

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

**GRATE LAKES COURIER SERVICE, LLC,**

**Case No: 15CVF-09-8444**

**Appellant,**

**JUDGE YOUNG**

**-vs-**

**OHIO STATE UNEMPLOYMENT COMPENSATION  
REVIEW COMMISSION,**

**Appellee.**

**DECISION AND ENTRY**  
**GRANTING THE APPELLEE’S MOTION TO DISMISS**  
**AS FILED ON NOVEMBER 2, 2015**

**YOUNG, JUDGE**

The above-styled case is before the Court on the Motion to Dismiss as filed by the Ohio Unemployment Compensation Review Commission (Appellee). Said Motion having been filed on November 2, 2015. Great Lakes Courier Service, LLC, (Appellant) filed a Memorandum Contra on November 12, 2015.

For the reasons that follow, this Court **GRANTS** the Appellee’s Motion to Dismiss.

**I. STATEMENT OF THE CASE:**

Appellant was adversely affected by an administrative decision. Appellant appealed that determination to this Court. The Appellee has asserted that this Court lack’s subject matter jurisdiction pursuant to R.C. §4141.26(D)(2).

**II. STATEMENT OF THE FACTS:**

Appellant contested a holding concerning the status of its workers. The Commission held that the workers in question were employees of the Appellant and not independent contractors. A final determination was made at the agency level and the Appellant filed this appeal. The only party named by the Appellant was the “State Of Ohio Unemployment Compensation Review Commission”. The Appellant did not name the Director of the Ohio Department of Job and Family

Services.

The Appellee filed its Motion to Dismiss claiming that the filing of the Appeal without naming the Director is incorrect and the error has led to a jurisdictional issue. The matter has been fully briefed.

### **III. Analysis:**

The Appellee relied upon the language of R.C. §4141.26(D)(2). Said language reads in pertinent part as follows:

(D) The rate determined pursuant to this section and section 4141.25 of the Revised Code shall become binding upon the employer unless:

(2) . . . .

The employer and the director shall be promptly notified of the commission's decision, which shall become final unless, within thirty days after the mailing of notice of it to the employer's last known address by certified mail, return receipt requested, or, in the absence of mailing, within thirty days after delivery of such notice, an appeal is taken by the employer or the director to the court of common pleas of Franklin county. **Such appeal shall be taken by the employer or the director** by filing a notice of appeal with the clerk of such court and with the commission. Such notice of appeal shall set forth the decision appealed and the errors in it complained of. Proof of the filing of such notice with the commission shall be filed with the clerk of such court.

The commission, upon written demand filed by the appellant and within thirty days after the filing of such demand, shall file with the clerk a certified transcript of the record of the proceedings before the commission pertaining to the determination or order complained of, and the appeal shall be heard upon such record certified to the commission. In such appeal, no additional evidence shall be received by the court, but the court may order additional evidence to be taken before the commission, and the commission, after hearing such additional evidence, shall certify such additional evidence to the court or it may modify its determination and file such modified determination, together with the transcript of the additional record, with the court. After an appeal has been filed in the court, **the commission, by petition, may be made a party to such appeal**. Such appeal shall be given precedence over other civil cases. The court may affirm the determination or order complained of in the appeal if it finds, upon consideration of the entire record, that the determination or order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate, or modify the determination or order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The judgment of the court shall be final and conclusive unless reversed, vacated, or modified on appeal. An appeal may be taken from the decision of the court of

common pleas of Franklin county. (Emphasis added)

The Appellee then relied upon *WFAL Construction v. Director*, ODJFS, 2015-Ohio-3044 (10<sup>th</sup> Dist.) to support its claim that the failure to name the Director was/is jurisdictional.

The WFAL court noted the following at ¶¶ 7 - 9:

Under R.C. 4141.26, WFAL was required to name and serve the appropriate party within the statutorily allowed time frame. For purposes of this appeal, the Director of Ohio Department of Job and Family Services was the correct adverse party to be named. However, in WFAL's original notice of appeal filed with the court, the Administrator of the Review Commission was named as the opposing party. The Director was not properly named as a party to the matter until July 17, 2014, more than one month after WFAL's allotted time for appeal had closed.

We have recently held that when a party fails to perfect an appeal pursuant to statute, the trial court lacks jurisdiction to hear the appeal. *Frambes 137, L.L.C. v. Franklin Cty. Bd. of Revision*, 10th Dist. No. 14AP-785, 2015-Ohio-1391, ¶ 10. Part of perfecting an appeal within a statutorily required time period includes naming the proper party in the notice of appeal.

The right to appeal is purely a matter of statute and must be exercised strictly in compliance with the statutory conditions relating thereto.

Thus, where, as here, a statute provides that certain parties are necessary to an appeal, such parties must be joined before the time for filing the appeal has lapsed, otherwise such appeal must fail. A subsequent joinder of necessary parties after the expiration of the time for filing of the appeal will not validate the appeal. The statutory time for filing appeals is substantially that of a statute of limitations, and, once such time has passed, necessary parties cannot be added so as to endow the court with jurisdiction over these proceedings.

*Reuben McMillan Free Library Assn. v. Mahoning Cty. Budget Comm.*, 175 Ohio St. 191 (1963), overruled on other grounds.

WFAL only named the Administrator of the Review Commission as a party in its appeal. It is clear from R.C. 4141.26 that the Review Commission is not meant to be a party of the appeal and that the Review Commission itself may petition to become a party if it chooses. "After an appeal has been filed in the court, the commission, by petition, may be made a party to such appeal. Such appeal shall be given precedence over other civil cases." R.C. 4141.26(D)(2). The trial court was proper in dismissing both WFAL's notice of appeal and amended notice of appeal for lack of subject-matter jurisdiction.

*WFAL* is controlling law in this County.

The Appellant claimed substantial compliance. But the case law clearly requires strict

compliance with the rule. The Appellant also requested the leave to amend. However, the finding of lack of jurisdiction means this Court has nothing that it can amend.

In the end, this is a harsh result but the law is very clear. Strict compliance with the statute is mandatory and the Appellant failed to comply.

Based upon the clear record and the case law. The Appellees' Motion to Dismiss is **GRANTED**.

**V. DECISION:**

The Appellee's Motion to Dismiss of November 2, 2015 is **GRANTED**.

Appellant's Appeal is **DISMISSED**.

**THIS IS A FINAL APPEALABLE ORDER**

**DAVID YOUNG, JUDGE**

Copies to:

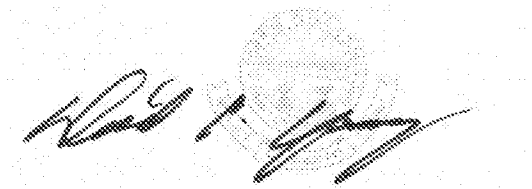
JERRY E PEER JR  
TWO MIRANOVA PL, STE 330  
COLUMBUS, OH 43215  
Counsel for the Appellant

SUSAN M SHEFFIELD  
20 W FEDERAL ST, 3RD FLR  
YOUNGSTOWN, OH 44503  
Counsel for the Appellee

Franklin County Court of Common Pleas

**Date:** 11-20-2015  
**Case Title:** GREAT LAKES COURIER SERVICE LLC -VS- OHIO STATE  
UNEMPLOYMENT COMPENSATION  
**Case Number:** 15CV008444  
**Type:** DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "D. Young", is written over a circular embossed seal. The seal is partially obscured by the signature and has a textured, dotted appearance.

/s/ Judge David C. Young

Court Disposition

Case Number: 15CV008444

Case Style: GREAT LAKES COURIER SERVICE LLC -VS- OHIO  
STATE UNEMPLOYMENT COMPENSATION

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 15CV0084442015-11-0299980000  
Document Title: 11-02-2015-MOTION TO DISMISS -  
DEFENDANT: OHIO STATE UNEMPLOYMENT COMPENSATION  
Disposition: MOTION GRANTED