31, 2013* under R.C. 4141.282. See *Dikong v. UCRC*, 1st Dist. No. C120057, 2013-Ohio-33; *Luton v. ODJFS*, 8th Dist. No. 97996, 2012-Ohio-3963; *Mattice v. ODJFS*, 2nd Dist. No. 25718, 2013-Ohio-3941; *Sydenstricker v. Donato's Pizzeria*, 11th Dist. No. 2009-L-149, 2010-Ohio-2953; *Griffith v. J.C. Penney*, 24 Ohio St. 3d 112 (1986); *Fowler v. Summa Health*, 9th Dist. No. CA22091, 2004-Ohio-6740.



JUDGE JOHN R. MIRALDI

NOTICE TO THE CLERK OF COURTS

Pursuant to Civ. R. 58(B), the Lorain County Clerk of Court shall serve notice of this *Final Judgment Entry of Dismissal* and its date of entry on the Journal upon all parties and/or counsel of record as follows:

Darren Morales
155 Ravenglass Boulevard
Amherst, Ohio 44001
Appellant Darren Morales

Edward Hack, Esq.
1991 Crocker Road, Suite 550
Westlake, Ohio 44145
Attorney for Appellee Avon Landscaping, Inc.

Patrick MacQueeney, Esq.
Assistant Attorney General
Ohio Attorney General's Office
615 W. Superior Avenue, 11th Floor
Cleveland, OH 44113-1899
Attorney for Ohio Department of Job and Family Services

**TO THE CLERK: THIS IS A FINAL
APPEALABLE ORDER
PLEASE SERVE UPON ALL PARTIES NOT IN
DEFAULT FOR FAILURE TO APPEAR,
NOTICE OF THE JUDGMENT AND
ITS DATE OF ENTRY UPON THE JOURNAL.**