

2015 WL 1124840

CHECK OHIO SUPREME COURT RULES FOR
REPORTING OF OPINIONS AND WEIGHT OF LEGAL
AUTHORITY.

Court of Appeals of Ohio,
Sixth District, Lucas County.

Kathryn RUPERT, Appellant

v.

Ohio DEPARTMENT OF JOB AND
FAMILY SERVICES, Appellee.

No. L-14-1139. | Decided March 13, 2015.

Attorneys and Law Firms

Kathryn Rupert, pro se.

Mike DeWine, Ohio Attorney General, and Eric A. Baum,
Managing Attorney, for appellee.

YARBROUGH, P.J.

I. Introduction

*1 {¶ 1} This is an appeal from the judgment of the Lucas County Court of Common Pleas, dismissing appellant's, Kathryn Rupert, appeal from a decision of the Unemployment Compensation Review Commission. For the reasons that follow, we affirm.

A. Facts and Procedural Background

{¶ 2} After being discharged from her job, appellant filed a claim for unemployment compensation, alleging that her discharge was in retaliation for her having filed discrimination charges against her employer. Her claim was denied. Appellant then exhausted her administrative remedies, culminating in an August 21, 2013 decision of the Unemployment Compensation Review Commission to disallow her request for further review.

{¶ 3} On September 20, 2013, appellant, pro se, appealed the Unemployment Compensation Review Commission's decision to the Lucas County Court of Common Pleas pursuant to R.C. 4141.282. Appellant's notice of appeal,

however, did not name her employer as an interested party, as required by R.C. 4141.282(D). For this reason, appellee, Ohio Department of Job and Family Services, moved to dismiss the appeal.¹

{¶ 4} On October 29, 2013, appellant made an impassioned plea for an extension of time to amend her notice of appeal to conform to the requirements of R.C. 4141.282, which the trial court granted. Appellant filed her amended notice of appeal on November 20, 2013.

{¶ 5} On December 9, 2013, appellee moved the trial court to reconsider its decision allowing appellant to amend her notice of appeal, and renewed its motion to dismiss the appeal. Appellee argued that the requirements of R.C. 4141.282 were jurisdictional, and because appellant did not comply with those requirements within the 30-day window provided by R.C. 4141.282(A), the trial court lacked jurisdiction to hear the appeal. Furthermore, appellee noted that Civ.R. 15(A), which allows for amendments to the pleadings, does not apply in an administrative appeal under R.C. 4141.282, and that R.C. 4141.282, itself, does not contain any provision for amending the notice of appeal.

{¶ 6} On May 19, 2014, the trial court entered its judgment recognizing that it "erred in giving [appellant] 28 days to 'amend [her] complaint.'" " The trial court then granted appellee's renewed motion to dismiss.

B. Assignment of Error

{¶ 7} Appellant has timely appealed the trial court's May 19, 2014 judgment. However, in contravention of App.R. 16(A)(3) and (4), her appellate brief does not set forth an assignment of error or statement of the issues presented for review. Nevertheless, in her brief, she questions whether it is just for the trial court to dismiss her appeal on a technicality when she is doing the best that she can as a pro se litigant, and in light of the fact that our justice system has a liberal notice pleading policy. Based on appellant's argument, we construe that she is assigning as error the trial court's retraction of permission to amend her pleading, and the court's dismissal of her appeal.

II. Analysis

*2 {¶ 8} Because this matter turns on the interpretation of R.C. 4141.282, it is a question of law that we review de novo. See *Riedel v. Consolidated Rail Corp.*, 125 Ohio St.3d 358, 2010–Ohio–1926, 928 N.E.2d 448, ¶ 6 (interpretation of statutory authority is a question of law that is reviewed de novo).

{¶ 9} R.C. 4141.282 provides, in pertinent part,

(A) THIRTY-DAY DEADLINE FOR APPEAL

Any interested party, within thirty days after written notice of the final decision of the unemployment compensation review commission was sent to all interested parties, may appeal the decision of the commission to the court of common pleas.

* * *

(C) PERFECTING THE APPEAL

The timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court. The notice of appeal shall identify the decision appealed from.

(D) INTERESTED PARTIES

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.

{¶ 10} We must first address whether appellant's notice of appeal was sufficient to vest jurisdiction in the trial court. Relevant to this issue, the Ohio Supreme Court has held, "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 conditioned upon compliance with the accompanying mandatory requirements." *Zier v. Bur. of Unemp. Comp.*, 151 Ohio St. 123, 84 N.E.2d 746 (1949), paragraph one of the syllabus. "Compliance with these specific and mandatory requirements governing the filing of such notice is essential to invoke the jurisdiction of the Court of Common Pleas." *In re King*, 62 Ohio St.2d 87, 88, 403 N.E.2d 200 (1980), quoting *Zier* at paragraph two of the syllabus.

{¶ 11} In *In re King*, the Ohio Supreme Court analyzed a prior version of R.C. 4141.282, which, at the time, required the appellant to serve upon all interested parties a copy of the notice of appeal.² *Id.* In that case, it was undisputed that the appellant failed to comply with this directive. Thus, the Ohio Supreme Court held that the court of common pleas lacked subject-matter jurisdiction over the matter. *Id.* at 88–89.

{¶ 12} More recently, other Ohio courts have addressed the failure to name all interested parties as appellees as required by R.C. 4141.282(D). Those courts have held that the failure to do so deprives the trial court of subject-matter jurisdiction over the appeal. See *Dikong v. Ohio Supports, Inc.*, 2013–Ohio–33, 985 N.E.2d 949 (1st Dist.) (failed to name the director of job and family services); *Mattice v. Ohio Dept. of Job & Family Servs.*, 2d Dist. Montgomery No. 25718, 2013–Ohio–3941 (failed to name the employer); *Luton v. Ohio Unemp. Revision Comm.*, 8th Dist. Cuyahoga No. 97996, 2012–Ohio–3963 (failed to name the employer); *Sydenstricker v. Donato's Pizzeria, LLC*, 11th Dist. Lake No. 2009–L–149, 2010–Ohio–2953 (failed to name the director of job and family services).

*3 {¶ 13} Upon review, we reach the same result. Notably, appellant argues that she did not include her employer as an interested party because the employer no longer wished to contest the unemployment compensation claim, and requested that appellant be awarded unemployment benefits without objection from the company. However, we do not find appellant's reason for the omission to be a material consideration. Here, the August 21, 2013 decision of the Unemployment Compensation Review Commission listed the name and address of appellant's employer. Appellant's employer is an "interested party" as defined by R.C. 4141.01(I) and 4141.28. Appellant failed to list her employer as an appellee in her notice of appeal as required by R.C. 4141.282(D). Thus, we hold that the trial court lacked subject-matter jurisdiction over her appeal.

{¶ 14} We must next determine whether the court erred in reconsidering its decision to allow appellant to amend her notice of appeal after the statutory 30-day window for filing appeals had expired, and ultimately in not considering appellant's amended notice of appeal. Relevant to the time permitted for filing a notice of appeal, R.C. 4141.281(D)(9) provides, "The time for filing an appeal or a request for review under this section or a court appeal under section 4141.282 of the Revised Code shall be extended in the manner described in the following four sentences." The next four sentences

provide for an extension (1) when the last day of an appeal period is a Saturday, Sunday, or legal holiday, (2) when the party's physical condition or mental capacity prevents them from filing within the appeal period, (3) when the party did not receive the director's determination or decision within the 21-day appeal period under R.C. 4141.281, and (4) when the party did not receive the commission's decision within the 30-day appeal period provided in R.C. 4141.282. The statute does not include an extension for where the appellant has filed a non-conforming notice of appeal. Thus, we hold that the trial court did not err when it did not consider appellant's amended notice of appeal. *See Dikong* at ¶ 27 ("Because the motion was filed outside the 30-day period during which the notice of appeal had to be filed, the trial court correctly concluded that the amendment could not be made.").

{¶ 15} In sum, we hold that to perfect an appeal from the Unemployment Compensation Review Commission and vest jurisdiction in the trial court, the appellant must file a notice of appeal that conforms to the requirements of R.C. 4141.282 within the statutory 30-day deadline. Here, appellant failed to meet these requirements. Furthermore, the fact that appellant was acting pro se does not excuse her failure as "[i]t is well established that pro se litigants are presumed to have knowledge of the law and legal procedures and that they are held to the same standard as litigants who are represented

by counsel." *In re Application of Black Fork Wind Energy, L.L.C.*, 138 Ohio St.3d 43, 2013-Ohio-5478, 3 N.E.3d 173, ¶ 22. Accordingly, we find appellant's assignment of error not well-taken.

III. Conclusion

*4 {¶ 16} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

MARK L. PIETRYKOWSKI, ARLENE SINGER, JJ., and
STEPHEN A. YARBROUGH, P.J. concur.

Parallel Citations

2015 -Ohio- 915

Footnotes

- 1 Appellee also argued that the notice of appeal did not identify the decision from which she was appealing as required by R.C. 4141.282(C). Appellant's notice of appeal stated, "I Kathryn Y. Rupert hereby appeal to the Common Pleas Court, Lucas County, Ohio. I'am (sic) appealing the decision of the denial of benefits of unemployment compensation and appealing the decision disallowing a request for review." Attached to the notice of appeal was the August 21, 2013 decision of the Unemployment Compensation Review Commission. Because we hold that appellant's notice of appeal did not invoke the jurisdiction of the trial court because it failed to name all interested parties as appellees, we do not reach the issue of whether appellant's notice of appeal adequately identified the decision from which she was appealing.
- 2 R.C. 4141.28(O) provided,
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. * * *