

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

ELIZABETH SMITH,

Case No: 14CVF-04-4027

Appellant,

JUDGE SHEWARD

-vs-

OHIO STATE DEPARTMENT OF
JOB AND FAMILY SERVICES, ET AL.,

Appellees.

DECISION AND ENTRY
GRANTING THE MOTION TO DISMISS FOR LACK OF SUBJECT MATTER
JURISDICTION AS FILED ON APRIL 25, 2014

SHEWARD, JUDGE

The above-styled case is before the Court on an appeal filed by Elizabeth Smith (Appellant). On April 25, 2014 the Ohio Department of Jobs and Family Services (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 was filed more than 30 days after the final order. The Appellee has asserted that the failure to timely file the appeal is a jurisdictional defect requiring this Court to dismiss the appeal.

II. STATEMENT OF THE FACTS

On April 11, 2014 the Appellant filed this appeal. The Appellant was contesting the decision issued by the Review Commission on January 8, 2014. Hence, the appeal was perfected outside of the 30 day timeline noted in R.C. §4141.282(A).

As already noted the Appellant has not moved or otherwise responded to the Appellee's

Motion. The other named Appellee; i.e., Confidential Services, Inc. has also failed to otherwise move or plead.

The Motion is ready for 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 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 R.C. 4141.282 is the statute governing the appeal process. Please note the following from that statute:

A) THIRTY-DAY DEADLINE FOR APPEAL

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 *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 filed by the Appellant along with the exhibits attached thereto. It is clear that Appellant failed to timely file her Notice. The Decision Disallowing Request for Review was mailed on January 8, 2004. Appellant's notice of Appeal was filed on April 11, 2014. Dismissing this appeal is a harsh result, but having no jurisdiction, this Court has no authority and therefore, no discretion in the matter.

The Appellee requested that his Court hold a hearing pursuant to R.C. §4141.282(I) to see if the Appellant can meet any of the exceptions as noted in R.C. §4141.281(D)(9). However, it is undisputed that this current appeal is a refiling of a prior timely appellee filed in case no: 14CVF-01-739. Hence none of the conditions in R.C. §4141.281(D)(9) can be applicable to this case. The law does not require the doing of a futile act.

The real issue is whether or not a Civ.R. 41(A)(1)(a) dismissal can save the Appellant and that is a question of law. Please note the following from *Campbell v. Valley Homes Mut.*, 2007-Ohio-1490 (1st Dist) at ¶¶4 – 6:

In *Schmieg v. Ohio State Dept. of Human Serv.*, the Tenth Appellate District considered whether the savings statute applied to an appeal of an administrative decision of the Ohio Department of Human Services. Citing the statute's reference to actions "commenced or attempted to be commenced," the court concluded that the statute applied only to original actions, not appeals. As further support for its view, the Tenth Appellate District cited *Atcherly v. Dickinson*, an Ohio Supreme Court decision in which the court had considered an earlier version of the savings statute and had concluded that it did not apply to proceedings in error. We adopt the reasoning of the Tenth Appellate District and conclude that the statute does not apply to appeals. By extension, we hold that the savings statute did not apply to Campbell's appeal of the Review Commission's decision.

Our conclusion is not altered by Lewis v. Connor, which Campbell points to in support of her argument. In that case, the Ohio Supreme Court held that the statute applied to an appeal from the Ohio Industrial Commission's decision in a workers' compensation case. But, as pointed out by the Tenth Appellate District, appeals from Industrial Commission decisions differ from administrative appeals because Industrial Commission decisions are reviewed de novo by the trial courts. In contrast, the common pleas court's review in administrative appeals, including those appealing a Review Commission decision, is limited to whether the agency's decision is supported by the record.

We conclude that the savings statute does not apply to appeals of Review Commission decisions. The trial court properly dismissed Campbell's appeal for being filed too late. The sole assignment of error is overruled, and we therefore affirm the judgment of the trial court. (Footnotes omitted)

The facts are not in dispute. Appellant's Notice of appeal is untimely, and that cannot be changed by the operation of the savings statute. Therefore, this Court does not have jurisdiction. The appeal must be dismissed.

V. DECISION:

The Motion filed on April 25, 2014 is **GRANTED**. The request for a hearing is **DENIED**.

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: 06-23-2014
Case Title: ELIZABETH SMITH -VS- OHIO STATE DEPARTMENT JOB
FAMILY SERVICE ET AL
Case Number: 14CV004027
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: 14CV004027

Case Style: ELIZABETH SMITH -VS- OHIO STATE DEPARTMENT
JOB FAMILY SERVICE ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 14CV0040272014-04-2599970000

Document Title: 04-25-2014-MOTION TO DISMISS

Disposition: MOTION GRANTED IN PART