

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

ALEASHA JACKSON,

Appellant,

-vs-

Case No: 16CVF-01-284

JUDGE REECE II

OHIO STATE UNEMPLOYMENT COMPENSATION
REVIEW COMMISSION,

Appellees.

DECISION AND ENTRY
GRANTING THE APPELLEE'S MOTION TO DISMISS
AS FILED ON MARCH 17, 2016

REECE, JUDGE

The above-styled case is before the Court on the Motion to Dismiss as filed by the Unemployment Compensation Review Commission (Appellee). Said Motion having been filed on March 17, 2016. Aleasha Jackson, (Appellant) filed a 'Reply to' the motion on March 21, 2016. No other party has made an appearance in this matter.

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. §4141.282(D).

II. STATEMENT OF THE FACTS:

Appellant contested a holding concerning the termination of her unemployment benefits. The Commission held that the Appellant no longer was going to be allowed to participate because she was employed and she had kept the fact of her employment from the Appellee. A final determination was made at the agency level and the Appellant filed this appeal. The Appellant

named the Unemployment Compensation Review Commission and only severed that entity.

The Appellant did not name the Director, Ohio Department of Job and Family Services even though the Decision informed the Appellant that said party was an interested party **to any** appeal. 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. §4141.282(D). Said language reads in pertinent part as follows:

(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 response to the Appellee's Motion, the Appellant filed a 'Reply'. That document asserted that the filing of the Motion was in fact untimely under the Civil Rules. Unfortunately, the Civil Rule concerning the timing of an Answer does not apply to this fact pattern. The issue before the Court concerns its jurisdiction. Lack of subject matter jurisdiction can be raised at any time.

The Appellee relied upon a number of cases that support its position. The Appellee advanced the case of *Sydenstricker v. Donato's Pizzeria*, 2010-Ohio-2953 (11th Dist.) and *Luton v. Ohio State, UCRC*, 2012-Ohio-3963, (8th Dist.).

A case not relied upon by the Appellee, but on point is *Hinton v. State, Unemployment Review Commission*, 2015-Ohio-1364 (7th Dist.). The *Hinton* court clearly supports Appellee's claim that the failure to name the Director was/is jurisdictional.

The *Hinton* court noted the following at ¶¶ 10 - 15:

The trial court dismissed Hinton's administrative appeal on the basis that it lacked jurisdiction due to Hinton's failure to include all interested parties in the appeal as required by R.C. 4141.282(D). As jurisdiction is a threshold matter, we consider that

issue first.

R.C. 4141.282(D) addresses the interested parties a claimant-appellant must include in their appeal of a decision of the unemployment compensation review commission to the court of common pleas:

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 right to appeal a decision of the unemployment compensation review commission is created by statute, and the statutory requirements governing an administrative appeal must be strictly followed in order to effectuate the appeal. The Ohio Supreme Court has often reaffirmed the proposition that: "[a]n 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 conditioned upon compliance with the accompanying mandatory requirements." *Zier v. Bureau of Unemployment Compensation*, 151 Ohio St. 123, 84 N.E.2d 746 (1949), paragraph one of the syllabus; reaffirmed by *Hansford v. Steinbacher*, 33 Ohio St.3d 72, 72, 514 N.E.2d 1385 (1987); further reaffirmed by *Ramsdell v. Ohio Civ. Rights Comm.*, 56 Ohio St.3d 24, 27, 563 N.E.2d 285 (1990). "Compliance 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 instance, the trial court did not err in dismissing Hinton's administrative appeal on the basis that it lacked jurisdiction due to Hinton's failure to comply with R.C. 4141.282(D). In accordance with R.C. 4141.282(D), the review commission's decision provided to Hinton contains a section entitled "APPEAL RIGHTS" which states:

An 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**. (Emphasis added.)

Hinton did not include all interested parties as appellees in his notice of appeal of the review commission's decision to the court of common pleas. He did not include the Director of the Department of Job and Family Services which the review commission's decision clearly identifies as an interested party. *Sydenstricker v. Donato's Pizzeria, LLC*, 11th Dist. No. 2009-L-149, 2010-Ohio-2953; R.C. 4141.01(I) (specifically defining an interested party to include the director). He also failed to include the employer, *Schwebel*. The employer is likewise an interested party. *Luton v. Ohio Unemp. Revision Comm.*, 8th Dist. No. 97996, 2012-Ohio-3963. Just below the section entitled "APPEAL RIGHTS" in which Hinton was advised of the requirement of naming all interested parties as appellees in the notice of appeal are the names and addresses of what would be considered interested

parties, including in this instance, the Director and Schwebel.

Thus, based on Hinton's failure to follow the statutory mandates of R.C. 4141.282, the Mahoning County Court of Common Pleas lacked jurisdiction, and, therefore, it was not error for the trial court to grant ODJFS's motion to dismiss.

Hinton is good law. *Hinton* was rendered on **March 30, 2015** and is supported by decisions from the First, Second and Eight District Courts of Appeal.

However, on **March 31, 2015** the Ninth District issued its decision in *Pryor v. Director, Ohio Department of Job and Family Services*, 2015-Ohio-1255. The *Pryor* court was unaware of the *Hinton* decision – but the *Pryor* court was aware of the opinions from the First, Second and Eight District Courts of Appeal. After reviewing the divergent opinions and after reviewing similar case law from this District; i.e., cases concerning R.C. §4141.26(D)(2) such as *WFAL Construction v. Director, ODJFS*, 2015-Ohio-3044 (10th Dist.) it appears that the holding in *Hinton* is of greater precedential value and it will be followed by this Court.

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 as filed on March 17, 2016 is **GRANTED.**

Appellant's Appeal is **DISMISSED.**

THIS IS A FINAL APPEALABLE ORDER

GUY REECE II, JUDGE

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Franklin County Court of Common Pleas

Date: 04-06-2016

Case Title: ALEASHA JACKSON ET AL -VS- OHIO STATE
UNEMPLOYMENT COMP REVIEW COMM

Case Number: 16CV000284

Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge Guy L. Reece, II

Court Disposition

Case Number: 16CV000284

Case Style: ALEASHA JACKSON ET AL -VS- OHIO STATE
UNEMPLOYMENT COMP REVIEW COMM

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 16CV0002842016-03-1799980000
Document Title: 03-17-2016-MOTION TO DISMISS -
DEFENDANT: OHIO STATE UNEMPLOYMENT COMP REVIEW
COMM
Disposition: MOTION GRANTED