

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

JAMES SHEPHERD,

Case No: 14CVF-01-356

Appellant,

JUDGE HOGAN

-vs-

OHIO STATE UNEMPLOYMENT
COMPENSATION,

Appellee.

DECISION AND ENTRY

**GRANTING THE MOTION TO DISMISS FOR LACK OF SUBJECT MATTER
JURISDICTION AS FILED ON MARCH 4, 2014**

HOGAN, JUDGE

The above-styled case is before the Court on an appeal filed by Appellant Shepherd. On March 4, 2014 the Ohio Department of Jobs and Family Services (hereinafter referred to as Appellee) filed its Motion requesting that the matter be dismissed for lack of jurisdiction. The Appellant has not filed a 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 Director of the Appellee nor did the Appellant name his former employer. The Appellee filed its Motion and asserted that the failure to name the Director of the Appellee and the employer is a jurisdictional defect requiring this Court to dismiss the appeal.

II. STATEMENT OF THE FACTS

Appellant was employed as a deli clerk for the Kroger Company. His last day worked was July 30, 2013. The Appellant missed several scheduled work days without calling in. He was

discharged due to his failure to notify his employer of his absences. Appellant filed for and requested benefits.

On October 24, 2013 the Director issued a Redetermination which held that the claimant was separated due to lack of work. The Kroger Company appealed that decision on October 30, 2013. The matter was transferred to the Commission on October 31, 2013. A hearing was held on November 18, 2013. The Kroger Company appeared but the Appellant did not.

On November 19, 2013 the Hearing Officer issued his Decision finding that the Appellant had been terminated for just cause and Appellant's benefits were terminated. The Appellant sent a number of letters in December of 2013 to the Appellee. The Appellant claimed that he was in the hospital during the times he was supposed to be at work and that he had his sister call his employer to inform it of the problems. In his letter dated December 20, 2013 the Appellant indicate that the wished to appeal the matter.

The Appellee treated the request as contained within the December 20, 2013 letter as a request for further review. The Appellant was given the opportunity to explain why he had apparently failed to timely appeal the November 19, 2013 decision. A new hearing on that topic was set for January 8, 2014 and conducted on that same date.

On January 9, 2014 the Hearing Officer issued his Decision. The Hearing Officer decided that the record reflected that the Appellant had failed to file his appeal timely. The evidence in the file showed that the Decision had been mailed to the last known address and the statutory presumption of service applied to the facts of the case. The Appellant's testimony at the January 8, 2014 hearing failed to overcome that presumption. Therefore, the Hearing Officer held that the Appellant's request for review was in fact untimely. The Decision was mailed to the right address and the document contained the required notices giving the Appellant the procedure to be used if he

wished to appeal. Please note the following:¹

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, 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 same document provided the Appellant with the proper address for the Director and Appellant's former employer.

The Appellant then filed his appeal with this Court. On March 4, 2014 the Appellee filed its Motion to Dismiss. The Appellant did not respond.

This matter is ready for a review.

III. STANDARD OF REVIEW

The Appellee's Motion to Dismiss for lack of Jurisdiction does not specifically mention the civil rule that it relies on. However, it is clear that the Appellee is moving to dismiss using Civ.R.

12(B)(1). Please note the following case law relevant to the standard of review:

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.

This Court will apply said standard to the pending motion.

R.C. §4141.282 sets forth how a party is to appeal an adverse administrative decision. Time

¹ The darker text is a 'copy image' taken from page 312 of the scanned certified record filed with this Court.

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 administrative appeal 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 of Appeal filed by the Appellant. It is clear that Appellant failed to name the Director of the Appellee as mandated by the language of R.C. §4141.282(D). The Appellee pointed out that there was no real caption to the filing made by the Appellant. The Appellant also failed to name his former employer in the document he filed with this Court.

Therefore the Appellee asserted that the Appellant simply failed to comply with the revised code after the Appellant had been clearly given notice of what was required of him. 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 of Appeal did not comply with the strict rule of the statute, therefore, this Court does not have jurisdiction. The appeal must be dismissed.

V. DECISION:

The Motion filed on March 4, 2014 is **GRANTED**. Appellant's appeal is **DISMISSED** for lack of jurisdiction.

THIS IS A FINAL APPEALABLE ORDER

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Franklin County Court of Common Pleas

Date: 03-25-2014
Case Title: JAMES SHEPHERD -VS- OHIO STATE UNEMPLOYMENT
COMPENSATION
Case Number: 14CV000356
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "D. T. Hogan", is written over a blue circular seal. The seal contains the text "COMMON PLEAS COURT" at the top and "ALL THINGS ARE" at the bottom. The signature is written in a cursive style.

/s/ Judge Daniel T. Hogan

Court Disposition

Case Number: 14CV000356

Case Style: JAMES SHEPHERD -VS- OHIO STATE
UNEMPLOYMENT COMPENSATION

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 14CV0003562014-03-0499970000

Document Title: 03-04-2014-MOTION TO DISMISS

Disposition: MOTION GRANTED