

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

MONEY GOINES,

Appellant,

-vs-

FORTUNO MANAGEMENT OHIO, INC, ET AL.,

Appellees.

Case No: 15CVF-10-9474

JUDGE YOUNG

DECISION AND ENTRY
GRANTING THE APPELLEE'S MOTION TO DISMISS
AS FILED ON NOVEMBER 3, 2015

YOUNG, JUDGE

The above-styled case is before the Court on the Motion to Dismiss as filed by the Unemployment Compensation Review Commission (Appellee). Said Motion having been filed on November 3, 2015. Money Goines, (Appellant) failed to timely file a response. The remaining party, Fortuno Management Ohio, Inc. has not made an appearance.

For the reasons that follow, this Court **GRANTS** the Appellee's Motion to Dismiss.

I. STATEMENT OF THE CASE:

Appellant was adversely affected by an administrative decision. Appellant appealed that determination to this Court. The Appellee has asserted that this Court lack's subject matter jurisdiction pursuant to R.C. §4141.282(D).

II. STATEMENT OF THE FACTS:

Appellant contested a holding concerning the status of his request for unemployment compensation. The Commission held that the Appellant was not allowed to participate. A final determination was made at the agency level and the Appellant filed this appeal. The Appellant named the Unemployment Compensation Review Commission and Fortuno Management Ohio, Inc.

The Appellant did not name the Director, Ohio Department of Job and Family Services even though the Decision Disallowing Request for Review informed the Appellant that said party was an interested party to any appeal. The Appellee filed its Motion to Dismiss claiming that the filing of the Appeal without naming the Director is incorrect and the error has led to a jurisdictional issue. The matter has been fully briefed.

III. Analysis:

The Appellee relied upon the language of R.C. §4141.282(D). Said language reads in pertinent part as follows:

(D) INTERESTED PARTIES

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 Appellee then relied upon a number of cases that support its position. One such case is *Hinton v. State, Unemployment Review Commission*, 2015-Ohio-1364 (7th Dist). The *Hinton* court clearly supports Appellee's claim that the failure to name the Director was/is jurisdictional.

The *Hinton* court noted the following at ¶¶ 10 - 15:

The trial court dismissed Hinton's administrative appeal on the basis that it lacked jurisdiction due to Hinton's failure to include all interested parties in the appeal as required by R.C. 4141.282(D). As jurisdiction is a threshold matter, we consider that issue first.

R.C. 4141.282(D) addresses the interested parties a claimant-appellant must include in their appeal of a decision of the unemployment compensation review 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.

The right to appeal a decision of the unemployment compensation review commission is created by statute, and the statutory requirements governing an administrative appeal must be strictly followed in order to effectuate the appeal. The Ohio Supreme Court has often reaffirmed the proposition that: "[a]n 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*, 151 Ohio St. 123, 84 N.E.2d 746 (1949), paragraph one of the syllabus; reaffirmed by *Hansford v. Steinbacher*, 33 Ohio St.3d 72, 72, 514 N.E.2d 1385 (1987); further reaffirmed by *Ramsdell v. Ohio Civ. Rights Comm.*, 56 Ohio St.3d 24, 27, 563 N.E.2d 285 (1990). "Compliance with these specific and mandatory requirements governing the filing of such notice is essential to invoke jurisdiction of the Court of Common Pleas." *Id.*, at paragraph two of the syllabus.

In this instance, the trial court did not err in dismissing Hinton's administrative appeal on the basis that it lacked jurisdiction due to Hinton's failure to comply with R.C. 4141.282(D). In accordance with R.C. 4141.282(D), the review commission's decision provided to Hinton contains a section entitled "APPEAL RIGHTS" which states:

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 * * *, 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.** (Emphasis added.)

Hinton did not include all interested parties as appellees in his notice of appeal of the review commission's decision to the court of common pleas. He did not include the Director of the Department of Job and Family Services which the review commission's decision clearly identifies as an interested party. *Sydenstricker v. Donato's Pizzeria, LLC*, 11th Dist. No. 2009-L-149, 2010-Ohio-2953; R.C. 4141.01(I) (specifically defining an interested party to include the director). He also failed to include the employer, Schwebel. The employer is likewise an interested party. *Luton v. Ohio Unemp. Revision Comm.*, 8th Dist. No. 97996, 2012-Ohio-3963. Just below the section entitled "APPEAL RIGHTS" in which Hinton was advised of the requirement of naming all interested parties as appellees in the notice of appeal are the names and addresses of what would be considered interested parties, including in this instance, the Director and Schwebel.

Thus, based on Hinton's failure to follow the statutory mandates of R.C. 4141.282, the Mahoning County Court of Common Pleas lacked jurisdiction, and, therefore, it was not error for the trial court to grant ODJFS's motion to dismiss.

Hinton is good law. *Hinton* was rendered on **March 30, 2015** and is supported by decisions from the First, Second and Eight District Courts of Appeal.

However, on **March 31, 2015** the Ninth District issued its decision in *Pryor v. Director, Ohio Department of Job and Family Services*, 2015-Ohio-1255. The *Pryor* court was unaware of

the *Hinton* decision – but the *Pryor* court was aware of the opinions from the First, Second and Eight District Courts of Appeal. After reviewing the divergent opinions and after reviewing similar case law from this District; i.e., cases concerning R.C. §4141.26(D)(2) such as *WFAL Construction v. Director, ODJFS*, 2015-Ohio-3044 (10th Dist.) it appears that the holding in *Hinton* is of greater precedential value and it will be followed by this Court.

In the end, this is a harsh result but the law is very clear. Strict compliance with the statute is mandatory and the Appellant failed to comply.

Based upon the clear record and the case law. The Appellees' Motion to Dismiss is **GRANTED**.

V. DECISION:

The Appellee's Motion to Dismiss as filed on November 3, 2015 is **GRANTED**.

Appellant's Appeal is **DISMISSED**.

THIS IS A FINAL APPEALABLE ORDER

DAVID YOUNG, JUDGE

Copies to:

JERRY E PEER JR
TWO MIRANOVA PL, STE 330
COLUMBUS, OH 43215
Counsel for the Appellant

SUSAN M SHEFFIELD
20 W FEDERAL ST, 3RD FLR
YOUNGSTOWN, OH 44503
Counsel for the Appellee

Franklin County Court of Common Pleas

Date: 11-20-2015

Case Title: MONEY GOINES -VS- FORTUNO MANAGEMENT OHIO INC ET
AL

Case Number: 15CV009474

Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "David C. Young", is written over a circular official seal. The seal contains the text "COMMON PLEAS COURT" at the top and "FRANKLIN COUNTY OHIO" around the bottom edge. The signature is written in a cursive style.

/s/ Judge David C. Young

Court Disposition

Case Number: 15CV009474

Case Style: MONEY GOINES -VS- FORTUNO MANAGEMENT
OHIO INC ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 15CV0094742015-11-0399980000
Document Title: 11-03-2015-MOTION TO DISMISS -
DEFENDANT: OHIO STATE UNEMPLOYMENT COMPENSATION
Disposition: MOTION GRANTED