

In the
Supreme Court of Ohio

Marcus H. Pryor II,)	Case No. 2015-0770
)	
Appellee,)	
)	
v.)	On Appeal from the
)	Summit County Court of Appeals,
Director, Ohio Department of Job and Family)	Ninth Appellate District
Services,)	
)	Court of Appeals
Appellant,)	Case No. 27225

**APPELLEE, MARCUS PRYOR II'S,
MEMORANDUM IN RESPONSE TO JURISDICTION**

MICHAEL DEWINE (0009181)
Attorney General of Ohio

ERIC E. MURPHY* (0083284)
State Solicitor
*Counsel of Record
STEPHEN P. CARNEY (0063460)
Deputy Solicitor
SUSAN M. SHEFFILED (0079012)
Assistant Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087

Counsel for Appellant,
Director, Ohio Department Jobs and
Family Services

MARCUS PRYOR II
809 Mishler Road
Mogadore, OH 44260
513-505-3754

Pro Se, Appellee

FILED
JUN 10 2015
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
JUN 10 2015
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

I. THIS CASE IS OF PUBLIC OR GREAT GENERAL INTEREST.....1

A. There is a certified conflict, and Ohioans are being denied access to the courts.....1

B. Employers that have no interest in the litigation are being forced to participate in court proceedings.....1

C. Pryor does not oppose this Court’s review2

II. STATEMENT OF THE CASE AND FACTS.....3

A. ODJFS committed a typographical error on the first appeal and tried to fix it by issuing a second appeal eight months later.....3

B. The Army has no interest in this appeal because ODJFS alone committed the errors below.....3

C. The trial court dismissed, the Ninth District reversed and certified a conflict.....4

III. THE DISPUTE IS OVER THE PERFECTING REQUIREMENTS AND THE NAMING REQUIREMENTS OF R.C. 4141.282.....4

IV. PRYOR’S COUNTER-PROPOSITION OF LAW.....5

In an unemployment compensation appeal to the trial court, the naming of parties, pursuant to R.C. 4141.282(D), is not a mandatory requirement necessary to perfect and vest the trial court with jurisdiction.

A. For the past 65 Years, this Court has held that the naming of parties is not jurisdictional in unemployment appeals.....5

B. The Naming Requirements do not pass this Court’s two-part test for mandatory requirements.....5

C. The intent behind the Naming Requirements and the Civil Rules are further reasons why the Naming Requirements are not jurisdictional.....6

V. CONCLUSION.....7

CERTIFICATE OF SERVICE.....9

I. THIS CASE IS OF PUBLIC OR GREAT GENERAL INTEREST

A. There is a certified conflict, and Ohioans are being denied access to the courts

Pryor agrees that this Court should hear this appeal because the Ninth District certified the existence of a conflict. Due to the conflict itself, it is clear that this appeal is of public or great general interest. In addition, Pryor agrees with Director, Ohio Department of Job and Family Services (“ODJFS”) that this appeal is of public or great general interest because in districts other than the Ninth, Ohioans are wrongfully being denied access to the courts. Pryor is satisfied with the briefing of these two issues in ODJFS’s Memorandum in Support of Jurisdiction.

B. Employers that have no interest in the litigation are being forced to participate in court proceedings

This appeal raises an additional critical issue of public or great general interest because parties, particularly employers, are being forced into court when the party has no legal interest in the appeal or no longer wishes to contest the merits of the appeal.

1. Employers have no interest when ODJFS commits the error that caused the appeal

Employers are at risk for being unfairly punished by the statutory interpretation urged by ODJFS. There are situations where the employer simply has no legal interest in the appeal. In these situations, it is unfair to force an employer to expend its resources and efforts in the appeal. While Pryor welcomes this Court’s review, Pryor’s case is distinguishable from the other six appeals because it involves the aforementioned situation.¹

¹ This reference refers to the six district court of appeals that issued holdings conflicting with the Ninth District’s holding.

Pryor's former employer, the United States Army ("Army"), has no legal interest in this matter because ODJFS is the only party that committed the errors at the administrative level. In addition, the Army has failed to participate in any of the appeal proceedings, including the proceedings at the administrative level. These two facts distinguish Pryor's appeal from the other six appeals that involved employers that did have an interest in the appeal and did participate in the appeal proceedings at the administrative level.

2. Employers have no interest when the employer no longer contests the payment of benefits

An employer should not be forced to litigate an appeal when the employer no longer contests the payment of benefits. For example, in *Rupert*, the employer no longer contested the appellant's right to benefits. See *Rupert v. Ohio Dept. of Job and Family Svc.*, 6th Dist. Lucas No. L-14-1139, 2015-Ohio-915, ¶ 13 (ignoring the fact that, the employer switched its position from initially opposing benefits, to later agreeing with the employee that benefits were warranted). In those situations, ODJFS argues that, despite the fact that the employer no longer wishes to contest benefits and the employer accepts the consequences of such a decision, the employee nevertheless must add the employer as an adverse party to the litigation. While the facts of *Rupert* are not directly on appeal, Pryor highlights *Rupert* to show that it is not just Ohioans that are subject to unfair treatment by ODJFS's interpretation; employers suffer as well.

C. Pryor does not oppose this Court's review

This appeal highlights the injustice that Ohioans, both employers and employees alike, face under the arguments proposed by ODJFS and currently in place in six districts. Thankfully, the Ninth District recognized the errors of those arguments and ruled in line with this Court's long-standing precedent. If this Court accepts review, Pryor urges it to uphold the Ninth District's holding.

II. STATEMENT OF THE CASE AND FACTS

A. **ODJFS committed a typographical error on the first appeal and tried to fix it by issuing a second appeal eight months later**

Pryor was honorably discharged from the Army on August 10, 2012. After his discharge, ODJFS initially granted Pryor benefits. After an appeal by the Army, which Pryor did not contest, ODJFS erroneously granted Pryor benefits due to a typographical error on its appellate decision.² Eight months later, ODJFS, on its own, recognized the error and issued a second appeal that stated Pryor was not entitled to benefits. The second appeal ignored the existence and legal significance of the first appeal. It is the second, invalid appeal that is the underlying appeal before this Court.

B. **The Army has no interest in this appeal because ODJFS alone committed the errors below**

Assuming that Pryor was overpaid benefits, ODJFS is the party that is liable for the overpayment because ODJFS committed the typographical error. Even if ODJFS is not liable for the overpayment, then the issue of repayment would fall on Pryor, not the Army. As such, the Army did not participate in the appeal process of this second, invalid appeal at any stage. Therefore, the Army has no interest in this appeal.

Also, the Review Commission's final decision did not identify any party as an 'interested party,' other than the Director, which Pryor properly named as an appellee in the notice of appeal. Given that the Army has no interest, that the Army did not participate, and that the Army was not identified as an interested party, Pryor concluded that the Army did not need to be

² Pryor recognized this error and questioned ODJFS staff about it on numerous occasions. ODJFS staff told Pryor not to worry about the discrepancy because he was entitled to benefits, per the appellate decision.

dragged into court as an appellee. However, erring on the side of caution, Pryor did list the Army as a party to be served and the Army was, in fact, served.³

C. The trial court dismissed, the Ninth District reversed and certified a conflict

The trial court dismissed Pryor's appeal because it found that Pryor's failure to name the Army as an appellee was a jurisdictional defect that deprived it of jurisdiction. On appeal and as a case of first impression in the district, the Ninth District found that the trial court did have jurisdiction and reversed and remanded. Then, the Ninth District certified the following question because its holding conflicts with the holdings of six other appellate courts:

When appealing an unemployment compensation decision to the trial court, are the requirements contained in R.C. 4141.282(D), which explains how to name the parties, mandatory requirements necessary to perfect the appeal and vest the trial court with jurisdiction?

Now, ODJFS has filed both a certified conflict appeal and this jurisdictional appeal.

III. THE DISPUTE IS OVER THE PERFECTING REQUIREMENTS AND THE NAMING REQUIREMENTS OF R.C. 4141.282

This appeal is over what is required to perfect the appeal and vest jurisdiction in the trial court for an unemployment appeal. Here are the pertinent parts of R.C. 4141.282:

(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.

³ The Review Commission also erred on its final decision by providing an incorrect address.

The Perfecting Requirements are those contained in subsection (C), and the Naming Requirements are those requirements, aimed at both ODJFS and Pryor, in subsection (D). Unanimously, the Ninth District agreed with Pryor, that the Naming Requirements are not jurisdictional requirements.

IV. PRYOR'S COUNTER-PROPOSITION OF LAW:

In an unemployment compensation appeal to the trial court, the naming of parties, pursuant to R.C. 4141.282(D), is not a mandatory requirement necessary to perfect and vest the trial court with jurisdiction.

This proposition of law is directly from this Court's holding in the seminal case, *Zier v. Bur. of Unemp. Comp.*, this Court's recent interpretation of *Zier* and a two-part test that has resulted from *Shinkle v. Ashtabula Cty. Bd. of Revision*, the General Assembly's intent for including the Naming Requirements, and the use of the Civil Rules.

A. For the past 65 years, this Court has held that the naming of parties is not jurisdictional in unemployment appeals

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 [sic] not constitute conditions precedent to jurisdiction * * *

Zier v. Bur. of Unemp. Comp., 151 Ohio St. 123, 127, 84 N.E.2d 746 (1949).

This Court has never overruled, nor has it limited, *Zier's* holding. See *Joy Mfg. Co. v. Albaugh*, 159 Ohio St. 460, 463, 112 N.E.2d 540 (1953) (reaffirming *Zier*); see also *In re King*, 62 Ohio St.2d 87, 89, 403 N.E.2d 200 (1980) (leaving intact *Zier's* holding regarding the naming of parties, *despite* the appellant's failure to name all interested parties as appellees, but modifying *Zier's* holding regarding proofs of service).

B. The Naming Requirements do not pass this Court's two-part test for mandatory requirements

Furthermore, this Court recently revisited *Zier's* holding to explain the difference between statutory requirements that are mandatory as opposed to directory. *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397, 985 N.E.2d 1243, ¶ 19. “A statutory requirement is mandatory and hence jurisdictional when the requirement is (1) imposed on the appellant itself and (2) relates to the informative content of the document by which the administrative proceeding is instigated.” *Id.*

Using that test here, the Naming Requirements are not jurisdictional because an appellant is dependent on the Review Commission to both identify and provide accurate contact information regarding the interested parties. Also, the Naming Requirements pertain solely to the caption of the notice of appeal and not to the informative content of the document that began the administrative proceedings. *See Zier* at 127 (finding that the naming of parties does not relate to the informative content of the notice of appeal).

C. The intent behind the Naming Requirements and the Civil Rules are further reasons why the Naming Requirements are not jurisdictional

While *Zier* and *Shinkle* squarely resolve this appeal, Pryor provides these additional points to correct the erroneous arguments that, (1) the General Assembly intended for the Naming Requirements to be jurisdictional, and (2) that the Civil Rules are inapplicable.

1. The Naming Requirements were added to correct a mistake from the prior version of the statute

The General Assembly included the Naming Requirements to ensure that the Director of ODJFS had the statutory right to participate in appeals because under the prior version, that right was statutorily given to the Review Commission, a quasi-judicial court. S.B. 99 Final Analysis, 129th General Assembly, p. 19. (effective date October 31, 2001).

Furthermore, the fact that the General Assembly placed the Naming Requirements in a separate subsection from the Perfecting Requirements is proof that the Naming Requirements were not intended to be jurisdictional. *Spencer v. Freight Handlers, Inc.*, 131 Ohio St.3d 316, 2012-Ohio-880, 964 N.E.2d 1030, ¶ 20 (holding that the naming requirement contained in R.C. 4123.512 was not jurisdictional because it was placed in a separate *paragraph* from the obviously jurisdictional requirements and because perfecting the appeal was limited to the filing of the notice of appeal); *see* R.C. 4141.282(C) (containing the same limiting language used in R.C. 4123.512); *see* R.C. 4141.282(D) (placing the Naming Requirements not only in a separate paragraph, but in a completely separate subsection than the Perfecting Requirements).

2. The Civil Rules apply to special statutory proceedings

Lastly, this Court has consistently held that the Civil Rules apply to special statutory proceedings unless the Rules would be “*clearly inapplicable.*” (Emphasis added.) Civ.R. 1(C); *e.g., Plumbers and Steamfitters Local Union v. Union School Dist. Bd. of Ed.*, 86 Ohio St.3d 318, 322, 715 N.E.2d 127 (1999) (finding that even if a statute provides the substantive requirement regarding the naming of parties, the applicability of the Civil Rules, specifically, amendments of initial pleadings to add necessary parties, may be used unless expressly prohibited by the statute). Here, the statute does not expressly prohibit amending a notice of appeal to add interested parties.⁴ Therefore, ODJFS’s argument that the Civil Rules are inapplicable to resolve this appeal is meritless and, the Ninth District was correct when it referenced the Rules in its analysis.

⁴ Pryor filed an amended notice of appeal, naming the Department of the Army as an appellee, with the trial court.

V. CONCLUSION

“The fundamental tenet of judicial review in Ohio [is] that courts should decide cases on their merits....” *E.g., Spencer* at ¶ 14. Even though Pryor won his battle just to get into court, Pryor is aware that other Ohioans are being denied that same right. Furthermore, as a result of ODJFS’s interpretation, other parties are being unnecessarily dragged into court. Should this Court accept this appeal, Pryor requests this Court to follow the fundamental tenet and hold that the Naming Requirements are not jurisdictional.

Respectfully Submitted,

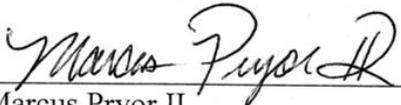


Marcus Pryor II
809 Mishler Road
Mogadore, OH 44260
513-505-3754

Pro Se, Appellee

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPELLEE, MARCUS PRYOR II'S, MEMORANDUM IN RESPONSE TO JURISDICTION** was sent via regular U.S. Mail on June, 8, 2015, to the parties listed below.



Marcus Pryor II
Pro Se, Appellee

Mike DeWine, Attorney General of Ohio
Eric E. Murphy, State Solicitor
Stephen P. Carney, Deputy State Solicitor
30 E. Broad St., 17th Floor
Columbus, OH 43215

Susan M. Sheffield
Assistant Attorney General
Unemployment Compensation Unit
20 West Federal Street, 3rd Floor
Youngstown, OH 44503

Department of Army
Attn Army Personnel Records Division
Ahrc-Pdr-Ucx
Fort Knox, KY 40122-5500

Department of Army
040664APEN HOME DET FC
FORT STEWART TC, GA 31314