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SUMMIT COUNTY  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

MARCUS PRYOR, II,

Plaintiff-Appellant,

v.

DIRECTOR, OHIO DEPARTMENT OF  
JOB AND FAMILY SERVICES,

Defendant-Appellee.

) CASE NO.: CV 2013 08 4088

) JUDGE CALLAHAN

) JUDGMENT ENTRY

) Final, Appealable Order

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This matter is before the Court upon Defendant-Appellee Director, ODJFS's Motion to Dismiss for Lack of Jurisdiction filed on October 16, 2013. Plaintiff-Appellant Marcus Pryor, II, filed a Motion in Opposition on October 21, 2013. Additionally, Defendant-Appellee Director, ODJFS, filed a Reply Brief on October 28, 2013. In accordance with the Local Rules, briefing of this Motion is closed and the Court will proceed to consider the pending Motion to Dismiss.

Defendant-Appellee ODJFS moves to dismiss the instant administrative appeal of the July 24, 2013 decision by the Unemployment Compensation Review Commission ("UCRC") for lack of subject matter jurisdiction. Specifically, it is alleged Plaintiff-Appellant Pryor failed to name the employer as an appellee in the Notice of Appeal and thus the common pleas court lacks subject-matter jurisdiction over the administrative appeal. Plaintiff-Appellant Pryor

argues based on decisions from the Ohio Supreme Court he has complied with the statute and his Amended Notice of Appeal cures any alleged defects.

R.C. 4141.282 governs the filing of administrative appeals of decisions from the Unemployment Compensation Review Commission to the court of common pleas. The statute not only authorizes the appeal, it also sets forth the conditions and procedures for filing and perfecting the appeal. *Zier v. Bur. of Unemployment Comp.*, 151 Ohio St. 123, 125, 84 N.E.2d 746 (1949). An appeal can only be perfected in the manner set forth in the statute. *Id.* “[W]here a statute confers the right to appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred.” *Id.* at 125-26, quoting *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 70 N.E.2d 93 (1946), paragraph one of the syllabus. Thus, the statute is mandatory and jurisdictional and failure to comply with the statute will result in a dismissal of the appeal for lack of subject-matter jurisdiction. *In re King*, 62 Ohio St.2d 87, 88-89, 403 N.E.2d 200 (1980).

An administrative appeal must be perfected in order to vest jurisdiction in the court of common pleas to hear the appeal. *Anderson v. Interface Elec., Inc.*, 10th Dist. No. 03AP-354, 2003-Ohio-7031, 2003 Ohio App. LEXIS 6359, ¶17, citing *Zier*, 151 Ohio St. at 125. In an administrative appeal from the Unemployment Compensation Review Commission’s final decision, “[t]he timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court.” R.C. 4141.282(C); *Zier*, 151 Ohio St. at 25. An appeal by an employee is perfected by filing a written notice of appeal in the court of common pleas where the employee is a resident or was last employed, within thirty days of the mailing of the final decision of the unemployment compensation review commission to the parties. R.C.

4141.282(A) and (B); see *Nicoll v. Ohio Dept. of Job and Family Servs.*, 2d Dist. No. 24509, 2011-Ohio-5207, 2011 Ohio App. LEXIS 4298, ¶18. The notice of appeal shall name all interested parties as appellees. R.C. 4141.282(D). "Interested parties" is defined as those individual and entities whose names and addresses are included in the UCRC final decision. *Id.* Failure by an appellant to name the employer as an appellee is a jurisdictional defect. *Luton v. State of Ohio Unemployment Rev. Comm.*, 8th Dist. No. 97996, 2012-Ohio-3963, 2012 Ohio App. LEXIS 3494, ¶12; *Mattice v. Ohio Dept. of Job and Family Servs.*, 2d Dist. No. 25718, 2013-Ohio-3941, 2013 Ohio App. LEXIS 4105, ¶14. If the appeal is not properly perfected, then the common pleas court lacks jurisdiction and the appeal must be dismissed. *Anderson*, 2003-Ohio-7031, at ¶17; *Mattice*, 2013-Ohio-3941, at ¶16.

Plaintiff-Appellant attempts to argue that while he did not name the employer, he served the employer and thus he has complied with the statute and jurisdiction is vested in the court. Plaintiff-Appellant is attempting argue that the employer has notice of the administrative appeal and he has substantially complied with the statutory requirements. Plaintiff-Appellant's position, however, overlooks the fact that he did not name the employer in the notice of appeal as required by R.C. 4141.282(D). The UCRC's final Decision of July 24, 2013 instructs the parties under the heading of "APPEAL RIGHTS" that "[t]he appellant must name all interested parties as appellees in the notice of appeal, \*\*\*." The July 24, 2013 Decision then listed four names and addresses: Marcus Pryor, II, 32 North Ave., Cincinnati, OH 45215; Department of Army, Attn. Army Personnel Records Division, Ahre-Pdr-Ucx, Fort Knox, KY 40122-5500; Department of Army, 040664 Aprn Home DET FC, Fort Stewart TC, GA 31314; and Director, Ohio Department of Job Family Services, 30 E. Broad Street, 32nd Floor, Columbus, Ohio

43215. These four names are the interested parties that were required to be named in the notice of appeal. The August 23, 2013 Notice of Appeal only lists Marcus Pryor and the ODJFS as parties. The Department of Army is not listed in the Notice of Appeal. While Plaintiff-Appellant filed and served the Notice of Appeal, the Notice of Appeal itself is defective as it did not name the Department of Army as an appellee. Service of the notice of appeal upon the employer, alone, does not satisfy the statutory requirements to perfect an appeal. See *Luton*, 2012-Ohio-3963, at ¶12.

Additionally, Plaintiff-Appellant's assertion that he only needed to comply with R.C. 4141.282(C) is incorrect. This section of the statute states "[t]he timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court." Plaintiff-Appellant's position ignores the remaining portions of the statute that also must be followed in order to vest jurisdiction, namely the requirement to name the employer as an appellee in the notice of appeal. The statute unequivocally states the appellant shall name all interested parties as appellees in the notice of appeal. In this case, Plaintiff-Appellant timely filed a deficient Notice of Appeal. The Notice of Appeal was deficient because it failed to list the employer as an appellee. The timely filing of a deficient notice of appeal does not vest this Court with jurisdiction over the administrative appeal. See *Luton*, 2012-Ohio-3963, at ¶14; *Mattice*, 2013-Ohio-3941, at ¶16. Moreover, the concept of "substantial" compliance with R.C. 4141.282 has been rejected based on the holdings of *Zier* and *In re King*: the "failure of a party to strictly comply with the statutory requirements will cause the appeal to be dismissed for lack of jurisdiction." *Luton*, 2012-Ohio-3963, at ¶15, citing *Sydenstricker v. Donato's Pizzeria, LLC*, 11th Dist. No. 2009-L-149, 2010-Ohio-2953, 2010 Ohio App. LEXIS 2455.

Further, Plaintiff-Appellant's reliance on *Spencer v. Freight Handlers, Inc.*, 131 Ohio St.3d 316, 2012-Ohio-880, 964 N.E.2d 1030, is misplaced as that case involves a workers' compensation appeal. Administrative appeals from the Industrial Commission are governed by R.C. 4123.512, while administrative appeals from the UCRC are governed by R.C. 4141.282. These are different statutes with different statutory requirements to perfect an appeal. Accordingly, the holding in *Spencer* is inapplicable in this matter. See *Luton*, 2012-Ohio-3963, at ¶17.

Similarly, Plaintiff-Appellant's reliance upon *Welsh Dev. Co., Inc. v. Warren Cty. Reg. Planning Comm.*, 128 Ohio St.3d 471, 2011-Ohio-1604, 946 N.E.2d 215, is also in error as that case involved an administrative appeal from an administrative agency pursuant to R.C. Chapter 2505 et seq. Again, the requirements to perfect an appeal from an administrative agency under R.C. Chapter 2505 et seq. are different from the statutory requirements to perfect an appeal from the UCRC. Thus, the holding in *Welsh* is not controlling in this matter.

Lastly, this Court disagrees with Plaintiff-Appellant's suggestion that the common pleas court look to the Appellate Rules of Procedure or any other relevant statutes to address the issue of how to perfect an appeal from the UCRC. R.C. 4141.282 clearly sets forth the statutory requirements for perfecting an administrative appeal from the UCRC. Moreover, there is abundant case law dealing directly with the issue at hand: a trial court lacks subject-matter jurisdiction in an administrative appeal when the appellant fails to name the employer as an appellee in the notice of appeal. See *Luton, supra*; *Mattice, supra*; *In re King, supra*. Accordingly, this Court must follow R.C. 4141.282 and the relevant case law in deciding the

pending Motion to Dismiss and not the Appellate Rules of Procedure and other unrelated statutes and irrelevant case law.

Plaintiff-Appellant attempts to correct his oversight in failing to name the employer in the Notice of Appeal by moving the Court and filing an Amended Notice of Appeal. An appellant may amend the notice of appeal to correct any errors, such as a failure to name an appellee, within the original 30-day timeframe following the mailing of the final determination by the UCRC. *Dikong v. Ohio Supports, Inc.*, 1st Dist. No. C-120057, 2013-Ohio-33, 2013 Ohio App. LEXIS 38, ¶26; R.C. 4141.282(A). In this case, the UCRC issued its final Decision on July 24, 2013. Thus, the 30-day appeal period expired on August 23, 2013, the same day Plaintiff-Appellant filed his Notice of Appeal. Plaintiff-Appellant filed a request to amend his Notice of Appeal in his Motion in Opposition filed on October 21, 2013. Additionally, Plaintiff-Appellant filed, without leave of court, an Amended Notice of Appeal on November 14, 2013. Plaintiff-Appellant's Motion to file an Amended Notice of Appeal and the Amended Notice of Appeal were both filed after August 23, 2013; the deadline to file the Notice of Appeal and any amendments thereto, and thus were untimely.

This Court is aware Plaintiff-Appellant Pryor was acting pro se at the time that he filed his Notice of Appeal. While Plaintiff-Appellant Pryor was entitled to represent himself in this matter, he is bound by the same rules and procedures as those litigants who retain counsel. *First Resolution Invest. Corp. v. Salem*, 9th Dist. No. 24049, 2008-Ohio-2527, 2008 Ohio App. LEXIS 2131, ¶7. Plaintiff-Appellant Pryor is held to the same standards as an attorney and must comply with the law, statutes and Ohio Rules of Civil Procedure. *Sherlock v Meyers*, 9th Dist. No. 22071, 2004-Ohio-5178, 2004 Ohio App LEXIS 4686, ¶3, citing *Martin v Wayne Cty. Natl.*

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*Bank*, 9th Dist. No. 03CA0079, 2004-Ohio-4194, 2004 Ohio App. LEXIS 3827, ¶14; *Kilroy v B.H. Lakeshore Co.*, 111 Ohio App.3d 357, 363, 676 N.E.2d 171 (8th Dist.1996). The pro se plaintiff must accept the results of his own mistakes and/or errors. *Martin*, 2004-Ohio-4194, at ¶14.

Based on the foregoing, Plaintiff-Appellant has failed to timely amend his Notice of Appeal and to perfect the instant administrative appeal. Accordingly, this Court does not have subject-matter jurisdiction over the instant administrative appeal and cannot consider the merits of Plaintiff-Appellant Marcus Pryor, II's administrative appeal.

**Conclusion**

Plaintiff-Appellant Marcus Pryor, II's Motion to File Amended Notice of Appeal is **denied**. The Amended Notice of Appeal filed on November 14, 2013 is **stricken** from the record.

Defendant-Appellee Director, ODJFS's Motion to Dismiss is well-taken and is **GRANTED**. The administrative appeal filed on August 23, 2013 is **dismissed with prejudice** for lack of subject-matter jurisdiction. Costs to Plaintiff-Appellant Marcus Pryor, II.

This is a final, appealable order.

IT IS SO ORDERED.

  
JUDGE LYNNE S. CALLAHAN

cc: Attorney Susan M. Sheffield  
Plaintiff-Appellant Marcus Pryor, II, pro se