

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

DIRECTOR, OHIO STATE
UNEMPLOYMENT REVIEW
COMMISSION,

Appellant,

vs.

BLUE MACHINE, LLC,

Appellee.

:
:
:
:
:
:

Case No. 16CVF12-11400

JUDGE FRENCH

**DECISION AND ENTRY GRANTING APPELLEE,
DIRECTOR OF THE OHIO DEPARTMENT OF JOB AND FAMILY SERVICES’
MOTION TO DISMISS,
FILED DECEMBER 19, 2016**

This matter is before the Court upon the Motion to Dismiss, filed by Appellee, Director of Ohio Department of Job and Family Services (hereinafter “Appellee ODJFS”), on December 19, 2016. On December 28, 2016, Appellant, Blue Machine, LLC (hereinafter “Appellant”), filed a Memorandum in Opposition to Appellee ODJFS’ Motion to Dismiss, and on January 3, 2017, Appellee ODJFS filed a Reply Memorandum to Appellant’s Memorandum in Opposition to Appellee ODJFS’ Motion to Dismiss. On January 5, 2017, Appellant filed a “Sur-Reply to Avoid Injustice.”

I. Background

On December 2, 2016, Appellant filed a Notice of Appeal to an Order of the Unemployment Review Commission mailed October 14, 2016 to Appellant. The Notice of Appeal was filed by Margie Burke who identified herself as a co-owner, and not an attorney admitted to the practice of law in this state. The Court further notes that Appellant failed to attach the Order of the Unemployment Review Commission to its

Notice of Appeal, improperly switched the parties, and incorrectly stated that the Appeal was filed to the Tenth District Court of Appeals instead of the Franklin County Court of Common Pleas.

On December 19, 2016, Appellee ODJFS filed the Motion to Dismiss, which is now before the Court.

II. Discussion

Appellee ODJFS contends that because Appellant failed to comply with the requirements of R.C. 4141.26(D)(2), this Court lacks jurisdiction and should dismiss Appellant's Appeal. Specifically, Appellee ODJFS contends that Appellant failed to perfect its appeal within the thirty-day time period specified in R.C. 4141.26(D)(2), because the Notice of Appeal docketed on December 2, 2016 was filed by Margie Burke, who identified herself as a co-owner of Appellant, and not an attorney admitted to the practice of law in this state. Appellee ODJFS contends that because Appellant is a limited liability company, any Notice of Appeal can only be made through counsel, making the Notice of Appeal filed by Margie Burke, a non-attorney, a nullity.

In *Campus Pitt Stop, L.L.C. v. Ohio Liquor Control Comm'n*, 2014-Ohio-227, 2014 Ohio App. LEXIS 206, 2014 WL 280516 (Ohio Ct. App., Franklin County Jan. 23, 2014), the Franklin County Court of Appeals held:

Construing R.C. 1925.17, the Eleventh District Court of Appeals in *Gass v. Headlands Contracting & Tunneling, Inc.*, 11th Dist. No. 2008-G-2841, 2008-Ohio-6057, dismissed a notice of appeal that had been filed by a non-lawyer member of a limited liability company. In *Gass*, H. Stanley Gass filed a notice of appeal from a judgment of the Geauga County Court of Common Pleas. Mr. Gass filed the appeal "d.b.a. Adept Contractor Services LLC, pro se." The appellee filed a motion to dismiss, arguing that the appellant, as a limited liability company, is prohibited from representing itself pro se in the appeal. The court noted its prior

precedent "that pursuant to R.C. 1925.17, outside of small claims court, an individual, including a corporate officer, who is not an attorney, may not appear in court or maintain litigation in propria persona on behalf of a corporation." *Id.* at ¶ 5. On this basis, the court ruled that Mr. Gass, a non-attorney, lacked standing to appeal the judgment entered against the appellant. We likewise find Ms. Krieder and Mr. Taylor could not appeal the judgment against appellant. Accordingly, we overrule appellant's second assignment of error.

Campus Pitt Stop, L.L.C., 2014-Ohio-227 at ¶ 13, 2014 Ohio App. LEXIS 206 at *8.

Therefore, based on *Campus Pitt Stop, supra*, the Court finds that Ms. Burke, a non-attorney, could not appeal the judgment against Appellant and the Notice of Appeal filed by Ms. Burke is a nullity. Furthermore, since the Notice of Appeal filed by Ms. Burke is a nullity, no appeal has been filed within the thirty (30) day period of R.C. 4141.26(D)(2), and this Court lacks jurisdiction to hear Appellant's Appeal.

Therefore, based on the foregoing, the Court accordingly hereby **GRANTS** Appellee ODJFS' Motion to Dismiss.

IT IS SO ORDERED.

Copies to:

Peter A. Burr, Esq.
Steven C. Davis, Esq.
Barron Peck Bennie & Schlemmer LPA
3074 Madison Road
Cincinnati, Ohio 45209
Counsel for Appellant, Blue Machine LLC

Alan Schwepe, Esq.
Assistant Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3400
Counsel for Appellee, Ohio Department of Job and Family Services

Franklin County Court of Common Pleas

Date: 02-16-2017
Case Title: OHIO STATE UNEMPLOYMENT REVIEW COMMISSION -VS-
BLUE MACHINE LLC
Case Number: 16CV011400
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "J. A. French", is written over a blue circular seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY OHIO" in the middle, and "ALL THINGS ARE" at the bottom.

/s/ Judge Jenifer A. French

Court Disposition

Case Number: 16CV011400

Case Style: OHIO STATE UNEMPLOYMENT REVIEW
COMMISSION -VS- BLUE MACHINE LLC

Case Terminated: 08 - Dismissal with/without prejudice

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 16CV0114002016-12-1999970000
Document Title: 12-19-2016-MOTION TO DISMISS - PLAINTIFF:
OHIO STATE UNEMPLOYMENT REVIEW COMMISSIO
Disposition: MOTION GRANTED