

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

CHANELLA DUNFORD,

CASE NO.: 2012 CV 07499

Plaintiff(s),

JUDGE TIMOTHY N. O'CONNELL

-VS-

OHIO DEPARTMENT OF JOB AND
FAMILY SERVICES,

**DECISION, ORDER AND ENTRY
GRANTING
APPELLEES/DEFENDANTS'
MOTION TO DISMISS AND
AMENDED MOTION TO DISMISS**

Defendant(s).

This matter is before the Court on Appellees/Defendants, Sylvester Patton, Chairman, and the Ohio Department of Job & Family Services' (collectively "Defendants") *Motion to Dismiss* that was filed on December 28, 2012. Appellant Chanella Dunford ("Dunford") filed a *Memorandum Contra* on January 16, 2013. Defendants filed an *Amended Motion to Dismiss* on January 17, 2013. Defendants also filed a *Reply Brief in Further Support of Amended Motion to Dismiss* on February 5, 2013.

I. LAW AND ANALYSIS

Defendants argue that 1) Dunford untimely filed her *Notice of Appeal*, depriving the Court of jurisdiction; and 2) Dunford failed to name her former employer as a party to this appeal, as required by O.R.C. 4141.282(D).

Dunford argues that she did not know that she needed to list her employer as one of the parties to this case. She asserts that she does not have an attorney to help her, and that her case

must be heard. She argues that Safe Haven Agency, LLC is employing people and not filing proper taxes.

A. Dunford's *Notice of Appeal* is untimely

Defendants argue that Dunford failed to file her *Notice of Appeal* within 30 days after the written notice of the final decision of the Commission was mailed to her, as required by O.R.C. 4141.282(A). Defendants contend that the time limitation is a condition precedent to jurisdiction of this Court, and thus the Court lacks jurisdiction over this matter.

Dunford does not specifically provide any arguments in opposition to Defendants' argument.

Dunford seeks an administrative appeal pursuant to O.R.C. 4141.282 from the decision of the State of Ohio Unemployment Compensation Review Commission (the "Commission"). The Commission's decision was mailed to Dunford on June 6, 2012.

O.R.C. 4141.282(A) states: "[a]ny 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."

The written notice of the final decision of the unemployment compensation review commission was sent to Dunford on June 6, 2012. Dunford did not file her *Notice of Administrative Appeal* until October 18, 2012. Dunford's *Notice of Administrative Appeal* was not filed within 30 days from the final decision of the Commission. The Court finds that Dunford's *Notice of Administrative Appeal* filed on October 18, 2012 was untimely. Based on this, the Court lacks subject matter jurisdiction over the matter.¹ Defendants' *Amended Motion to Dismiss* is GRANTED as to this argument.

¹ *Fulton v. Unemployment Comp. Review Comm'n*, Lucas App. No. L-07-1209, 2008 Ohio 2094 (May 2, 2008).

B. Failure to name former employer

Defendants argue that this Court does not have jurisdiction over Dunford's appeal because she failed to name her former employer, Safe Haven Agency, LLC, as a party to the appeal, as required by O.R.C. 4141.282(D).

Dunford argues that she did not know that she needed to list her employer as one of the parties to this case.

O.R.C. 4141.282(D) states: "[t]he 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."

"An 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."²

Dunford's *Notice of Administrative Appeal* solely lists Sylvester Patton, Chairman and Ohio Department of Job & Family Services as defendants. Dunford does not list her former employer, Safe Haven Agency, LLC as a defendant. The Commission stated in its June 6, 2012 final decision that:

"[a]n 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, or of the county where the appellant, if an employer, is resident or has the principal place of business in this state, 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."

The final decision also lists Dunford's former employer, Safe Haven Agency, LLC, and the address for Safe Haven Agency, LLC.

² *Zier v. Bur. Of Unemp. Comp.*, 151 Ohio St. 123 (1949).

The court in *Luton* held that: “The statute at issue unequivocally states that Luton must name all interested parties as appellees in the notice of appeal. Luton's failure to name his former employer in his notice of appeal means that he did not comply with the mandatory requirements of R.C. 4141.282(D).”³ The court went on to find that the trial court lacked jurisdiction over the appeal based on the failure to follow the mandates of O.R.C. 4141.282(D). The Court agrees with the holding in *Luton*. Dunford has failed to follow the statutory mandates of O.R.C. 4141.282(D). Therefore, this Court lacks jurisdiction to consider Dunford’s appeal. Defendants’ *Amended Motion to Dismiss* and *Motion to Dismiss* are GRANTED as to this argument.

II. CONCLUSION

After duly considering the above matter, Defendants’ *Motion to Dismiss* and *Amended Motion to Dismiss* are hereby GRANTED.

This is a final appealable order, and there is not just cause for delay for the purposes of Civ. R. 54. Pursuant to App. R. 4, the parties shall file a Notice of Appeal within thirty (30) days.

SO ORDERED:

TIMOTHY N. O’CONNELL, JUDGE

**To the Clerk of Courts:
Please serve the attorney for each party and each party not represented by counsel with Notice of Judgment and its date of entry upon the journal.**

SO ORDERED:

JUDGE TIMOTHY N. O’CONNELL

³ *Luton v. State Unemployment Revision Comm’n*, Cuyahoga App. No. 97996, 2012 Ohio 9363 (Aug. 30, 2012).

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41 N. Perry Street, Dayton, Ohio 45422

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Case Number: 2012 CV 07499
Type: Decision Sustaining Motion

So Ordered

Timothy N. O'Connell

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