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CASE NUMBER: 2013 CV 01232 Docket ID: 18023437
GREGORY A BRUSH
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IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

STATE OF OHIO UNEMPLOYMENT
COMPENSATION REVIEW,

CASE NO.: 2013 CV 01232

Plaintiff(s),

JUDGE DENNIS J. ADKINS

-vs-

PATRICIA VAUGHAN SMITH,

**DECISION, ORDER, AND ENTRY
SUSTAINING THE MOTION TO
DISMISS**

Defendant(s).

This matter is before the Court on a *Motion to Dismiss for Failure to Name Interested Statutory Parties* (“*Motion to Dismiss*”) filed by Ohio Unemployment Compensation Review Commission (“Review Commission”) on March 13, 2013. No response was filed. This matter is now properly before the Court and for the reasons contained herein the Court SUSTAINS the motion to dismiss.

I. Facts

On February 26, 2013, Patricia Vaughan-Smith filed an *Administrative Appeal* appealing a decision by the Review Commission. *Administrative Appeal* at 1. Vaughan-Smith claims that she “was misinformed of the hearing process and was denied a new hearing.” *Administrative Appeal* at 1. Vaughan-Smith only named the Review Commission as a party. *Id.* The motion to dismiss arises out of the same.

II. Law and Analysis

The Review Commission claims that the *Administrative Appeal* should be dismissed for failure to name the Director, Ohio Department of Job and Family Services (“ODJFS”) and Infocision Management Corporation (“Employer”). *Motion to Dismiss* at 1. The Review Commission asserts that this is not a valid Notice of Appeal because the failure to name the previously mentioned parties violates R.C. 4141.282(D).

Id. at 2. Further, the Review Commission asserts that Vaughan-Smith cannot amend her Notice of Appeal because the thirty-day statutory appeal period has expired. *Id.* at 2.

R.C. 4141.282 governs appeals to the court after a final decision of the Review Commission. R.C. 4141.282(D) states that “[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.” R.C. 4141.282(D).

The Ohio Second District Court of Appeals has not ruled on the issue of whether the failure to name interested parties and, thus, filing a timely but defective notice of appeal deprives the trial court of subject matter jurisdiction. However, the First, Eighth and Eleventh District Courts of Appeal have all ruled on the issue in the affirmative, but using different analyses to reach their decisions. The First District explained their analysis in the following manner:

Were this court to read R.C. 4141.282(C) to merely require that the notice of appeal be filed within 30 days to vest the common pleas court with subject-matter jurisdiction over the appeal, it would render R.C. 4141.282(D) meaningless. Taken to its logical extreme, a party could write “Notice of Appeal” at the top of a blank page, file it, and the common pleas court would have subject-matter jurisdiction over the appeal. Such a filing would in effect negate R.C. 4141.282(D), and would not comply with Supreme Court case law requiring a party taking an administrative appeal to strictly comply with the requirements in the statute providing for such an appeal. (Internal citation omitted).

Consequently, after considering all of the above, we conclude that the trial court did not err in dismissing Dikong’s notice of appeal for lack of subject-matter jurisdiction. Because R.C. 4141.282(D) expressly provides that the director of the Ohio Department of Job and Family Services is always an interested party and must be named in the notice of appeal, any amendments to the notice of appeal lacking such language must be made within the 30-day time frame following the mailing of the final determination by the Unemployment Compensation Review Commission. See *Reuben McMillan Free Library Assn. v. Mahoning Cty. Budget Comm.*, 175 Ohio St. 191, 194, 192 N.E.2d 67 (1963)

Dikong v. Ohio Supports, Inc., 1st Dist. No. C-120057, 2013-Ohio-33 ¶ 21, 26.

Here, this Court finds that Vaughan-Smith timely filed her Notice of Appeal, but failed to name the Director of ODJFS and the Employer as parties. The thirty-day time period to file a proper appeal has now passed. Further, Vaughan-Smith has neither responded to the motion to dismiss nor request leave of Court to amend her Notice of Appeal. Based on the reasoning in *Dikong, supra*, the Court finds that Vaughan-Smith

failed to comply with the requirements of R.C. 4141.282 and divested this Court of subject matter jurisdiction. Therefore, the Court SUSTAINS the Review Commission's motion to dismiss.

III. Conclusion

Based on the foregoing, the Court SUSTAINS the *Motion to Dismiss for Failure to Name Interested Statutory Parties* in its entirety.

THIS IS A FINAL APPEALABLE ORDER, AND THERE IS NOT JUST CAUSE FOR DELAY FOR PURPOSES OF CIV. R. 54. PURSUANT TO APP. R. 4, THE PARTIES SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.

SO ORDERED:

JUDGE DENNIS J. ADKINS

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.

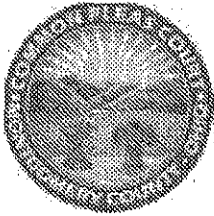
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General Divison
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Type: Decision
Case Number: 2013 CV 01232
Case Title: STATE OF OHIO UNEMPLOYMENT COMPENSATION REVIEW
vs PATRICIA VAUGHAN SMITH

So Ordered

A handwritten signature in black ink, appearing to read "Dadkins".