

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

WFAL Construction,	:	
Plaintiff-Appellant,	:	
v.	:	No. 14AP-985 (C.P.C. No. 14CV-5820)
Director, Ohio Department of Job & Family Services,	:	(ACCELERATED CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on July 30, 2015

William W. Johnston, for appellant.

Michael DeWine, Attorney General, and *Susan M. Sheffield*,
for appellee.

APPEAL from the Franklin County Court of Common Pleas

HORTON, J.

{¶ 1} Appellant, WFAL Construction ("WFAL"), appeals from the judgment of the Franklin County Court of Common Pleas granting appellee's, the Director of Ohio Department of Job and Family Services ("Director"), motion to dismiss. For the following reasons, we affirm.

I. FACTUAL AND PROCEDURAL HISTORY

{¶ 2} On May 7, 2014, the Unemployment Compensation Review Commission ("Review Commission") upheld the findings of the Ohio Department of Job and Family Services that certain individuals who did work for WFAL did not fall within the context of

excluded employees for unemployment taxation purposes.¹ (R. 3, exhibit A, Decision.) In connection with this finding, WFAL became subject to unemployment tax contributions per Ohio Unemployment Compensation law. *Id.*

{¶ 3} In its decision, the Review Commission informed WFAL of its appeal rights:

An appeal from this decision may be filed in the Court of Common Pleas of Franklin County, Ohio, within thirty (30) days after the date of mailing, in the manner set forth in Section 4141.26, Revised Code of Ohio.

If your appeal is filed more than thirty (30) days from the date of mailing, then you may ask the Common Pleas Court to determine the timeliness of your appeal. The court may find the appeal to be timely if you did not receive this decision within thirty (30) days after it was mailed to you.

WFAL filed a notice of appeal with the Franklin County Court of Common Pleas on June 3, 2014, pursuant to R.C. 4141.26. Prior to filing with the court, WFAL filed a notice of appeal with the Ohio Department of Job and Family Services. Upon filing with the court, WFAL requested that the clerk serve a copy upon the Administrator of the Review Commission; the named party in the appeal. On July 17, 2014, outside of the 30-day period for appeal, WFAL filed an amended notice of appeal this time naming the Director of Ohio Department of Job and Family Services as a party. The Director filed a motion to dismiss for lack of subject-matter jurisdiction with the court.

{¶ 4} The trial court held that WFAL had not complied with the strict requirements for an appeal pursuant to R.C. 4141.26(D)(2), which states in pertinent part:

The employer and the director shall be promptly notified of the commission's decision, which shall become final unless, within thirty days * * * an appeal is taken by the employer or the director to the court of common pleas of Franklin county. Such appeal shall be taken by the employer or the director by filing a notice of appeal with the clerk of such court and with the commission. Such notice of appeal shall set forth the decision appealed and the errors in it complained of. Proof of the filing of such notice with the commission shall be filed with the clerk of such court.

¹ The Supreme Court has addressed the merits of this case in *State ex rel. WFAL Constr. v. Buehrer*, __N.E.3d__, 2015-Ohio-2305.

The commission, upon written demand filed by the appellant and within thirty days after the filing of such demand, shall file with the clerk a certified transcript of the record of the proceedings before the commission pertaining to the determination or order complained of, and the appeal shall be heard upon such record certified to the commission. In such appeal, no additional evidence shall be received by the court, but the court may order additional evidence to be taken before the commission, and the commission, after hearing such additional evidence, shall certify such additional evidence to the court or it may modify its determination and file such modified determination, together with the transcript of the additional record, with the court. After an appeal has been filed in the court, the commission, by petition, may be made a party to such appeal. Such appeal shall be given precedence over other civil cases.

R.C. 4141.26 requires a party to file its notice of appeal with the Review Commission and the clerk of court. WFAL had only filed a notice of appeal with the court and had requested for the clerk to serve the Review Commission. WFAL did not abide by the requirements established in the statute. Therefore, the court did not have jurisdiction to hear WFAL's appeal. The trial court dismissed WFAL's notice of appeal and amended notice of appeal with prejudice.

II. ASSIGNMENT OF ERROR

{¶ 5} WFAL appeals, assigning the following as error:

WFAL'S ADMINISTRATIVE APPEAL IS CONSIDERED FILED AND PERFECTED FOR PURPOSES OF R.C. 2505.04 IF THE CLERK OF COURTS SERVES UPON THE ADMINISTRATIVE AGENCY A COPY OF THE NOTICE OF THE APPEAL FILED IN THE COURT OF COMMON PLEAS AND THE ADMINISTRATIVE AGENCY IS SERVED WITHIN THE TIME PERIOD PRESCRIBED BY R.C. 2505.07.

III. STANDARD OF REVIEW

{¶ 6} The issue of subject-matter jurisdiction is a question of law. *Turner v. Ohio Dept. of Rehab. & Corr.*, 180 Ohio App.3d 86, 2008-Ohio-6608, ¶ 9 (10th Dist.). We therefore review a motion to dismiss for lack of subject-matter jurisdiction de novo. *Id.*

IV. ASSIGNMENT OF ERROR – MOOT

{¶ 7} Under R.C. 4141.26, WFAL was required to name and serve the appropriate party within the statutorily allowed time frame. For purposes of this appeal, the Director of Ohio Department of Job and Family Services was the correct adverse party to be named. However, in WFAL's original notice of appeal filed with the court, the Administrator of the Review Commission was named as the opposing party. The Director was not properly named as a party to the matter until July 17, 2014, more than one month after WFAL's allotted time for appeal had closed.

{¶ 8} We have recently held that when a party fails to perfect an appeal pursuant to statute, the trial court lacks jurisdiction to hear the appeal. *Frambes 137, L.L.C. v. Franklin Cty. Bd. of Revision*, 10th Dist. No. 14AP-785, 2015-Ohio-1391, ¶ 10. Part of perfecting an appeal within a statutorily required time period includes naming the proper party in the notice of appeal.

The right to appeal is purely a matter of statute and must be exercised strictly in compliance with the statutory conditions relating thereto. Thus, where, as here, a statute provides that certain parties are necessary to an appeal, such parties must be joined before the time for filing the appeal has lapsed, otherwise such appeal must fail. A subsequent joinder of necessary parties after the expiration of the time for filing of the appeal will not validate the appeal. The statutory time for filing appeals is substantially that of a statute of limitations, and, once such time has passed, necessary parties cannot be added so as to endow the court with jurisdiction over these proceedings.

Reuben McMillan Free Library Assn. v. Mahoning Cty. Budget Comm., 175 Ohio St. 191 (1963), *overruled on other grounds*.

{¶ 9} WFAL only named the Administrator of the Review Commission as a party in its appeal. It is clear from R.C. 4141.26 that the Review Commission is not meant to be a party of the appeal and that the Review Commission itself may petition to become a party if it chooses. "After an appeal has been filed in the court, the commission, by petition, may be made a party to such appeal. Such appeal shall be given precedence over other civil cases." R.C. 4141.26(D)(2). The trial court was proper in dismissing both WFAL's notice of appeal and amended notice of appeal for lack of subject-matter jurisdiction.

{¶ 10} WFAL argues in its sole assignment of error that its appeal should be considered filed and perfected for purposes of R.C. 2505.04 because it filed its notice of appeal with the clerk of courts, which then served the notice of appeal upon the agency, within the time period prescribed by R.C. 2505.07. However, in light of our above analysis and holding, WFAL's sole assignment of error is rendered moot. Additionally, WFAL's arguments of whether R.C. 2505.04 applies to the present action, or if R.C. 4141.26 can be perceived as ambiguous, are also moot.

V. DISPOSITION

{¶ 11} Having rendered WFAL's assignment of error as moot, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BROWN, P.J., concurs in judgment only.
LUPER SCHUSTER, J., concurs separately.

LUPER SCHUSTER, J., concurring separately.

{¶ 12} Although I concur with the judgment reached by the majority, I write separately to address the assignment of error raised by appellant and the grounds relied on by the trial court in its decision. As the majority noted, the trial court lacks subject matter jurisdiction when a party fails to perfect an appeal pursuant to statute. Appellant was required, under R.C. 4141.26(D), to file "a notice of appeal with the clerk of such court and with the commission." Here, appellant failed to file the notice with the commission; therefore, the trial court correctly found it lacked subject matter jurisdiction. Accordingly, I would overrule appellant's sole assignment of error and affirm the decision of the trial court.
