

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

GREGORY SEDLAK

C. A. No. 25064

Appellant

v.

CDG GROUP, LLC, et al.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV 2009-05-3687

Appellees

DECISION AND JOURNAL ENTRY

Dated: September 30, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} CDG Group LLC discharged Gregory Sedlak after his cash register was short fifteen dollars. Mr. Sedlak applied for unemployment benefits, but a hearing officer disallowed his request because he concluded CDG Group had just cause to terminate him. The Unemployment Compensation Review Commission disallowed Mr. Sedlak’s request for review of the hearing officer’s decision. He appealed to the Summit County Common Pleas Court, but it dismissed his appeal after he failed to file a brief on time. This Court affirms because Mr. Sedlak did not file his brief by the agreed deadline.

FAILURE TO PROSECUTE

{¶2} Mr. Sedlak’s assignment of error is that the common pleas court incorrectly dismissed his appeal without prior notice. He has argued that, under Rule 41(B) of the Ohio Rules of Civil Procedure, the court had to provide him with notice before dismissing his action.

{¶3} Under Section 4141.28.2 of the Ohio Revised Code, Mr. Sedlak had the right to appeal the decision of the Unemployment Compensation Review Commission to the common pleas court. Section 4141.28.2(G) provides that “[t]he court shall provide for the filing of briefs by the parties, whether by local rule, scheduling order, or otherwise.” On June 22, 2009, the common pleas court issued an order setting a briefing schedule for the appeal. According to that order, Mr. Sedlak’s brief was due on July 3, 2009. The order told Mr. Sedlak that, if he failed to file a brief, it “may result in dismissal for failure to prosecute.”

{¶4} Mr. Sedlak did not file a brief by July 3, 2009. On July 13, 2009, the court entered an “Agreed Scheduling Order,” providing that Mr. Sedlak “shall file a brief no later than September 11, 2009.” When he did not file a brief by the new deadline, the court dismissed his appeal “for failure to prosecute.”

{¶5} In its initial scheduling order, the common pleas court told Mr. Sedlak that, if he did not file a brief by the prescribed deadline, his appeal might be dismissed for failure to prosecute. After the deadline passed, the court adopted a new schedule. Mr. Sedlak, however, failed to file a brief by the new deadline as well. Assuming, for the sake of argument, that Mr. Sedlak was entitled to notice under Civil Rule 41(B), we conclude that he received adequate notice. The common pleas court exercised proper discretion when it dismissed Mr. Sedlak’s appeal after he missed the second filing deadline. His assignment of error is overruled.

CONCLUSION

{¶6} The common pleas court exercised proper discretion when it dismissed Mr. Sedlak’s appeal for failure to prosecute. The judgment of the Summit County Common Pleas Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

CLAIR E. DICKINSON
FOR THE COURT

WHITMORE, J.
BELFANCE, J.
CONCUR

APPEARANCES:

EDMUND M. SAWAN, attorney at law, for appellant.

RICHARD CORDRAY, attorney general, and PATRICK MACQUEENEY, assistant attorney general, for appellee.

NADA G. FADDOUL, and JOHN P. SUSANY, attorneys at law, for appellee.