

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

EMILY SYDENSTRICKER,	:	O P I N I O N
Appellant,	:	
- vs -	:	CASE NO. 2009-L-149
DONATO'S PIZZERIA, LLC,	:	
Appellee,	:	
(DIRECTOR, OHIO DEPARTMENT OF	:	
JOB AND FAMILY SERVICES,	:	
Intervenor-Appellee).	:	

Administrative Appeal from the Court of Common Pleas, Case No. 09 CV 002108.

Judgment: Affirmed.

Natalie F. Grubb and John S. Lobur, Grubb & Associates, L.P.A., 437 West LaFayette Road, Suite 260-A, Medina, OH 44256 (For Appellant).

Brendan P. Feheley, Kegler, Brown, Hill & Ritter, L.P.A., 65 East State Street, Suite 1800, Columbus, OH 43215-4294 (For Appellee).

Richard Cordray, Attorney General, State Office Tower, 30 East Broad Street, Columbus, OH 43215-3428, and *Patrick MacQueeney*, Assistant Attorney General, 615 West Superior Avenue, 11th Floor, Cleveland, OH 44113-1899 (For Intervenor-Appellee).

TIMOTHY P. CANNON, J.

{¶1} Appellant, Emily Sydenstricker, appeals from the September 30, 2009 judgment of the Lake County Court of Common Pleas granting appellee's, Donato's

Pizzeria, LLC (“Donato’s”), motion to dismiss appellant’s complaint based on failure to name all interested parties, as mandated by R.C. 4141.282(D).

{¶2} Appellant was an employee of Donato’s from September 2001 through January 2009. Appellant was discharged from employment for “engaging in an argument or fight with a co-worker on company premises.”

{¶3} On January 18, 2009, appellant filed an application for determination of benefit rights through the Ohio Department of Job and Family Services (“ODJFS”), Office of Unemployment Compensation. A determination was issued on February 10, 2009, disallowing appellant’s application for unemployment compensation benefits. Appellant appealed this determination.

{¶4} After exhausting her administrative appeals, appellant, on July 2, 2009, filed a timely notice of appeal and complaint with the Lake County Court of Common Pleas. The notice of appeal named Donato’s as the sole party-appellee. The certificate of service indicated the notice of appeal and complaint was to be sent to: (1) Donato’s Pizzeria, LLC, (2) Administrator, the Ohio Bureau of Employment Services, and (3) the Unemployment Compensation Review Commission.

{¶5} ODJFS filed a notice of appearance of counsel and statement of the case. ODJFS argued that appellant failed to comply with R.C. 4141.282(D), as she named only Donato’s as a party-appellee, excluding the names of all other interested parties. ODJFS stated that appellant was statutorily required to “name all interested parties identified in the Decision of the Review Commission dated June 3, 2009 and appellees in her Notice of Appeal on July 2, 2009.” Arguing that the notice of appeal was “legally defective and void under Ohio law,” ODJFS requested the complaint be dismissed for lack of subject matter jurisdiction.

{¶6} On September 4, 2009, Donato's filed a notice of appearance and motion to dismiss, incorporating the arguments set forth in ODJFS's motion to dismiss.

{¶7} In her statement of the case filed on September 4, 2009, appellant argued that although the Administrator was not named in the notice of appeal, ODJFS filed its notice of appearance of counsel and statement of the case, and the appeal should be construed in favor of appellant.

{¶8} The trial court issued its judgment on September 30, 2009, stating:

{¶9} "[D]espite the appellant's claims to the contrary, the court notes that it does not appear ODJFS was given notice of the appeal. The appellant named only the employer as an appellee. Further, the certificate of service indicates the notice of appeal was sent to the employer, the Administrator of the Ohio Bureau of Employment Services, and the Unemployment Compensation Review Commission. There is no indication that a notice of appeal was sent to the Director of ODJFS."

{¶10} Appellant filed a timely notice of appeal and, as her sole assignment of error, alleges:

{¶11} "The trial court erred to the prejudice of appellant in concluding that the Ohio Department of Job and Family Services was not given notice of appellant's appeal."

{¶12} In her brief, appellant suggests that because she "substantially complied" with the statutory mandates of R.C. 4141.282, this court should reverse the trial court's judgment and allow the appeal to reach the merits. We find this argument without merit.

{¶13} The Supreme Court of Ohio, in *Zier v. Bur. of Unemployment Comp.* (1949), 151 Ohio St. 123, paragraph one of the syllabus,¹ has held:

{¶14} “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 conditional upon compliance with the accompanying mandatory requirements.”

{¶15} The court further held: “*** [c]ompliance 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.

{¶16} The Supreme Court of Ohio, when deciding *In re Claim of King* (1980), 62 Ohio St.2d 87, 88, relied upon *Zier*, *supra*, 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),² requiring “that the party appealing serve all other interested parties with notice.” *Id.* 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 in his appeal. *Id.* The appellee

1. *Zier* was decided under Section 1346-4, General Code, which provided, in pertinent part:

“Any interested party *** may *** within thirty days *** appeal from the decision of the board of review ***. Such appeal shall be taken by the filing by appellant of a notice of appeal with the clerk of such court and with the board of review. Such notice of appeal shall set forth the decision appealed from and the errors therein complained of. Proof of the filing of such notice with the board of review shall be filed with the clerk of such court. All other parties before the board of review *** shall be made appellees. The appellant shall serve notice of the appeal upon all appellees by registered mail or actual delivery to his last known post office address unless such notice is waived.”

2. As noted in *King*, former R.C. 4141.28(O) provided, in pertinent part:

“Any interested party may, within thirty days after notice of the decision of the board was mailed to the last known post office address of all interested parties, appeal from the decision of the board to the court of common pleas of the county wherein the appellant, if an employee, is resident or has his principal place of business in this state. Such appeal shall be taken within such thirty days by the appellant by filing a notice of appeal with the clerk of the court of common pleas, with the board, and upon all appellees by certified mail to their last known post office address. *** All other interested parties before the board or the referee shall be made appellees.” (Emphasis removed.)

also failed to name his employer as a party to the appeal. Id. at 87. 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. at 89. 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 that right.” Id. at 88. (Citation omitted.)

{¶17} The pertinent portion of R.C. 4141.282, being the statute governing the appeal procedure involved herein, states, in pertinent part:

{¶18} “(D) 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.*” (Emphasis added.)

{¶19} The commission complied with the applicable section of R.C. 4141.282(D), stating in its June 3, 2009 correspondence addressed to appellant:

{¶20} “APPEAL RIGHTS

{¶21} “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 ***. 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.)

{¶22} The statute at issue unequivocally states that appellant must name all interested parties as appellees in the notice of appeal, including the Director of ODJFS.

Contrary to appellant's assertion, filing an incorrect notice of appeal does not vest jurisdiction in the court of common pleas. See R.C. 4141.282(C). Appellant has not complied with the mandatory requirements of R.C. 4141.282(D).

{¶23} In her brief, appellant also argues the trial court's reliance on *Nelson v. Grieselhuber* (June 26, 1980), 8th Dist. No. 41501, 1980 Ohio App. LEXIS 12109, was flawed. We disagree. *Nelson* held: "[f]ailure to name as appellees the proper parties or to serve notice upon all appellees renders the Court of Common Pleas without jurisdiction to hear the case. *In re Claim of King*, supra; *Russo v. Ohio Bur. of Emp. Servs.*, [(Aug. 30, 1979), 8th Dist. No. 38962, 1979 Ohio App. LEXIS 12114]." *Id.* at *3.

{¶24} As in the instant case, the appellant in *Nelson* named only her former employer as an appellee. *Id.* at *2. The appellant's notice of appeal was served on her former employer and the Board of Review of the Ohio Bureau of Employment Services. *Id.* The Administrator for the Ohio Bureau of Employment Services moved to dismiss the appellant's complaint based on her failure to comply with former R.C. 4141.28(O). The *Nelson* Court affirmed the ruling of the trial court dismissing the appellant's complaint due to jurisdictional deficiencies. *Id.* at *4.

{¶25} Based on appellant's failure to follow the statutory mandates of R.C. 4141.282, the Lake County Court of Common Pleas lacked jurisdiction, and, therefore, it was not error for the trial court to grant ODJFS's motion to dismiss. The judgment of the Lake County Court of Common Pleas is hereby affirmed.

MARY JANE TRAPP, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.