

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

JOSHUA CAUDILL,

Case No: 12CVF-12-15506

Appellant,

JUDGE SHEWARD

-vs-

ABERCROMBIE & FITCH, ET AL.,

Appellees.

DECISION AND ENTRY
GRATING THE MOTION TO DISMISS FOR LACK OF SUBJECT MATTER
JURISDICTION AS FILED ON JANUARY 17, 2013

SHEWARD, JUDGE

The above-styled case is before the Court on an appeal filed by Appellant Caudill. On January 17, 2013 the Ohio Department of Jobs and Family Services (hereinafter referred to as ODJFS) filed its motion requesting that the matter be dismissed pursuant to R.C. §4141.282(D). The Appellant has not filed a timely response to that motion. For the reasons that follow, this Court **GRANTS** the Appellee's Motion to Dismiss for lack of jurisdiction.

I. STATEMENT OF THE CASE

Appellant filed a Notice of Appeal with this Court. The Notice of Appeal did not name the ODJFS, nor did the Appellant name his former employer. The failure to name ODJFS is a jurisdictional defect in the pleading pursuant to R.C. §4141.282(D).

II. STATEMENT OF THE FACTS

The Appellant was in the process of attempting to secure unemployment compensation. Appellant did not like the result of the administrative proceeding and filed a *pro se* Notice of Appeal. The Notice of Appeal did not name any party.

This matter is ready for a review.

III. STANDARD OF REVIEW

R.C. §4141.282 sets forth the method of appeal to this Court. Time and time again the courts of Ohio have indicated that strict compliance with R.C. §4141.282 is necessary in order for a party to perfect an appeal to this Court. Please note the following relevant language from *Luton v. State of Ohio Unemployment Revision Commission*, 2012-Ohio-3963(8th District) at ¶¶ 6 – 9:

The Supreme Court of Ohio, in *Zier v. Bur. of Unemp. Comp.*, 151 Ohio St. 123, 84 N.E.2d 746 (1949), paragraph one of the syllabus, held:

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.

The court further held: "[c]ompliance with these specific and mandatory requirements governing the filing of such notice is essential to invoke jurisdiction of a Court of Common Pleas. * * *" *Id.*, at paragraph two of the syllabus.

The Supreme Court of Ohio, when deciding *In re Claim of King*, 62 Ohio St.2d 87, 88, 403 N.E.2d 200 (1980), relied upon *Zier* in determining that a party appealing a decision of the Unemployment Compensation Board of Review to the court of common pleas is required to follow the statutory requirements. The appellee in *King* failed to adhere to the statutory mandate of former R.C. 4141.28(O), requiring "that the party appealing serve all other interested parties with notice." The appellee did not file a copy of the notice of appeal with the administrator of the Ohio Bureau of Employment Services nor did he name the administrator as a party to his appeal. *Id.* The appellee also failed to name his employer as a party to the appeal. *Id.* The court found that the appellee failed to follow the directives of the statute, thus the court of common pleas lacked subject matter jurisdiction. *Id.* The court reiterated that "where a statute confers a right of appeal, as in the instant cause, strict adherence to the statutory conditions is essential for the enjoyment of the right." *Id.* See also *Sydenstricker*.

In the present case, the pertinent portion of R.C. 4141.282, the statute governing the appeal process involved herein, states as follows:

(D) 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 *Luton* case confirmed the long line of cases indicating that strict compliance is necessary to perfect an appeal from an administrative agency to this Court.

The issue for this Court deals with its jurisdiction to hear the appeal. Please note the following:

We begin our discussion by addressing the applicable standard of review in the case sub judice. Subject matter jurisdiction connotes the power to hear and decide a case upon its merits. *State ex rel. Rothal v. Smith* (2002), 151 Ohio App.3d 289, 313, 2002-Ohio-7328 at ¶ 110. Subject matter jurisdiction focuses on the court as a forum and on the case as one of a class of cases, not on the particular facts of a case or the particular tribunal that hears the case. *Id.*, citing *State v. Swiger* (1998), 125 Ohio App.3d 456, 462, 708 N.E.2d 1033. Further, jurisdiction does not relate to the rights of the parties, but to the power of the court." *Rothal*, 151 Ohio App.3d at ¶110, citing *State ex rel. Tubbs Jones v. Suster* (1998), 84 Ohio St.3d 70, 75, 701 N.E.2d 1002. Appellate review of a trial court's dismissal of an action for lack of subject-matter jurisdiction is a question of law that is reviewed independently of a trial court's analysis and decision. *BP Exploration & Oil, Inc. v. Ohio Dept. of Commerce* (2005), Franklin App. No. 04AP-619, 04AP-620, 2005-Ohio-1533 at ¶ 7, citing *Gary Phillips & Assoc. v. Ameritech Corp.* (2001), 144 Ohio App.3d 149, 154, 759 N.E.2d 833. *Althof v. State Bd. of Psychology*, 2006-Ohio-502, at ¶9.

From within this framework, this Court will render its decision.

IV. ANALYSIS:

The Court has reviewed the Notice filed by the Appellant. It is clear that Appellant failed to name the ODJFS as mandated by the language of R.C. §4141.282(D). Appellant simply failed to comply. Dismissing this appeal is a harsh result, but having no jurisdiction, this Court has no authority and therefore, no discretion in the matter.

The facts are not in dispute. Appellant's Notice did not comply with the strict rule of the statute and therefore, this Court does not have jurisdiction. The appeal must be dismissed.

This Court also noted that the Appellee Abercrombie filed its own Motion to Dismiss on January 22, 2013, said motion contained additional arguments but it also relied upon R.C. §4141.282(D). Appellee Abercrombie also asserted that the filing was untimely and therefore violated R.C. §4141.282(A). Having Granted Appellee ODJFS's Motion, Appellee Abercrombie's is **MOOT**.

V. DECISION:

Appellant's appeal is **DISMISSED** for lack of jurisdiction.

THIS IS A FINAL APPEALABLE ORDER

Copies to:

JOSHUA CAUDILL
FL 1
6 COLTON ST
WORCESTER, MA 01610
Appellant Pro Se

DANIEL J CIANCHETTA
52 EAST GAY ST
COLUMBUS, OH 43215
Counsel for the Appellee Abercrombie

PATRIA V HOSKINS
30 E BROAD,26TH FL
COLUMBUS, OH 43215-3428
Appellee Dept. of Job and Family Services

Franklin County Court of Common Pleas

Date: 02-25-2013
Case Title: JOSHUA CAUDILL -VS- ABERCROMBIE & FITCH
ET AL
Case Number: 12CV015506
Type: DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Richard S. Sheward". The signature is written over a circular blue ink seal. The seal contains the text "FRANKLIN COUNTY OHIO" around the top and "ALL THINGS ARE" around the bottom. The signature is written in a cursive style.

Judge Richard S. Sheward

Court Disposition

Case Number: 12CV015506

Case Style: JOSHUA CAUDILL -VS- ABERCROMBIE & FITCH
ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 12CV0155062013-01-1799980000
Document Title: 01-17-2013-MOTION TO DISMISS
Disposition: MOTION GRANTED
2. Motion CMS Document Id: 12CV0155062013-01-2299970000
Document Title: 01-22-2013-MOTION TO DISMISS
Disposition: MOTION IS MOOT