

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

AMADOU KANE,	□	CASE NUMBER 13CV 13880
	∥	
APPELLANT,	□	JUDGE LYNCH
	∥	
vs.	□	MAGISTRATE MCCARTHY
	∥	
GENCO	□	
	∥	
APPELLEE	□	

ORDER OF DISMISSAL

Lynch. J.

This matter comes to the attention of the court by way of appellant's notice of appeal filed on December 30, 2013. Upon the court's review and consideration, it is found this court does not possess subject matter jurisdiction over this attempted administrative appeal.

The Ohio Revised Code controls appeals from an administrative agency to this court for judicial review. For unemployment compensation cases, R.C. 4141.282 sets forth the requirements for an acceptable appeal to this court. It is provided:

Any 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 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.*¹ (Emphasis added.)

In administrative appeals from adjudication orders of administrative agencies, the Supreme Court of Ohio has consistently held that strict compliance with the controlling statutory dictates is necessary to imbue the common pleas court with jurisdiction to consider the merits of the 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." *Zier v. Bureau of Unemployment Compensation* (1949), 151 Ohio St. 123, paragraph one of syllabus. Ohio courts have consistently held that a party adversely affected by an agency decision must strictly comply with statutory requirements in order to perfect an appeal. *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 52, 2007 Ohio 2877.

In the instant case, appellant arguably named only "U.C. Unemployment Review Commission" and perhaps the employer, Genco, as appellees. Appellant failed to name a necessary interested party, namely, the director of job and family services. In such a circumstance, this court fails to acquire subject matter jurisdiction over the proceeding and must dismiss the action.

In *Sydenstricker v. Donatos Pizzeria, LLC*, 2010 Ohio 2953, 2010 Ohio App. LEXIS 2455 (Ohio Ct. App., Lake County June 25, 2010), appellant named her former employer as a party defendant, but failed to name the director of job and family services in that unemployment compensation case. The appellate

¹ This directory language is contained in the Unemployment Compensation Review Commission's decision sent to appellant in the present case.

court upheld the dismissal by the trial court due to the trial court's lack of subject matter jurisdiction. The court noted:

The statute at issue unequivocally states that appellant must name all interested parties as appellees in the notice of appeal, including the Director of ODJFS. Contrary to appellant's assertion, filing an incorrect notice of appeal does not vest jurisdiction in the court of common pleas. See R.C. 4141.282(C). Appellant has not complied with the mandatory requirements of R.C. 4141.282(D).

In this regard, it is further instructive to note the case of *Berus v. Ohio Dept of Admin. Servs.*, 2005 Ohio 3384, 2005 Ohio App. LEXIS 3113 (Ohio Ct. App., Franklin County, June 30, 2005). In *Berus*, the Franklin County Court of Appeals admonished:

When the right to appeal is conferred by statute, the appeal can be perfected only in the mode prescribed by statute. *Ramsdell v. Ohio Civil Rights Comm.* (1990), 56 Ohio St. 3d 24, 27.

And see, *Griffith v. J. C. Penney Co.* (1986), 24 Ohio St. 3d 112, 113, citing *McCruiter v. Bd. of Review* (1980), 64 Ohio St. 2d 277, 279; *Holmes v. Union Gospel Press* (1980), 64 Ohio St. 2d 187, 188, 18 O.O. 3d 405, 406; *Zier v. Bur. of Unemployment Comp.* (1949), 151 Ohio St. 123, 125.

In the recent case of *Luton v. State Unemployment Revision Commission*, 2012 Ohio 3963, 2012 Ohio App. LEXIS 3494, (Ohio Ct. App., Cuyahoga County Aug. 30, 2012) a similar factual pattern was presented for review. In *Luton*, the appellant neglected to name his employer as an appellee in the appeal. As noted above, all "interested parties" must be named in the administrative appeal. Clearly, both the employer and the administrative director are interested parties. The court in *Luton*, recognizing that strict statutory compliance is required in

administrative appeals, upheld the lower court decision dismissing the appeal for lack of subject matter jurisdiction. The court ruled: “. . . the timely filing of an incorrect notice of appeal does not vest the court of common pleas with jurisdiction.” Citing *Sydenstricker, supra*.

Accordingly and upon consideration, this action is hereby **dismissed** due to this court’s lack of subject matter jurisdiction over this action. Costs to be paid by appellant.

Copies mailed to:

Amadou Kane
Appellant, pro se

Ohio Unemployment Compensation Review Commission
Possible Appellee

Genco
Possible Appellee

Franklin County Court of Common Pleas

Date: 05-07-2014
Case Title: AMADOU KANE -VS- GENCO ET AL
Case Number: 13CV013880
Type: DECISION

It Is So Ordered.

A handwritten signature in cursive script, "Julie M. Lynch", is written over a circular, embossed seal. The seal is partially obscured by the signature and has a textured, dotted appearance.

/s/ Judge Julie M. Lynch

Court Disposition

Case Number: 13CV013880

Case Style: AMADOU KANE -VS- GENCO ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes