

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

CHIEBONAM EZIRIM,

CASE NO. 17CVF-02-1431

APPELLANT,

JUDGE YOUNG

VS.

OHIO STATE UNEMPLOYMENT  
COMPENSATION REVIEW, ET AL.,

APPELLEES.

**DECISION AND ENTRY**  
**GRANTING THE MOTION TO DISMISS**  
**AS FILED BY THE DIRECTOR OF THE OHIO DEPARTMENT OF JOB AND**  
**FAMILY SERVICES ON FEBRUARY 27, 2017**

YOUNG, J.

The matter before the Court is the pending Motion to Dismiss as filed by the Director of the Ohio Department of Job and Family Services, (Appellee) on February 27, 2017. Chiebonam Ezirim (Appellant) failed to file a memorandum contra. For the reasons that follow, this Court **GRANTS** the Appellee's Motion.

**I. Procedural History:**

The Appellant filed a Notice of Appeal with this Court on February 2, 2017. The Appellant contested the decision from the Unemployment Compensation Review Commission (Commission) as mailed on January 25, 2017. The Commission's Decision Disallowing Request for Review related to the request for benefits as filed by Chenelle R. Butler. The Commission's decision allowed Chenelle Butler to receive benefits. The Notice had the following name and address listed for the Appellant on the cover page of the Notice:<sup>1</sup>

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<sup>1</sup> The following is a 'copy image' from the Notice filed with this Court.

Plaintiff

Chiebonam Ezirim

DBA: The Patience Home Healthcare Service, LLC  
3184 West Broad Street Columbus Ohio 43204  
(614) 279-875 ph (614) 886-5466 cell

The Notice also had a letter attached. The letter had a letterhead of +The Patience Home Healthcare Services, LLC. It was signed by Chiebonam Ezirim, RN. No attorney signed the Notice of Appeal.

The Appellee moved to have the appeal dismissed because Chiebonam Ezirim is not an attorney and the filing of the Notice of Appeal on behalf of a corporate entity was/is a nullity. Hence, the Appellee asserted that the Appellant has never commenced its appeal. Having failed to timely commence its appeal, the Appellee asserted that the entire case should be dismissed on jurisdictional grounds. Appellee based that request on the fact that without a timely filed Notice of Appeal, this Court lacks subject matter jurisdiction to hear the appeal.

To support the argument the Appellee asserted that R.C. 4141.282 gave the Appellant 30 days to perfect its appeal. The filing of the Notice on February 9, 2017 – if filed by an attorney – would have been timely. However, as of the date of the filing of the Appellee’s Motion to Dismiss; i.e., February 27, 2017 - and clearly by the date of the filing of the Decision and Entry - no proper Notice of Appeal has been filed and the 30 day timeframe contained within R.C. 4141.282 has expired. The Decision mailed on January 25, 2017 had to be appealed no later than February 24, 2017.

This Court has reviewed the Motion. As noted, the Appellant did not file a Memorandum Contra or otherwise move or plead in response to the filing. The matter is ready for a determination.

## **II. STANDARD OF REVIEW**

The Appellee has asserted that this Court does not have jurisdiction because the filing is untimely. What makes the filing untimely is the Appellee's argument that the Notice filed by the Appellant was/is a nullity.

Though the Appellee has not referenced a civil rule, it is apparent that the motion is a Civ.R. 12(B)(1) motion to dismiss. The Appellees have asserted that his Court does not have subject matter jurisdiction. Please note the following:

The standard of review for a Civ.R. 12(B)(1) motion to dismiss is "whether any cause of action cognizable by the forum has been raised in the complaint." State ex rel. Bush v. Spurlock (1989), 42 Ohio St.3d 77, 80. When making this determination, the trial court is not confined to the allegations of the complaint, but may consider material pertinent to that inquiry without converting the motion into one for summary judgment. Southgate Development Corp. v. Columbia Gas Transmission Corp. (1976), 48 Ohio St.2d 211, paragraph one of the syllabus. If the trial court only considers the complaint and undisputed facts when ruling on the motion, then appellate review is limited to a determination of whether the facts are indeed undisputed and whether the trial court correctly applied the law. Wilkerson v. Howell Contrs., Inc., 163 Ohio App.3d 38, 43, 2005-Ohio-4418.

From within this legal framework this Court will now review the arguments of counsel.

## **III. ANALYSIS**

As noted the Appellee has moved to have the appeal dismissed. The Appellee claimed that the filing of the Notice is a nullity and it should be dismissed. The Appellee asserted that only a lawyer can file a Notice of Appeal for a corporate entity. Please note the following *Williams v. Global Constr. Co.*, 26 Ohio App.3d 119 at 121:

Under Ohio law, a corporation can maintain litigation or appear in court only through an attorney admitted to the practice of law and may not do so through an officer of the corporation or some other appointed agent. 1 Union Savings Assn. v. Home Owners Aid (1970), 23 Ohio St.2d 60, 52 O.O.2d 329, 262 N.E.2d 558; Bd. of Trustees for the Memorial Civic Center v. Carpenter Co. (Aug. 9, 1982), Allen App. No. 1-81-38, unreported, 1982 WL 4618. In Williams v. Global Construction Co. Ltd. (1985), 26 Ohio App.3d 119, 26 OBR 330, 498 N.E.2d 500, paragraph two of the syllabus, the court stated:

"When a non-attorney files a complaint in a court in violation of R.C. 4705.01, the court should dismiss the complaint without prejudice."

See, also, Micchia, D.D.S. v. Matchak (Dec. 5, 1986), Lake App. No. 11-217, unreported, 1986 WL 14348; and Clark v. Summers (May 21, 1988), Hocking App. No. 87-CA-2, unreported, 1988 WL 65610. *Sheridan Mobile Village, Inc. v. Larsen*, 78 Ohio App.3d 203 at 205 (4<sup>th</sup> Dist.)

There are exceptions to this rule, but none of the exceptions relate to this appeal. Hence, the above case law supports a dismissal without prejudice of Appellant's appeal.

The Appellee also relied upon the language contained in *Campus Pitt Stop LLC v. Ohio Liquor Control Commission*, 2014-Ohio-227 (10<sup>th</sup> Dist.) at ¶ 13:

Construing R.C. 1925.17, the Eleventh District Court of Appeals in *Gass v. Headlands Contracting & Tunnelling, Inc.*, 11th Dist. No. 2008-G-2841, 2008-Ohio-6057, dismissed a notice of appeal that had been filed by a non-lawyer member of a limited liability company. In *Gass*, H. Stanley Gass filed a notice of appeal from a judgment of the Geauga County Court of Common Pleas. Mr. Gass filed the appeal "d.b.a. Adept Contractor Services LLC, pro se." The appellee filed a motion to dismiss, arguing that the appellant, as a limited liability company, is prohibited from representing itself pro se in the appeal. The court noted its prior precedent "that pursuant to R.C. 1925.17, outside of small claims court, an individual, including a corporate officer, who is not an attorney, may not appear in court or maintain litigation in propria persona on behalf of a corporation." *Id.* at ¶ 5. On this basis, the court ruled that Mr. Gass, a non-attorney, lacked standing to appeal the judgment entered against the appellant. We likewise find Ms. Krieder and Mr. Taylor could not appeal the judgment against appellant. Accordingly, we overrule appellant's second assignment of error.

Normally, a without prejudice dismissal would allow a litigant to re-file. However, this is an administrative appeal.

The Appellee correctly pointed out that R.C. 4141.282 controls the method and timing of an appeal. The cases interpreting the code requires a litigant to strictly follow the procedures for filing an administrative appeal. Having determined that the Notice filed on behalf of the corporation is a nullity, it is impossible for the Appellant to now timely file its appeal. Hence, the dismissal should be with prejudice because any new filing will be after the jurisdictional deadline contained in the code. There is merit to that argument.

Even if the Appellant had requested the right to amend the Notice that request would not solve the error. One cannot amend a nullity. Therefore the Appellee's Motion is **GRANTED**.

#### **IV. DECISION**

The Motion to Dismiss as filed by the Appellees on February 27, 2017 is **GRANTED**.

The Appeal is **DISMISSED WITH PREJUDICE**.

#### **THIS IS A FINAL APPEALABLE ORDER**

**Judge David Young**

Copies to:

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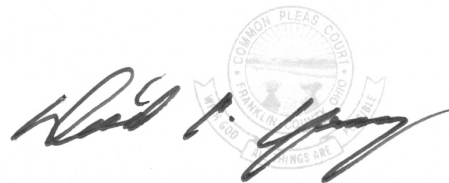
**Date:** 03-17-2017

**Case Title:** CHIEBONAM EZIRIM -VS- OHIO STATE UNEMPLOYMENT  
COMPENSATION REV ET AL

**Case Number:** 17CV001431

**Type:** DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "David C. Young", is written over a circular official seal. The seal features a central emblem and the text "COMMON PLEAS COURT" at the top and "FRANKLIN COUNTY OHIO" around the bottom edge.

/s/ Judge David C. Young

Court Disposition

Case Number: 17CV001431

Case Style: CHIEBONAM EZIRIM -VS- OHIO STATE  
UNEMPLOYMENT COMPENSATION REV ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 17CV0014312017-02-2799980000  
Document Title: 02-27-2017-MOTION TO DISMISS - NON-  
PARTY: OHIO DEPT JOB & FAMILY SERVICES  
Disposition: MOTION GRANTED