

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
GENERAL DIVISION**

OPSAHL, LLC, : **CASE NO. 15-CV-7117**
and :
JUDGE KIMBERLY COCROFT
GLASS CITY :
FLOWERS, LLC, dba The Flower Girls, :
Appellants, :
vs. :
DIRECTOR, OHIO DEPARTMENT
OF JOB AND FAMILY SERVICES, :
and
DIRECTOR, STATE OF OHIO :
UNEMPLOYMENT COMPENSATION
REVIEW COMMISSION,
and :
PROGRAM SERVICES/TAX
APPEALS
and
ELIZABETH BILBY :
Appellees. :

DECISION AND ENTRY

COCROFT, J.

This matter is before this Court upon a Notice of Appeal filed by Appellants, Opsahl, LLC and Glass City Flowers, LLC dba The Flower Girls (“Glass City”), from two separate

decisions rendered by the State of Ohio, Unemployment Compensation Review Commission (“Review Commission”) on July 15, 2015. However, there is no indication in the record that these two separate cases were consolidated by this Court or that either Appellant filed a motion requesting consolidation of these cases.

The record reflects that neither of the Appellants, Opsahl, LLC nor Glass City, filed a brief as set forth in the Clerk’s Original Case Schedule, filed on August 14, 2015. Appellants’ separate briefs were due on October 23, 2015. A review of the record demonstrates that neither Appellant requested an extension of time to file a brief.

This Court will note that the record reflects that a separate record of proceedings was filed for each case. However, a review of the record demonstrates that the May 28, 2015 hearing addressed both cases and referred to them as “companion” cases. Thus, pursuant to the holding in *Red Hotz, Inc. v. Liquor Control Comm.*, 1993 Ohio App. LEXIS 4032, this Court will address each case separately on its merits.

Standard of Review

R.C. 4141.26(D) provides, in relevant part:

The court may affirm the determination or order complained of in the appeal if it finds, upon consideration of the entire record, that the determination or order is supported by reliable, probative and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate, or modify the determination or order or make such other ruling as is supported by reliable, probative and substantial evidence and is in accordance with law.

“Reliable evidence” is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. “Probative evidence” is evidence that tends to prove the issue in question; it must be relevant in determining the issue. “Substantial evidence” is evidence with some weight; it must have importance and value. *Our Place v. Ohio Liquor Control Comm.*, 63 Ohio St.3d 570, (1992). In reviewing the decision of

the Review Commission, the Court may not weigh or judge the credibility of the witnesses. This Court must give due deference to the administrative resolution of evidentiary conflicts. *All Star Personnel v. State of Ohio*, 2006-Ohio-1302, citing *Univ. of Cincinnati v. Conrad*, 63 Ohio St. 2d 108 (1980); see also *Kathmandu, Inc. v. Bowland*, 1999 Ohio App. LEXIS 4499. Additionally, a reviewing Court must give due deference to statutory interpretations by an administrative agency that has substantial experience and has been delegated enforcement responsibility. *Resources Title National Agency v. Ohio Dept. of Job & Family Services*, 2014-Ohio-3427.

A. Opsahl, LLC Appeal.

The legal issue in this case was whether Appellant Opsahl, LLC timely filed its appeal pursuant to R.C. 4141.25. The Review Commission concluded that the employer's appeal was untimely filed, and thus, was properly dismissed by ODJFS. July 15, 2015 Decision.

In the Notice of Appeal, Appellant Opsahl, LLC asserts that the Review Commission made the following errors in its July 15, 2015 Decision:

- a. that the Commission should not have affirmed the Redetermination decision issued by ODJFS on December 16, 2014
- b. that the Commission should not have determined that the appeal of appellant was not timely filed; and
- c. that the Commission should not have decided that the appeal of the Employer Liability and Contribution Rate Determination mailed October 31, 2014 was final.

Upon review of the record, the Review Commission made the following findings of fact:

The Employer Liability and Contribution Rate Determination was mailed to the appellant on October 31, 2014. The appellant received the determination. The appellant filed an appeal of the Employer Liability and Contribution Rate Determination on December 10, 2014.

The Review Commission did not accept Appellant's assertion that "she relied to her detriment on a third party to file the appeal" and stated that [W]hether or not the appellant had hired a third party to represent her does not relieve her of the responsibility to file a timely

appeal.” July 15, 2015 Decision. The Review Commission affirmed the Redetermination Decision issued by ODJFS on December 16, 2014 and concluded that the employer’s appeal filed on December 10, 2014 was untimely and properly dismissed by ODJFS. Thus, the Review Commission concluded as a matter of law that the Employer Liability and Contribution Rate Determination mailed on October 31, 2014 was final. July 15, 2015 Decision.

Appellant Opsahl, LLC did not file a brief and thus, has not asserted specific assignments of legal errors in the record. The assertions set forth by Appellant Opsahl LLC in the Notice of Appeal are general in nature and attack the Review Commissions ultimate Decision without directing this Court to any factual evidence in the record, or legal reasoning, as to why the July 15, 2015 Decision is not a determination or order that is supported by reliable, probative and substantial evidence and is in accordance with law. Thus, this Court will not speculate as to Appellant’s arguments.

Based on this Court’s independent review of the record, it concludes as a matter of law that the July 15, 2015 Decision is supported by reliable, probative and substantial evidence and is in accordance with law.

Accordingly, the Review Commission’s July 15, 2015 is hereby **AFFIRMED**.

B. Glass City Flowers, LLC Appeal.

The legal issues in this case are whether Glass City flowers LLC, dba The Flower Girls, is a liable employer and whether individuals performing services for this employer are engaging in services that would be considered in covered employment, pursuant to R.C. 4141.01(B)(1) and O.A.C. 4141-3-05. The Review Commission concluded that Glass City is a liable employer and that Elizabeth Bilby was working for Appellant Glass City Flowers, LLC in covered employment pursuant to R.C. 4141.01.

In the Notice of Appeal, Appellant Glass City asserts that the Review Commission made the following errors in its July 15, 2015 Decision:

- a. that the Commission should not have decided that appellant met the definition of an employer;
- b. that the Commission should not have decided that the Determination of Employer Liability and Contribution Rate Determination were affirmed;
- c. that the Commission should not have decided that claimant while working through Lucas County, Ohio as part of the Work Experience Program was an employee of appellant;
- d. that the Commission should not have decided that Ms. Opsahl continued to do business as Glass City Flowers after February 14, 2013;
- e. that the Commission should not have decided once the claimant was no longer part of the Work Experience Program that she continued to work as an employee;
- f. that the Commission should not have decided that claimant and appellant established an employee-employer relationship;
- g. that the Commission should not have decided that Glass City Flowers, LLC, dba The Flowers Girls, is a liable employer under Ohio law effective February 18, 2012;
- h. that the Commission should not have decided that the claimant performing services for the appellant was engaged in covered employment; and
- i. that the Commission should not have decided that the Reconsideration Decision, mailed November 3, 2014 was affirmed.

The Review Commission made the following findings of fact:

The Ohio Department of Job and Family Services issued a Determination of Employer Liability and Contribution Rate Determination on August 13, 2014 finding that Elizabeth Bilby was working for the appellant in covered employment as defined by ORC 4141.01.

Initially the claimant started working for the employer through Lucas County, Ohio as a WEP employee (Work Experience Program). However, once the claimant was no longer part of the program she continued to work as an employee. She delivered flowers, performed work at the employer's business location and was paid for the work that she performed. She turned her time into the employer and was paid on a regular basis. The claimant did not invest and had no liability. In an initial statement made to ODJFS Ms. Opsahl informed ODJFS that she had the right to hire and fire the claimant. For work at the store she provided all tools needed.

On February 14, 2013 the Ohio Secretary of State's office issued a certificate that dissolved Glass City Flowers, LLC. Although a certificate was issued by the State, Ms. Opsahl continued to do business as Glass City Flowers.

On September 15, 2014 Cheryl Mulinix, ODJFS Compliance, External Auditor II made an unannounced visit to the business location for Glass City Flowers, dba 1-800-flowers

All Hours, in an attempt to retrieve employee information. The store had a “hiring” sign beside the door. The door was open and Ms. Mulinix was able to enter the business without any problems.

Ms. Opsahl approached Ms. Mulinix and asked if she could help her. Initially Opsahl denied being the owner, and said that the person who owned the business was never around. When Ms. Mulinix identified herself Opsahl admitted her identity. Ms. Opsahl gave Ms. Mulinix two business cards. One card was for Glass City Flowers, the second card was for 1-800-flowers All Hours listing Ms. Opsahl as the Director, Store Operations.

Ms. Opsahl agreed to a follow-up meeting on September 18, 2014 at 2:00 PM. On September 17, 2014 Ms. Opsahl called Ms. Mulinix and canceled the meeting. Ms. Mulinix contacted Opsahl’s attorney and explained the situation. However, the employer continued to be uncooperative.

Further investigation established that Glass City Flowers continued to maintain a Facebook page into 2014. On July 18, 2013 Glass City Flowers posted an article on Facebook that Glass City Flowers, LLC was selected as the Best of Toledo Award in the Florist category by the Toledo Award Program.

July 15, 2015 Decision.

The July 15, 2015 Decision further states:

The Director’s Reconsidered Decision, mailed November 3, 2014, is hereby affirmed.

Glass City Flowers LLC dba The Flower Girls, is a liable employer under Ohio law effective February 18, 2012.

The claimant performing services for the appellant was engaged in covered employment. Said services are covered by Ohio Unemployment Compensation Laws and are considered employment pursuant to statute and rule. The contribution was properly assigned.

July 15, 2015 Decision.

The Review Commission stated in its July 15, 2015 Decision that “the state’s witnesses are found to be more credible.” July 15, 2015 Decision. Opsahl, LLC did not file a brief and thus, has not asserted specific assignments of legal errors in the record. Moreover, although Appellant asserts factual errors in its Notice of Appeal, it does not provide this Court with any citations to the record that conflict with the findings in the July 15, 2015 Decision. This Court

will not speculate as to what evidence in the record Appellant might assert conflicts with the July 15, 2015 Decision. Based on this Court's independent review of the record, it concludes as a matter of law that the Review Commission's July 15, 2015 Decision is supported by reliable, probative and substantial evidence and is in accordance with law. R.C. 4141.26.

Accordingly, the Review Commission's July 15, 2015 is hereby **AFFIRMED**

DECISION

Based on the foregoing, and upon a review of the record, this Court concludes as a matter of law that there is reliable, probative and substantial evidence supporting both Decisions rendered by the Review Commission on July 15, 2015 regarding Appellant Opsahl, LLC and Glass City, LLC, respectively. Moreover, this Court concludes that both of these Decisions are in accordance with law. The Opsahl Decision rendered by the Review Commission on July 15, 2015 is hereby **AFFIRMED**. Likewise, the Glass City Decision rendered by the Review Commission of July 15, 2015 is hereby **AFFIRMED**.

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY. THIS IS A FINAL APPEALABLE ORDER. Pursuant to Civil Rule 58, the Clerk of Court shall serve **notice of this judgment and its date of entry upon all parties.**

It is so ordered.

Copies to all parties registered for e-filing

Franklin County Court of Common Pleas

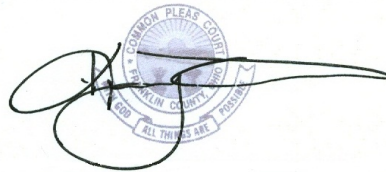
Date: 11-30-2015

Case Title: OPSAHL LLC ET AL -VS- OHIO STATE DEPARTMENT JOBS
FAMILY SERVIC ET AL

Case Number: 15CV007117

Type: ENTRY

It Is So Ordered.

A handwritten signature in black ink is written over a circular blue seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" in the middle, and "ALL THINGS ARE POSSIBLE" at the bottom. The signature is a cursive-style name that appears to be "Kimberly Cocroft".

/s/ Judge Kimberly Cocroft

Court Disposition

Case Number: 15CV007117

Case Style: OPSAHL LLC ET AL -VS- OHIO STATE DEPARTMENT
JOBS FAMILY SERVIC ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes