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Supreme Court of Ohio Clerk of Court - Filed May 14, 2015 - Case No. 2015-0767

COURT OF APPEALS
DANIEL M. HORRIGAN
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STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

MARCUS PRYOR, II

Appellant

v.

DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

Appellee

C.A. No. 27225

APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CV 2013 08 4088

DECISION AND JOURNAL ENTRY

Dated: March 31, 2015

CARR, Judge.

{¶1} Appellant Marcus Pryor, II, appeals the judgment of the Summit County Court of Common Pleas that dismissed his administrative appeal for lack of subject matter jurisdiction. This Court reverses and remands.

I.

{¶2} Mr. Pryor filed in the common pleas court an appeal from the decision of the Unemployment Compensation Review Commission that disallowed a review hearing regarding the denial of his application for unemployment benefits and the ordering of repayment of benefits improperly received. He timely filed his appeal on August 23, 2013, from the commission's decision which was mailed on July 24, 2013. He further directed that the complaint be served on the Director of the Ohio Department of Job and Family Services ("ODJFS") and the Department of the Army. The administrative record was subsequently filed with the trial court.

EXHIBIT 2

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{¶3} ODJFS filed a motion to dismiss for lack of subject matter jurisdiction. Mr. Pryor responded in opposition, and ODJFS replied. On December 31, 2013, the trial court granted the department's motion and dismissed Mr. Pryor's appeal with prejudice for lack of subject matter jurisdiction. Mr. Pryor filed a motion for reconsideration, requesting that the trial court remand the matter to the review commission to determine whether he was required to repay benefits received, as that matter was not fully resolved by the commission. ODJFS filed a brief in opposition. The trial court declined to reconsider its December 31, 2013 judgment entry for the reason that it had no jurisdiction to review or modify a final judgment. Mr. Pryor filed a timely appeal in which he raises two assignments of error for review. This Court addresses the second assignment of error first as it is dispositive of the appeal.

II.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED WHEN IT DISMISSED THE APPEAL FOR LACK OF SUBJECT-MATTER JURISDICTION.

{¶4} Mr. Pryor argues that the trial court erred by dismissing his appeal from the decision of the review commission for lack of subject matter jurisdiction. This Court agrees.

{¶5} This Court reviews de novo the trial court's dismissal of an action for lack of subject matter jurisdiction. *Lorain Cty. Children Servs. v. Gossick*, 9th Dist. Lorain No. 13CA010476, 2014-Ohio-3865, ¶ 10.

{¶6} R.C. 4141.282 addresses unemployment compensation appeals to the common pleas court. Subsection (A) permits any interested party to appeal a decision of the review commission to the common pleas court "within thirty days after written notice of the final decision of the unemployment compensation review commission was sent to all interested parties[.]" Subsection (D) defines "interested parties" and further requires that the "appellant

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shall name all interested parties as appellees in the notice of appeal." There is no dispute that Mr. Pryor did not name the Department of the Army, his former employer and an interested party to the appeal, in his notice of appeal. ODJFS has argued consistently that Mr. Pryor's failure to name all interested parties in his notice of appeal constituted a jurisdictional flaw, divesting the common pleas court of subject matter jurisdiction to address the merits of the appeal.

{¶7} R.C. 4141.282(C), however, addresses perfection of the appeal and expressly states: "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." Although several of our sister districts have declined to take subsection (C) at face value, instead recognizing jurisdictional ramifications where an appellant fails to strictly comply with subsection (D), this Court concludes that the legislature clearly enunciated the requirements for vesting subject matter jurisdiction in the common pleas court.

{¶8} In the past few years, the First, Second, and Eighth District Courts of Appeals have concluded that an appellant's failure to name one of the interested parties to an appeal from the Unemployment Compensation Review Commission's decision divests the common pleas court of jurisdiction to hear the appeal. *See, e.g., Dikong v. Ohio Supports, Inc.*, 1st Dist. Hamilton No. C-120057, 2013-Ohio-33; *Mattice v. Ohio Dept. of Job & Family Servs.*, 2d Dist. Montgomery No. 25718, 2013-Ohio-3941; *Luton v. Ohio Unemployment Revision Comm.*, 8th Dist. Cuyahoga No. 97996, 2012-Ohio-3963. All three appellate courts read the mandate in R.C. 4141.282(D) to name all interested parties in the notice of appeal as jurisdictional. In fact, the *Dikong* and *Mattice* courts have gone so far as to conclude that subsection (D) would be rendered meaningless if the mere timely filing of the appeal from the identified decision pursuant to

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subsection (C) were sufficient to vest subject matter jurisdiction in the common pleas court. *Dikong* at ¶ 21; *Mattice* at ¶ 13-14. This Court disagrees with that conclusion.

{¶9} *Dikong*, *Mattice*, and *Luton* all cite *Zier v. Bur. of Unemp. Comp.*, 151 Ohio St. 123 (1949), paragraph one of the syllabus, in support of their conclusion. The high court 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." *Id.* at paragraph one of the syllabus. The statute governing appeals from decisions of the unemployment compensation board of review in effect at that time read:

> 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 the 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 interested 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.

Zier, 151 Ohio St. at 126-127.

{¶10} Mr. Zier filed his notice of appeal in the common pleas court "from the decision of the board of review denying the right to compensation, in accordance with his right to appeal under [statute]." *Id.* at 124. The high court affirmed the trial court's dismissal of the appeal for lack of jurisdiction, but only because Mr. Zier failed to "set forth the decision appealed from or the errors therein complained of[,]" not based on the failure to make all interested parties appellees. *Id.* at 127. In fact, the high court distinguished the jurisdictional requirements from the non-jurisdictional ones:

> We are in accord with the view that the procedure directed by the above provisions relative to parties and proofs of service of notice *does not constitute*

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> *conditions precedent to jurisdiction*, but compliance with the requirements as to the filing of the notice of appeal – the time of filing, the place of filing and the content of the notice as specified in the statute – are all conditions precedent to jurisdiction.

(Emphasis added.) *Id.*

{¶11} In this case, the legislature expressly delineated the jurisdictional requirements in R.C. 4141.282(C). To perfect an appeal, only two things are required: the notice of appeal must be timely filed and it must identify the decision appealed. As the *Zier* court concluded, so does this Court conclude that the provisions in subsection (D) (relative to parties to be named in the notice of appeal) and subsection (E) (relative to service of the notice of appeal) are not conditions precedent to the vesting of subject matter jurisdiction in the common pleas court. Moreover, the conclusion does not render meaningless the requirements in subsections (D) and (E). An appellee may still seek dismissal pursuant to Civ.R. 12(B)(7) (failure to join a party under Civ.R. 19 or 19.1) or pursuant to Civ.R. 12(B)(5) (insufficiency of service of process). Alternatively, once an appeal has been perfected, the appellant may seek leave to amend the notice of appeal to cure any nonjurisdictional defects. Any such defects in Mr. Pryor's notice of appeal, specifically, his failure to name his prior employer as an appellee, did not divest the trial court of jurisdiction to consider his appeal, however. Therefore, in the absence of naming all interested parties, while Mr. Pryor may not be able to fully exercise his right to appeal, he has nevertheless perfected that right. *See Zier* at paragraph one of the syllabus. Accordingly, the trial court erred by granting the department's motion to dismiss for lack of subject matter jurisdiction. Mr. Pryor's second assignment of error is sustained.

ASSIGNMENT OF ERROR I

> THE COMMISSION ERRED WHEN IT AFFIRMED THAT PRYOR DID NOT MEET THE MONETARY REQUIREMENT.

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{¶12} Pryor argues that the review commission erred by finding that he did not meet the monetary requirements to be entitled to unemployment benefits. Based on our resolution of the second assignment of error, the first assignment of error has been rendered moot and we decline to address it. *See* App.R. 12(A)(1)(c).

{¶13} Moreover, to the extent that Pryor may have addressed this issue in his motion for reconsideration before the trial court, we are compelled to decline to address it. A dismissal of an action with prejudice for lack of subject matter jurisdiction constitutes a final, appealable order. *See* R.C. 2505.02(B). The trial court properly concluded that it had no authority to reconsider a final judgment and that any substantive ruling on the issues for reconsideration would constitute a nullity. *See U.S. Bank v. Schubert*, 9th Dist. Lorain No. 13CA010462, 2014-Ohio-3868, ¶ 12. Accordingly, there is no substantive issue arising out of the motion for reconsideration for this Court's review.

III.

{¶14} Mr. Pryor's second assignment of error is sustained. This Court declines to address his first assignment of error. The judgment of the Summit County Court of Common Pleas is reversed, and the cause remanded for further proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

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.

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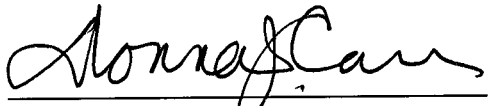
Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of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



DONNA J. CARR
FOR THE COURT

HENSAL, P. J.
MOORE, J.
CONCUR.

APPEARANCES:

MARCUS H. PRYOR II, pro se, Appellant.

SUSAN M. SHEFFIELD, Associate Assistant Attorney General, for Appellee.