

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

<b>Troy Sumner,</b>		<b>Case No. 15CV-03476</b>
<b>Appellant,</b>		<b>Judge Sheeran</b>
<b>vs.</b>		
<b>Ohio Unemployment Compensation Review Commission,</b>		
<b>Appellee.</b>		

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**Decision and Judgment Entry Dismissing Revised Code 4141.282 Administrative  
Appeal for Lack of Subject Matter Jurisdiction**

**and**

**Notice of Final Appealable Order**

**Sheeran, J.**

This case is a Revised Code 4141.282 administrative appeal, by Troy Sumner (Appellant), from a Decision that the Ohio Unemployment Compensation Review Commission mailed to Appellant on February 24, 2015. In that Decision, the Commission denied Appellant's request for further review of a Hearing Officer's Decision. The record that the Commission has certified to the Court reflects the following procedural history.

On August 1, 2014, Appellant applied to the Ohio Department of Job and Family Services (ODJFS) for unemployment compensation benefits. Appellant's former employer, Talbott Recovery Campus, opposed Appellant's application.

In an initial Determination issued on August 20, 2014, ODJFS allowed Appellant's application for benefits, having found that he was discharged without just cause in connection with his work. Talbott Recovery Campus appealed the initial Determination.

In a Director's Redetermination issued on October 1, 2014, the Director of ODJFS affirmed the initial Determination and allowed Appellant's application for benefits, having found that he was discharged without just cause in connection with his work. Talbott Recovery Campus appealed the Director's Redetermination.

On October 10, 2014, ODJFS transferred jurisdiction of the appeal to the Ohio Unemployment Compensation Review Commission.

On October 24, 2014, a Hearing Officer conducted a telephone hearing on the appeal. Talbott Recovery Campus participated in the hearing. Appellant did not participate.

In a Decision issued on October 27, 2014, the Hearing Officer reversed the Director's Redetermination and disallowed Appellant's application for benefits, having found that Appellant was discharged for just cause in connection with his work. In the Decision, the Hearing Officer notified the parties, "A Request for Review before the U.C. Review Commission may be filed by any interested party within twenty-one calendar days after this decision is mailed. Said twenty-one day period is calculated to end on November 17, 2014."

Appellant did not file a Request for Review by November 17, 2014.

On February 3, 2015, Appellant filed a Request for Review of the Hearing Officer's October 27, 2014 Decision.

On February 23, 2015, a Hearing Officer conducted a telephone hearing on the issue of whether Appellant had filed a timely Request for Review of the Hearing Officer's October 27,

2014 Decision. Appellant participated in the hearing. Talbott Recovery Campus did not participate.

In a Decision mailed to Appellant on February 24, 2015, the Commission dismissed Appellant's Request for Review from the Hearing Officer's October 27, 2014 Decision, having found that Appellant did not file a timely Request for Review. In the Decision, the Commission notified Appellant:

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(A)(B)(C), 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.

In the Decision, the Commission provided Appellant with the names and addresses of all interested parties, including Appellant's former employer, Talbott Recovery Campus and the Director of ODJFS.

On March 24, 2015, Appellant timely appealed the Commission's February 24, 2015 Decision to this Court, and the case was assigned to Judge Michael J. Holbrook. See *Sumner v. Ohio Unemp. Comp. Rev. Comm.*, Franklin C.P. No. 15CV-02549. Appellant did not name Talbott Recovery Campus or the Director of ODJFS as appellees in his notice of appeal.

Revised Code 4141.282(D) provides:

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.

On April 3, 2015, on the Director's motion, Judge Holbrook dismissed Franklin C.P. No. 15CV-02549 for lack of subject matter jurisdiction, because Appellant did not name all

interested parties as appellees in his notice of appeal, as required by R.C. 4141.282(D). Appellant did not appeal Judge Holbrook's judgment, and the judgment therefore became final.

On April 23, 2015, fifty-eight days after the Commission mailed its February 24, 2015 Decision to Appellant, he filed the instant appeal from that same Decision. Appellant, again, did not name Talbott Recovery Campus or the Director of ODJFS as appellees in his notice of appeal.

On April 23, 2015, Appellant instructed the Franklin County Clerk of Courts to serve Appellant's notice of appeal on some, but not all, of the interested parties identified in the Commission's February 24, 2015 Decision. On April 27, 2015, the Clerk mailed Appellant's notice of appeal, by certified mail, to the addresses provided by Appellant. However, there were no returns of service filed with the Clerk by the U.S. Postal Service to establish that any of the mailings had been received.

On February 23, 2016, therefore, the Court ordered the Clerk to serve Appellant's notice of appeal on all of the interested parties identified in the Commission's February 24, 2015 Decision, including Talbott Recovery Campus and the Director of ODJFS. The Court ordered the Clerk to serve Appellant's notice of appeal at the addresses provided by the Commission.

On March 1, 2016, counsel for the Director of ODJFS entered an appearance in this case. On March 8, 2016, counsel for Talbott Recovery Campus entered an appearance.

On March 18, 2016, the Director of ODJFS filed a motion to dismiss this appeal pursuant to Civ. R. 12(B)(6) for failure to state a claim upon which relief can be granted. The Director contends that, under the doctrine of res judicata, Judge Holbrook's April 3, 2015 judgment bars this appeal. Appellant has not opposed the Director's motion, and the motion was deemed submitted to the Court on April 15, 2016 pursuant to Local R. 21.01.

For the following reasons, the Director's motion to dismiss this appeal pursuant to Civ. R. 12(B)(6) must be denied. However, there are other, independent grounds for the dismissal of this appeal, as explained below.

The doctrine of res judicata involves both claim preclusion (historically called estoppel by judgment in Ohio) and issue preclusion (traditionally known as collateral estoppel). *Grava v. Parkman Twp.*, 73 Ohio St. 3d 379, 381 (1995). With regard to the claim-preclusive effect of the doctrine of res judicata, the Supreme Court of Ohio has held:

A final judgment or decree rendered **upon the merits**, without fraud or collusion, by a court of competent jurisdiction is conclusive of rights, questions and facts in issue as to the parties and their privies, and is a complete bar to any subsequent action on the same claim or cause of action between the parties or those in privity with them. (Emphasis added.)

*Norwood v. McDonald*, 142 Ohio St. 299 (1943), paragraph one of the syllabus. Pursuant to Civ. R. 41(B)(4)(a), an involuntary dismissal due to a lack of subject matter jurisdiction constitutes a failure otherwise than upon the merits. *Brownfield v. Krupman*, 10th Dist. No. 14AP-294, 2015-Ohio-1966, ¶ 10.

On April 3, 2015, when Judge Holbrook dismissed Appellant's first appeal for lack of subject matter jurisdiction, Judge Holbrook did not enter a final judgment upon the merits of the appeal. Judge Holbrook's judgment therefore does not bar the present appeal under the doctrine of res judicata. The Director's March 18, 2016 motion to dismiss this appeal pursuant to Civ. R. 12(B)(6) for failure to state a claim upon which relief can be granted is therefore **DENIED**.

Nevertheless, this appeal must be dismissed because Appellant did not file this appeal within thirty days from the date of mailing of the Commission's February 24, 2015 Decision, and because Appellant did not name Talbott Recovery Campus or the Director of ODJFS in his notice of appeal.

Revised Code 4141.282 provides:

§ 4141.282 Appeal to court.

APPEAL TO COURT

(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.

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(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. (Emphasis added.)

The Supreme Court of Ohio has held repeatedly that, when the right to appeal is conferred by statute, an appeal can be perfected only in the manner prescribed by the applicable statute. *Welsh Dev. Co., Inc. v. Warren Cty. Regional Planning Comm.*, 128 Ohio St. 3d 471, 2011-Ohio-1604, ¶ 14. A party must strictly adhere to the filing requirements in order to perfect an appeal and invoke the jurisdiction of the common pleas court. *CHS-Windsor, Inc. v. Ohio Dept. of Job and Family Servs.*, 10th Dist. No. 05AP-909, 2006-Ohio-2446, ¶ 6.

Appellant did not file this appeal within thirty days of the mailing of the Commission's February 24, 2015 Decision. By failing to file a timely appeal, Appellant has failed to invoke the jurisdiction of this Court.

Furthermore, the failure to name all interested parties as appellees in the notice of appeal, as required by R.C. 4141.282(D), deprives a common pleas court of subject matter jurisdiction over an unemployment compensation appeal. *Hinton v. Ohio Unemp. Comp. Rev. Comm.*, 7th

Dist. No. 14 MA 45, 2015-Ohio-1364, ¶¶ 14-15; *Rupert v. Ohio Dept. of Job and Family Servs.*, 6th Dist. No. L-14-1139, 2015-Ohio-915, ¶¶ 12-13; *Mattice v. Ohio Dept. of Job and Family Servs.*, 2nd Dist. No. 25718, 2013-Ohio-3941, ¶¶ 14-16; *Dikong v. Ohio Supports, Inc.*, 1st Dist. No. C-120057, 2013-Ohio-33, syllabus; *Luton v. Ohio Unemp. Comp. Rev. Comm.*, 8th Dist. No. 97996, 2012-Ohio-3963, ¶ 19; *Sydenstricker v. Donato's Pizzeria, LLC*, 11th Dist. No. 2009-L-149, 2010-Ohio-2953, ¶ 25. By failing to name Talbott Recovery Campus and the Director of ODJFS as appellees in his notice of appeal, Appellant has failed to invoke the jurisdiction of this Court.

The Court is mindful of the fact that Appellant is not an attorney and that he has chosen to represent himself in this appeal and in the appeal before Judge Holbrook. However, as a pro se party, Appellant is held to the same rules, procedures, and standards as those litigants represented by counsel and therefore must accept the results of his own mistakes and errors. *Discover Bank v. Doran*, 10th Dist. No. 10AP-496, 2011-Ohio-205, ¶ 6.

This Court does not possess subject matter jurisdiction over this appeal. This case is hereby **DISMISSED**.

This is a final, appealable Order. Pursuant to Civ. R. 58, the Franklin County Clerk of Courts shall serve notice of this judgment and its date of entry upon all parties.

Copies electronically transmitted to all parties and counsel of record.

Franklin County Court of Common Pleas

**Date:** 04-27-2016  
**Case Title:** TROY SUMNER -VS- TALBOTT RECOVERY CAMPUS ET AL  
**Case Number:** 15CV003476  
**Type:** DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Patrick E. Sheeran". The signature is written over a blue circular official seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY OHIO" around the inner edge, and "WHERE ALL THINGS ARE" at the bottom. The signature is written in a cursive style.

/s/ Judge Patrick E. Sheeran



Court Disposition

Case Number: 15CV003476

Case Style: TROY SUMNER -VS- TALBOTT RECOVERY CAMPUS  
ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 15CV0034762016-03-1899980000  
Document Title: 03-18-2016-MOTION TO DISMISS -  
DEFENDANT: OHIO STATE UNEMPLOYMENT COMPENSATION  
REV  
Disposition: MOTION DENIED