Supreme Court of Ohio Clerk of Court - Filed November 23, 2015 - Case No. 2015-0770

In the
# Supreme Court of Ohio

| | | |
|---|---|---|
| Marcus H. Pryor II,<br>Appellee,<br>v.<br>Director, Ohio Department of Job and Family Services,<br><br>Appellant, | ) | Case No. 2015-0767; 2015-0770<br><br>On Appeal from the<br>Summit County Court of Appeals,<br>Ninth Appellate District<br><br>Court of Appeals<br>Case No. 27225 |

---

**BRIEF OF APPELLEE, MARCUS PRYOR II**

---

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
mpryorii25@live.com

*Pro Se*, Appellee

## TABLE OF CONTENTS

**TABLE OF AUTHORITIES** ..... iv

**INTRODUCTION** ..... 1

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

I. The underlying dispute is between Pryor and the Director only.

II. The only party identified as an 'interested' party was the Director.

III. Pryor did not name the Army in the notice of appeal.

IV. The failure to name all interested parties is wide-spread among pro se and represented appellants alike, and the Commission consistently makes mistakes on its final decisions.

V. The trial court dismissed, the Ninth District reversed, and this Court accepted review.

**PRYOR'S FIRST PROPOSITION OF LAW:**

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

**ARGUMENT** ..... 6

**I. The Ninth District used the plain and unambiguous language of the statute to conclude that the Naming Requirements are not jurisdictional** ..... 6

A. The plain language of the statute provides that the timely filing of the notice of appeal is *the only act* required to perfect the appeal and vest the court with jurisdiction.

B. The Naming Requirements cannot be jurisdictional under the plain language of the statute.

**II. The Ninth District applied this Court's sixty-five year precedent that requirements regarding the naming of parties in unemployment appeals are not jurisdictional** ..... 8

A. The naming of parties has never been jurisdictional under unemployment statutes.

B. The substantive language is the same today as it was in 1949.

C. The current version of the unemployment statute mirrors *Zier*.

**III. The Ninth District was correct to rely on the Civil Rules to give meaning to the Naming Requirements.....13**

A. The Civil Rules apply to the unemployment statute.
B. The Ninth District's use of the Civil Rules was to make it clear that failing to name all interested parties may result in dismissal because the court may not be able to grant complete relief if a party is missing, but such failure does not deprive the trial court of jurisdiction to hear the appeal.

**IV. The rule from *Zier* has been explained in *Shinkle*; the Naming Requirements are non-jurisdictional according to the *Shinkle* Test.....15**

A. The *Shinkle* Test.
B. The Naming Requirements do not pass the *Shinkle* Test.
1. The Naming Requirements are imposed on the Commission and Pryor alike.
2. The rationale behind the first prong is that access to the courts cannot depend on the actions of another party.
3. The Naming Requirements do not relate to the informative content of the notice.

**V. This Court interprets naming requirements under the workers' compensation statute as non-jurisdictional.....19**

A. When the General Assembly limits the jurisdictional requirements to the timely filing of the notice of appeal, additional statutory requirements are not jurisdictional.
B. Content requirements are jurisdictional.
C. The Naming Requirements are not content requirements.
D. This Court applies the substantial compliance doctrine to perfecting appeals under the workers' compensation statute.

**PRYOR'S SECOND PROPOSITION OF LAW:**

*The right to appeal an unemployment decision to the common pleas court can be perfected only in the manner provided by the statute in R.C. 4141.282, and, absent substantial compliance with the statute, the reviewing body lacks jurisdiction to review the Review Commission's final decision.*

**ARGUMENT.....24**

**I. The doctrine of substantial compliance has long been applied to unemployment appeals .....24**

A. Substantial compliance means an appellant has put an opposing party on reasonable notice that an appeal is taking place.

B. The Ohio appellate courts apply the doctrine of substantial compliance to the unemployment statute but are unaware that the doctrine can be used in regards to the Naming Requirements.

**II. This Court should find that Pryor substantially complied with the statutory requirements to perfect the appeal and vest the trial court with jurisdiction .....27**

**CONCLUSION .....27**

**CERTIFICATE OF SERVICE.....29**

**APPENDIX:**

Excerpt from Initial Decision Allowing Benefits and Second Decision Reversing..... App-1

Excerpt from Hearing Officer Decision identifying the issue for appeal..... App-2

Excerpt from Commission's final decision identifying Director as an interested party..... App-3

List of unemployment appeals filed from Sept. 1 – Nov. 13, 2015, that fail to properly name all interested parties and the corresponding notice of appeals.....App-4

Excerpt from recent Commission's decision citing the jurisdictional requirements as R.C. 4141.282(A)(B)(C)..... App-5

Director's Motion to Dismiss Party From Appeal..... App-6

Excerpt from Dockett showing Army's wrong address..... App-7

Excerpts from four recent Commission's final decisions identifying the wrong statute for the appeal process..... App-8

Excerpts from Director's trial court Reply Brief in *Pryor* and Director's Merit Brief in *Luton* arguing that *Spencer* does not apply..... App-9

## TABLE OF AUTHORITIES

**Cases**

*Anderson v. Interface Elec., Inc.*,
10th Dist. Franklin No. 03AP-354, 2003-Ohio-7031.....25

*Arcuragi v. Bd. of Rev., Ohio Bur. of Emp. Servs.*,
12th Dist. Preble No. 305, 1982 WL 3275, *2 (Nov. 24, 1982).....26

*Castleberry v. Evatt, Tax Com'r., et al.*,
147 Ohio St. 30, 67 N.E.2d 861 (1946).....26

Dept. of Army v. Blue Fox, Inc.,
525 U.S. 255, 119 S.Ct. 687, 142 L.Ed.2d 718 (1999).....2

*Dikong v. Ohio Supports, Inc. et al.*,
2013-Ohio-33, 985 N.E.2d 949 (1st Dist.).....5

*Dragon v. Ohio Unemp. Comp. Rev. Comm.*,
11th Dist. Ashtabula No. 2005-A-0017, 2006-Ohio-1447.....26

*Fisher v. Mayfield*,
30 Ohio St.3d 8, 505 N.E.2d 975 (1987).....25

*Hambuechen v. 221 Mkt. North., Inc.*,
143 Ohio St.3d 161, 2015-Ohio-756, 35 N.E.3d 502.....13

*Hansford v. Steinbacher*,
33 Ohio St.3d 72, 514 N.E.2d 1385 (1987).....8-9

*Hinton v. Ohio Unemp. Rev. Comm.*,
7th Dist. Mahoning No. 14 MA 45, 2015-Ohio-1364.....5

*Hulsmeyer v. Hospice of Southwest Ohio, Inc.*,
142 Ohio St.3d 236, 2014-Ohio-5511, 29 N.E.3d 903.....6

*Giese v. Dir., Ohio Dept. of Job & Fam. Servs.*,
6th Dist. Erie No. E-06-034, 2007-Ohio-2395.....26

*Gustinski v. Bur. of Emp. Servs.*,
8th Dist. Cuyahoga No. 49094, 1985 WL 9006 (May 16, 1985).....26

*In Re King*,
62 Ohio St.2d 87, 403 N.E.2d 200 (1980).....5, 8

*Joy Mfg v. Albaugh*,
159 Ohio St. 460, 112 N.E.2d 540 (1953).....8

*Kempf v. Arnold Corp.*,
5th Dist. Richland No. 93CA27, 1993 WL 535497 (Dec. 7, 1993).....26-27

*Lorain Cty. Aud. v. Ohio Unemp. Rev. Comm.*,
113 Ohio St. 3d 124, 2007-Ohio-1247, 863 N.E.2d 133.....6-7

*Luton v. Ohio Unemp. Revision Comm.*,
8th Dist. Cuyahoga No. 97996, 2012-Ohio-3963.....5, 19, 27

*Mattice v. Ohio Dept. of Job & Family Servs.*,
2d Dist. Montgomery No. 25718, 2013-Ohio-3941.....5

*McCruter v. Bd. of Rev., Bur. of Unemp. Servs.*,
64 Ohio St.2d 277, 415 N.E.2d 259 (1980).....8

*Moore v. Foreacher*,
156 Ohio St. 255, 102 N.E.2d 8 (1951).....25, 26, 27

*Price v. Westinghouse Elec. Corp.*,
70 Ohio St.2d 131, 435 N.E.2d 1114 (1982).....13

*Proctor v. Giles*,
61 Ohio St.2d 211, 400 N.E.2d 393 (1980).....8

*Pryor v. Dir., Ohio Dept. of Job and Family Servs.*,
Ninth Dist. Summit No. 27255, 2015-Ohio-1255..... *passim*

*Pryor v. Dir., Ohio Dept. of Job and Family Servs.*,
Summit C.P, No. CV 2013-08-4088 (Dec. 31, 2013).....15

*Plumbers & Steamfitters Local Union 83 v. Union Local School Dist. Bd. of Edn.*,
86 Ohio St.3d 318, 1999-Ohio-109, 715 N.E.2d 127.....14, 15

*Rupert v. Ohio Dept. of Job and Family Servs.*,
6th Dist. Lucas No. L-14-1139, 2015-Ohio-915.....5

*Sydenstricker v. Donato's Pizzeria, LLC.*,
11th Dist. Lake No. 2009-L-149, 2010-Ohio-2953.....5, 27

*Shinkle v. Ashtabula Cty. Bd. of Revision*,
135 Ohio St.3d, 2013-Ohio-397, 985 N.E.2d 1243.....10, 15-18, 22

*Spencer v. Freight Handlers, Inc.*,
131 Ohio St.3d 316, 2012-Ohio-880, 964 N.E.2d 1030..... 12, 15, 19-24, 25

*State ex rel. Jones v. Indus. Comm.*,
65 Ohio St.3d 133, 1992-Ohio-16, 601 N.E.2d 36..... 24-25

*Todd v. Garnes*,
44 Ohio St.2d 56, 337 N.E.2d 790 (1975).....8

*Triplett v. Bd. of Rev., Bur. of Unemp. Comp.*,
118 Ohio App. 515, 196 N.E.2d 107 (2d Dist.1963).....26

*Wolmack v. Bd. of Rev.*,
10th Dist. Franklin No. 94APE12-1780, 1995 WL 373547 (June 22, 1995).....25-26

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

*Zier v. Bur. of Unemp. Comp.*,
51 Ohio Law Abs. 411, 81 N.E.2d 129 (8th Dist.1948),
rev'd on other grounds, 151 Ohio St. 123, 84 N.E.2d 746 (1949).....9

**Statutes**

R.C. 2721.12.....12
R.C. 4141.28(O) (predecessor section to R.C. 4141.282).....27
R.C. 4123.512(A)..... 20
R.C. 4123.512(B).....20, 22
R.C. 4141.282(C)..... *passim*
R.C. 4141.282(D) ..... *passim*
R.C. 4141.35(B)..... 3
R.C. 5101.35..... 26
R.C. 5717.03(B).....12
prior version R.C. 4123.512(B), effective July 29, 2011 - Sep. 16, 2014 ..... 21

**Civil Rules**

Civ.R. 12(B)(1)..... 2, 14, 15
Civ.R. 15 .....13
Civ.R. 19..... 2, 14, 15, 23
CIv.R. 21.....14

**Other**

S.B. 99 Final Analysis, 129th General Assembly, p. 19 (October 31, 2001).....12

## INTRODUCTION

The Ninth District was correct in holding that the trial court had jurisdiction to hear Appellee, Marcus Pryor II's ("Pryor") unemployment appeal and reversing the trial court's dismissal. Under R.C. 4141.282(C) ("Perfecting Requirements"), the timely filing of a notice of appeal identifying the decision being appealed is "the only act necessary to perfect the appeal and vest jurisdiction in the court." Undisputedly, Pryor timely filed his notice of appeal identifying the decision being appealed and thus, vested the court with jurisdiction.

However, Appellant, Director, Ohio Dept. of Job and Family Servs. ("Director") argues that R.C. 4141.282(D) ("Naming Requirements"), the requirement to name all interested parties as appellees in the notice of appeal, is an additional jurisdictional requirement. Despite Pryor's full and complete compliance with the Perfecting Requirements and substantial compliance with the Naming Requirements, the Director argues that Pryor's failure to name all interested parties as appellees left the trial court without jurisdiction.

As the Ninth District correctly held, the Director's argument cannot overcome the plain language of the statute that explicitly states what is needed to perfect the appeal or that this Court has held for sixty-five years in unemployment appeals that, "provisions relative to parties * * * are not conditions precedent to jurisdiction." *Zier v. Bur. of Unemp. Comp.*, 151 Ohio St. 123, 127, 84 N.E.2d 746 (1949). Rejecting the Director's argument, the Ninth District explained that the Naming Requirements are properly enforced by motion practice via the Civil Rules, not by stripping trial courts of jurisdiction.

Here, while the Director refuses to read the statute "literally" or rely any of the conflicting appellate decisions, the Director's reliance on this Court's interpretations of *other* statutory provisions governing *other* kinds of administrative appeals is equally baffling; even

under those cases, the Director's argument fails. The Director's last supporting reason that the Naming Requirements are jurisdictional is that it is "common sense" to force veterans to sue to the United States Department of Army, even if the Army has no interest in the appeal. While the Director's common sense argument does not trump the plain language of the statute or this Court's sixty-five year precedent, the United States Supreme Court's decisions show that it is in fact, *not* common sense to sue the Nation's Army because the Army has sovereign immunity until Congress expressly waives it. *E.g.*, *Dept. of Army v. Blue Fox, Inc.*, 525 U.S. 255, 260, 119 S.Ct. 687, 142 L.Ed.2d 718 (1999) ("absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit").

At the end of the day, the Naming Requirements can and should be enforced through motion practice under Civ.R. 12(B)(7) and Civ.R. 19, as the Ninth District correctly recognized. After all, the Director used the Civil Rules to have a party removed from this case, there is no reason the Civil Rules cannot be used to have a party added. Allowing alleged defects to be addressed through motion practice would allow the Director to enforce the party-naming directive in those cases where the employer possesses a true interest in the appeal. At the same time, it would avoid the inherent unfairness in a requirement that forces appellants to name parties as appellees who, like the United Stated Department of Army, have no interest in the underlying appeal and in fact, are probably immune from suit. This Court should affirm the judgment below so that trial courts may address party-naming errors in a sensible, case-by-case fashion through motion practice.

Furthermore, even if this Court finds that the Naming Requirements are jurisdictional, it should nonetheless remand *this* case to the trial court because there is no denying that Pryor substantially complied with the statutory requirements to vest the court with jurisdiction. Pryor

timely filed the notice, he identified the decision being appealed in the notice, he filed the notice in the right court, he named the Director as an appellee in the notice, and he served all parties, including the Army, with the notice. Heeding common sense, Pryor did everything *but* sue the United States Department of Army in state trial court.

Therefore, Pryor requests this Court to find that the trial court had jurisdiction.

## STATEMENT OF THE FACTS AND CASE

The following facts illustrate why the Director's interpretation, that the Naming Requirements are jurisdictional, is untenable.

### I. The underlying dispute is between Pryor and the Director only.

Pryor served as a combat medic and was honorably discharged from the United States Army. At the Army's recommendation, Pryor applied for unemployment benefits. After granting Pryor unemployment benefits, the Director reversed the decision but made a typographical error that resulted in the non-fraudulent overpayment of benefits. *See* App-1 (showing the original decision granting benefits and the subsequent decision that reversed the original decision, but still granted Pryor benefits).[1] Thus, the underlying issue is whether it is the Director or Pryor that is responsible for the error that resulted in the overpayment of benefits. The only parties that may be held responsible are the Director or Pryor, not the Army.[2]

### II. The only party identified as an 'interested party' was the Director.

---

[1] Pryor notified the Director of the discrepancy numerous times but was repeatedly told by the Director's operators that he was entitled to benefits, despite the conflicting language on the decision.

[2] *See* R.C. 4141.35(B) (explaining that when a claimant has not committed any acts of fraud but nonetheless has received an overpayment of benefits, that the claimant must repay those benefits, unless the overpayment was the result of a typographical or clerical error made by the Director); *see also* App-2 (showing that the only issue that has had any type of review is whether Pryor was eligible for benefits, not which party bears the responsibility for the Director's error that resulted in the overpayment of benefits, hence the need for a hearing on the merits).

The Review Commission's ("Commission") final decision stated that the decision was *sent* to four parties, two of which were the Army; but the decision identified *only* the Director as an interested party. App-3. In addition, the Army did not appear or participate at the agency appeal levels. Nor has the Army appeared or participated at the trial court or appellate levels. Thus, it was unclear that the Army was an interested party.[3]

## III. Pryor did not name the Army in the notice of appeal.

Pryor did not name the Army as an appellee in the notice of appeal because: (1) the underlying dispute is between Pryor and the Director alone; (2) the Army's status as an interested party was unclear; and (3) Pryor was unsure that even if the Army was an interested party, whether the Army had waived sovereign immunity and could be sued in state court. However, despite the obvious reasons not to drag the Army into state court, Pryor nonetheless served the Army at every step of the appeal's process.

## IV. The failure to name all interested parties is wide-spread among pro se and represented appellants alike, and the Commission consistently makes mistakes on its final decisions.

From September – November 2015, nine unemployment appeals have been filed. Eight of those appeals incorrectly name the interested parties on the notice of appeal. The problem is not contained to pro se appellants only, as both represented employers and employees have failed to properly name the interested parties as well. *See* App-4 (indexing the nine cases and including the respective notice of appeals). Furthermore, the Commission erroneously stated on four of the nine decisions that appeals are filed under R.C. 4141.26 and failed to identify *any* parties as interested parties on those decisions. *See* App-5 (showing the final page of each of those four decisions, which explains the appellant's right to appeal). Also, on one of the final decisions, the

[3] There is no express waiver of sovereign immunity in the regulations. 20 CFR 614.

Commission stated that an appellant must comply with "Section 4141.282(A)(B)(C), Revised Code of Ohio" in order to perfect the appeal, notably leaving out the Naming Requirements from that list of subsections. *See* App-6 (showing final page of that decision).

## V. The trial court dismissed, the Ninth District reversed, and this Court accepted review.

The trial court dismissed Pryor's appeal for lack of jurisdiction because Pryor did not name the Army as an appellee. The Ninth District reversed the decision, finding that jurisdiction to hear unemployment appeals turns on whether an appellant complies with the General Assembly's plain and unambiguous requirement to timely file a notice of appeal that identifies the decision being appealed, not on which parties are named in the appeal. Next, the Ninth District certified a conflict between its interpretation and six other appellate courts.[4] This Court accepted and consolidated the certified conflict and the Director's jurisdictional appeals.

---

[4] The six appellate courts do not agree on why the Naming Requirements are jurisdictional. *See Sydenstricker v. Donato's Pizzeria, LLC.*, 11th Dist. Lake No. 2009-L-149, 2010-Ohio-2953 (finding the Naming Requirements to be jurisdictional under the mistaken premise that all statutory requirements are mandatory and notably, lacking any analysis of the Perfecting Requirements); *Luton v. Ohio Unemp. Revision Comm.*, 8th Dist. Cuyahoga No. 97996, 2012-Ohio-3963 (finding the Naming Requirements to be jurisdictional under the mistaken analysis that *In re King*, 62 Ohio St.2d 87, 403 N.E.2d 200 (1980), dismissed the appeal for failure to follow *all* of the statutory directives when in fact, the Court dismissed for failure to *serve* the interested parties but not for the failure to *name* them); *Dikong v. Ohio Supports, Inc. et al.*, 2013-Ohio-33, 985 N.E.2d 949, ¶ 13 (1st Dist.) (using the erroneous statutory interpretation argument that the Naming Requirements must be jurisdictional otherwise appellants would file blank notice of appeals, and acknowledging that "*Sydenstricker* lacks any meaningful analysis of R.C. 4141.282(C) * * *"); *Mattice v. Ohio Dept. of Job & Family Servs.*, 2d Dist. Montgomery No. 25718, 2013-Ohio-3941, ¶ 11 (acknowledging that "neither *Sydenstricker* nor *Luton* contain a separate analysis of R.C. 4141.282(C) in relation to section (D) * * *," and holding that the Naming Requirements are jurisdictional based on *Dikong's* analysis); *Rupert v. Ohio Dept. of Job and Family Servs.*, 6th Dist. Lucas No. L-14-1139, 2015-Ohio-915 (finding the Naming Requirements to be jurisdictional based on *Zier*, *In re King*, *Sydenstricker*, *Luton*, *Dikong*, and *Mattice*); *Hinton v. Ohio Unemp. Rev. Comm.*, 7th Dist. Mahoning No. 14 MA 45, 2015-Ohio-1364 (finding the Naming Requirements to be jurisdictional based on *Zier's* syllabus quote about mandatory requirements but failing to analyze the difference between mandatory and non-mandatory requirements, also citing *Sydenstricker* and *Luton*).

## PRYOR'S FIRST PROPOSITION OF LAW:

*In an unemployment compensation appeal, the statutory directive to name parties pursuant to R.C. 4141.282(D) is not a jurisdictional requirement necessary to perfect the appeal and vest the trial court with jurisdiction.*

## ARGUMENT

### I. The Ninth District used the plain and unambiguous language of the statute to conclude that the Naming Requirements are not jurisdictional.

The following are the two pertinent subsections of the unemployment statute:

> (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.

R.C. 4141.282. Pryor references subsection (C) as the "Perfecting Requirements" and subsection (D) as the "Naming Requirements."

#### A. The plain language of the statute provides that the timely filing of the notice of appeal is the *only act* required to perfect the appeal and vest the court with jurisdiction.

"When statutory language is ambiguous, the rules of statutory interpretation must be applied to determine the intent of the legislature." *Hulsmeyer v. Hospice of Southwest Ohio, Inc.*, 142 Ohio St.3d 236, 2014-Ohio-5511, 29 N.E.3d 903, ¶ 22. However, "when the statutory language is plain and unambiguous, and conveys a clear and definite meaning, we must rely on what the General Assembly has said." (Citations omitted.) *Id.* at ¶ 23. Furthermore, "the court must give effect to the words used, making neither additions nor deletions from the words chosen by the General Assembly." (Citation omitted.) *Id.*; *see Lorain Cty. Aud. v. Ohio Unemp. Comp.*

*Rev. Comm.*, 113 Ohio St.3d 124, 2007-Ohio-1247, 863 N.E.2d 133, ¶ 24 (citing the same rules of statutory interpretation in an unemployment appeal).

First, it cannot be overlooked that the Director fails to argue that the statute is ambiguous and rightly so. Director's Merit Brief. What can be more plain and unambiguous than a subsection titled, "PERFECTING THE APPEAL," and that contains language that expressly states what is required to "perfect the appeal and vest jurisdiction in the court?" R.C. 4141.282(C). While the heading itself is not dispositive, the plain language, combined with the heading, leaves no doubt that the answer to the certified question is, 'no.'[5] Despite the Director's unwillingness to read the statute "literally," that is exactly what this Court should do. Director's Merit Brief at 14, 16.

**B. The Naming Requirements cannot be jurisdictional under the plain language of the statute.**

The Ninth District followed the plain language doctrine by taking the Perfecting Requirements "at face value." *Pryor v. Dir., Ohio Dept. of Job and Family Servs.*, Ninth Dist. Summit No. 27225, 2015-Ohio-1255, ¶ 7. The Perfecting Requirements explicitly state that the timely filing of the notice of appeal identifying the decision being appealed is the only jurisdictional requirement. R.C. 4141.282(C). If there was any question whether additional statutory requirements are jurisdictional, the Ninth District determined that any and all additional statutory requirements are non-jurisdictional because of the General Assembly's inclusion of plain and unambiguous language that limits the jurisdictional requirements: "The timely filing of the notice of appeal shall be *the only act* necessary to perfect the appeal and vest jurisdiction in

[5] The certified question is: 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?

the court. The notice of appeal shall identify the decision appealed from." (Emphasis added.) R.C. 4141.282(C); *Id.* at ¶ 7. Because the plain language of the Perfecting Requirements limits the jurisdictional requirements to those two items, any additional statutory requirements, such as the Naming Requirements, simply are not necessary to vest the trial court with jurisdiction. *Id.*

The plain language doctrine does not permit, nor does a plain language argument need, a court to add, insert, or move words around in a statute so that a particular interpretation results. Just as the Ninth District did, this Court should refuse to add, insert, or move words around in order to make the Naming Requirements jurisdictional.

## II. The Ninth District applied this Court's sixty-five year precedent that the requirements regarding the naming of parties in unemployment appeals are not jurisdictional.

### A. The naming of parties has never been jurisdictional under unemployment statutes.

The seminal case on determining the jurisdictional requirements under unemployment statutes is *Zier*, 151 Ohio St. 123, 84 N.E.2d 746 (1949). *See e.g., Joy Mfg v. Albaugh*, 159 Ohio St. 460, 463, 112 N.E.2d 540 (1953) (citing *Zier* and holding that the naming of parties is not a jurisdictional requirement); *Todd v. Garnes*, 44 Ohio St.2d 56, 337 N.E.2d 790 (1975) (citing *Zier* to find that the thirty-day filing deadline was a jurisdictional requirement); *Proctor v. Giles*, 61 Ohio St.2d 211, 400 N.E.2d 393 (1980) (citing *Zier* to hold that the deadline for filing an extension could not be extended by the Civil Rules); *In Re King*, 62 Ohio St.2d 87, paragraph 2 of syllabus, 88-89, 403 N.E.2d 200 (1980) (citing *Zier* and refusing to find the appellant's failure to name all interested parties in the notice of appeal as a reason to dismiss the appeal and instead, dismissing the appeal based on the appellant's failure to serve all interested parties); *McCruter v. Bd. of Rev., Bur. of Unemp. Servs.*, 64 Ohio St.2d 277, 415 N.E.2d 259 (1980) (citing *Zier* to find that the deadline for filing a notice of appeal was a jurisdictional requirement); *Hansford v.*

*Steinbacher*, 33 Ohio St.3d 72, 514 N.E.2d 1385 (1987) (citing *Zier* and holding that the requirement to file in the proper court is a jurisdictional requirement).

The unemployment statute at the time of *Zier* 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 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.

(Citation and quotations omitted.) *Zier* at 126-127.

The *Zier* appellant did not name all interested parties as appellees in the notice of appeal.[6] The appellant also failed to "set forth the decision appealed from and the errors therein complained of." *Id.* at 127. The *Zier* Court looked at the failure to name parties and the failure to identify the decision being appealed with the alleged errors and held:

> 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 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.

*Id.* at 127. The *Zier* Court added, "the notice of appeal involved herein is not *sufficient* to meet the requirements of the statute in that it fails to set forth the decision appealed from or the errors therein complained of." (Emphasis added.) *Id.*; *see infra* at 24 (arguing the second proposition of law, Pryor requests this Court to find that the trial court had jurisdiction because Pryor's notice of appeal sufficiently met the statutory requirements).

---

[6] The appellate decision clearly states the fact that Zier did not name all interested parties in the notice of appeal. *Zier v. Bur. of Unemp. Comp.*, 51 Ohio Law Abs. 411, 412, 81 N.E.2d 129 (8th Dist.1948), *rev'd on other grounds*, 151 Ohio St. 123, 84 N.E.2d 746 (1949).

Although this is a new version of the unemployment statute, as was the situation in the majority of the Ohio Supreme Court cases above that cite *Zier*, the Ninth District applied the undisputed precedent on this issue: "As the *Zier* court concluded, so does this Court conclude that the provisions contained in subsection (D) (relative to parties to be named in the notice of appeal) * * * are not conditions precedent to the vesting of subject matter jurisdiction in the common pleas court." *Pryor*, Ninth Dist. Summit No. 27255, 2015-Ohio-1255, at ¶ 11. Likewise, this Court should follow *Zier* and interpret the Naming Requirements as non-jurisdictional.

**B. The substantive language is the same today as it was in 1949.**

The counter-argument that *Zier* should not apply because the statute has been amended is not a credible argument. Director's Merit Brief at 17. Aside from the fact that the statute has been amended numerous times since *Zier*, yet was and still is cited for its holding, the important point is that the substantive language and intent is the same today as it was in 1949. *See Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397, 985 N.E.2d 1243, ¶ 17 (using *Zier* to explain the difference between statutory requirements that are mandatory and those that are directory in nature).

In 1949, the statute read: "All other parties before the board *** shall be made appellees." *Zier* at 126. Today, the statute reads: "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." R.C. 4141.282(D).

The difference in the language does not change the substantive meaning behind the naming of parties. Under both the *Zier* version and the current version, the appellant is required to name the interested parties as appellees in the notice of appeal. The only difference between the two versions is that the current version: (1) directs the Commission to identify those parties

that are 'interested parties;' and (2) clarifies for an appellant where and how to name those interested parties. If the naming of parties in unemployment appeals has not been jurisdictional for sixty-five years, and it is substantively the same today as it was in 1949, then there is no reason to make it jurisdictional now. Just as the Ninth District did, this Court should follow *Zier* and hold that the Naming Requirements are non-jurisdictional.

### C. The current version of the unemployment statute mirrors *Zier*.

Furthermore, in 1949, this Court interpreted the requirements that pertain to the time of filing, the place of filing, and the content of the notice as jurisdictional requirements. *Zier* at 127. However, the Court interpreted the naming of parties and proofs of service requirements as non-jurisdictional. *Id.* Subsequently, this Court used *Zier* in a number of cases to determine whether a specific statutory requirement was mandatory for jurisdictional purposes. *Supra* at 8.

In 2001, the General Assembly reviewed this Court's holdings in unemployment appeals and relied on *Zier* to craft the current version of the statute, breaking each part of *Zier*'s holding into a subsection. *See* R.C. 4141.282(A) – (E) (separating in subsections how long one has to appeal, where to file the appeal, *how to perfect the appeal*, which parties are interested parties, and how to serve the notice of appeal); *see* Legal Aid Society Amicus Brief; *see also* App-6 (showing the Commission's decision from a recent appeal identifying the jurisdictional requirements as "Section 4141.282 (A)(B)(C), Revised Code of Ohio").

In opposition, the Director argues that the General Assembly intended for the Naming Requirements to be jurisdictional because it wanted a "stricter regime" based on the removal of language that gave courts the discretion to dismiss appeals. Director's Merit Brief at 19. However, the Director's inference is wrong. The proper inference to take from the removal of the option to dismiss is that courts are no longer permitted to dismiss appeals, not that courts must

automatically dismiss if there is an imperfection. This is the correct inference because the General Assembly *removed* that option from the statute; it did not change the language from giving courts the discretion to now mandating dismissal.[7]

Furthermore, it is illogical to argue that the General Assembly intended to limit whether the trial courts could hear unemployment appeals based on which party is named in the caption. If the General Assembly had intended to limit jurisdiction in such a manner, it would have included the Naming Requirements in the section titled, "PERFECTING THE APPEAL." R.C. 4141.282(C). While this Court has held that certain naming and service requirements are jurisdictional, the statutes under which it has done so are noticeably distinguishable from the unemployment statute in that under those statutes, a party still has legal options to seek redress if its appeal or case is dismissed; while under the unemployment statute, if an appellant's appeal is dismissed, there is no legal route for the appellant to bring the appeal again. *See Spencer v. Freight Handlers*, 131 Ohio St.3d 316, 2012-Ohio-880, 964 N.E.2d 1030, ¶ 19 (identifying the naming and service requirements under R.C. 5717.03(B) and 2721.12 as jurisdictional requirements).[8] Also, neither R.C. 5717.03(B) or 2721.12 contain plain language that limits jurisdiction to the timely filing of the notice or contain subsection headers that explicitly state, "PERFECTING THE APPEAL." R.C. 4141.282(C).

---

[7] In addition, the purpose of including in the Naming Requirements that the Director is always an interested party was to correct an error from the previous version of the statute, which allowed the Commission, a quasi-judicial court, the right to argue appeals instead of the Director. S.B. 99 Final Analysis, 129th General Assembly, p. 19 (October 31, 2001). The Commission should not have been given the statutory right to argue appeals any more than an appellate court is permitted to argue its decision to a higher court.

[8] If an appellant failed to name and serve all interested parties under R.C. 5717.03(B), the appellant would have to wait a year and re-apply for a new tax determination. If the decision was again unfavorable, the appellant could appeal and this time, properly name and serve all parties. Likewise, under R.C. 2721.12, a party bringing an action under this statute is free to refile the case if the trial court dismisses it for failing to name all parties.

## III. The Ninth District was correct to rely on the Civil Rules to give meaning to the Naming Requirements.

The Ninth District found that the Naming Requirements were non-jurisdictional. *Pryor*, Ninth Dist. Summit No. 27255, 2015-Ohio-1255, at ¶ 11. In response to the argument that such a finding leaves the Naming Requirements without any meaning in the statute, the Ninth District explained that when the Naming Requirements are read with the Civil Rules, the Naming Requirements are not meaningless because an appellee may use the Civil Rules to move for dismissal if all parties are not joined. However, the Ninth District reiterated that the naming of appellees does not vest, nor divest, a trial court of its power to hear an unemployment appeal. *Id.*

### A. The Civil Rules apply to the unemployment statute.

"The Civil Rules will be applicable to special statutory proceedings adversary in nature unless there is a good and sufficient reason not to apply the rules." (Citations omitted.) *E.g.*, *Hambuechen v. 221 Mkt. North., Inc.*, 143 Ohio St.3d 161, 2015-Ohio-756, 35 N.E.3d 502, ¶ 7. In Ohio, "the civil rules should be held to be clearly inapplicable only when their use will alter the basic statutory purpose for which the specific procedure was originally provided in the special statutory action." (Citations and quotations omitted.) *Price v. Westinghouse Elec. Corp.*, 70 Ohio St.2d 131, 133, 435 N.E.2d 1114 (1982).

Here, both the Director and Pryor will agree, the *basic statutory purpose* of the Naming Requirements is to ensure that all parties that have an interest in the appeal are able to participate in the appeal. *See supra* at 12, fn 7 (explaining the General Assembly's purpose for the Director always being an interested party). Thus, the Civil Rules should apply because the Civil Rules, specifically Civ.R. 15, 19, and 21, will not alter this basic principle.[9]

---

[9] The Director's fears about non-interested parties joining appeals can be resolved by the Civil Rules as well, although it is unlikely that a non-interested party would move to join an appeal in

And while the Director rails against the Ninth District's application of the Civil Rules, the fact cannot be overlooked that it is the Director that has used the Civil Rules to further its own agenda in this appeal, albeit not by reference but clearly in substance. At the trial court, the Director started this entire appeal by filing a motion to dismiss for lack of subject matter jurisdiction, which is essentially a motion to dismiss under Civ.R. 12(B)(1). At the appellate level, the Director moved to dismiss Attorney General Mike DeWine from this appeal because he is not a "proper party to this appeal," which is essentially a motion to dismiss an improper party under Civ.R. 21. *See* App-7 (showing the Director's *unopposed* motion, which was granted, to dismiss the attorney general).

**B. The Ninth District's use of the Civil Rules was to make it clear that failing to name all interested parties may result in dismissal because the court may not be able to grant complete relief if a party is missing, but such failure does not deprive the trial court of jurisdiction to hear the appeal.**

Aside from the Director's own use of the Civil Rules, its arguments about the Civil Rules miss the Ninth District's point. The Ninth District relied on the Civil Rules to ensure that the Naming Requirements are not treated as "discretionary" by appellants. *Pryor* at ¶ 11; *see* Director's Merit Brief at 20 (arguing that the Ninth District's interpretation makes the Naming Requirements discretionary).

The Civil Rules allow for parties to be added or dropped at any point in the litigation, as well as allow for a party to move for dismissal if necessary parties have not been added. Civ.R. 19, 21; *Plumbers & Steamfitters Local Union 83 v. Union Local School Dist. Bd. of Edn.*, 86 Ohio St.3d 318, 321, 1999-Ohio-109, 715 N.E.2d 127 (explaining that "Civ.R. 21 * * * allows

---

which it has no interest. Director's Merit Brief at 21. On the other hand, it is equally important that if a party does have an interest and for whatever reason is not identified as an interested party on the Commission's final decision, that it too, be able to use the Civil Rules to join the appeal.

parties to be added or dropped at any stage of the proceeding, as justice requires"); *Spencer*, 131 Ohio St.3d 316, 2012-Ohio-880, 964 N.E.2d, at ¶ 21 (explaining that failing to name a party would subject an appeal to dismissal but that the Civil Rules allow parties to be added).

The Ninth District's point was that, while the Director was entitled to move for dismissal in accordance with Civ.R. 12(B)(7) and 19, because Pryor did not name all interested parties as directed to do so by the Naming Requirements, that failure did not deprive the trial court of jurisdiction because, "the timely filing of the notice of appeal is all that is required to perfect the appeal and vest jurisdiction in the court." *Pryor* at ¶ 11. Had the trial court wanted to dismiss for failure to join all parties, it may have done so[10]; however, the trial court's dismissal for lack of subject matter jurisdiction was incorrect because it did, in fact, have jurisdiction. *Id.*

Thus, despite the Director's disdain that, "Ohio courts have eschewed the harsh results of dismissing an action because an indispensable party was not joined, electing instead to order that the party be joined pursuant to Civ.R. 19(A) (joinder if feasible) or that leave to amend the complaint be granted," it is clear that the Ninth District's reliance on the Civil Rules to give meaning to the Naming Requirements is correct.[11] (Citations and quotations omitted.) *Plumbers* at 321; *see Spencer* at ¶ 13 (explaining that Ohio Courts have "retreated from the harsh results of the strict compliance rule * * *"); Director's Merit Brief at 23.

## IV. The rule from *Zier* has been explained by this Court in *Shinkle*; the Naming Requirements are non-jurisdictional when applied to the *Shinkle* Test.

[10] The trial court should have allowed Pryor to add the missing party and if he failed to do so, at that point the trial court should have dismissed the appeal for failure to join all parties.

[11] At the trial court, Pryor requested leave to amend the notice of appeal and filed an amended notice of appeal with the Army named as an appellee; however, the trial court found both pleadings to be untimely. *Pryor v. Dir., Ohio Dept. of Job and Family Servs.*, Summit C.P, No. CV 2013-08-4088 (Dec. 31, 2013).

The Director argues that the Ninth District misapplied *Zier*, focusing on the holding instead of the *rule*. Director's Merit Brief at 17. However, this Court has clarified the rule from *Zier* and it is now clear that the rule is the following: 'There are two types of statutory requirements, those that are mandatory and those that are directory in nature. Mandatory requirements are jurisdictional, while directory requirements are not.' *Shinkle*, 135 Ohio St.3d 227, 2013-Ohio-397, 985 N.E.2d 1243, at ¶ 17. While the *Shinkle* Test is not needed here because the statute is undisputedly plain and unambiguous, it is clear that under the *Shinkle* Test, the Naming Requirements are directory, not mandatory.

**A. The *Shinkle* Test.**

The *Shinkle* Test is a two-question test developed by this Court based on *Zier*. *Shinkle* at ¶ 17; *see Zier*, 151 Ohio St. at syllabus, 84.N.E.2d 746 (1949) (explaining that an appellant must comply with the "accompanying mandatory requirements" in order to perfect an appeal conferred by statute). Some lower courts have failed to make the distinction between requirements that are mandatory and those that are directory; instead, those courts have been finding all statutory requirements to be mandatory without any analysis of what it means to be, *mandatory*. *See supra* at 5, fn 4 (explaining how each conflicting appellate court arrived at the wrong conclusion that the Naming Requirements are jurisdictional); *see infra* at 25 (citing other courts that recognize the difference and therefore, use the substantial compliance doctrine).

Thus, in 2013, this Court explained the difference between statutory requirements that are mandatory, as opposed to directory:

> The case law has usually treated a statutory requirement as mandatory and hence jurisdictional when the requirement is (1) imposed on the appellant itself and (2) relates to the informative content by which the administrative proceeding is instigated. *See Zier*, 151 Ohio St. at 126-127, 84 N.E.2d 746 (requirement that notice of appeal from denial of unemployment compensation "set forth the decision appealed from" held to be jurisdictional).

(Citations omitted.) *Shinkle* at ¶ 19. If the requirement is not mandatory, then it is directory because it *directs* a party on the proper procedure to move the litigation forward. *Id.* at ¶ 17.

### B. The Naming Requirements do not pass the *Shinkle* Test.

#### 1. The Naming Requirements are imposed on the Commission and Pryor alike.

The Naming Requirements, in its entirety, read:

> (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 in the notice of appeal.

(Emphasis added.) R.C. 4141.282(D).

In an unemployment appeal, the first requirement is imposed on the Commission, which is *directed* to provide the names and addresses of the interested parties on its final decision. The statute then *directs* the appellant on what to call those parties and where to place them, appellees in the notice of appeal. Because the Naming Requirements are imposed on two parties, Pryor and the Commission alike, the Naming Requirements cannot be jurisdictional.

#### 2. The rationale behind the first prong is that access to the courts cannot depend on the actions of another party.

The Director explains that, "One party's rights cannot rely on the helpfulness of a co-party." Director's Merit Brief at 22. That is the exact reason behind the first prong of *Shinkle*. Here, an appellant relies on the Commission to provide the names and addresses of the interested parties. Per the Director's logic, the appellant's right to appeal cannot be jurisdictional because the appellant has to rely on the 'helpfulness' of the Commission. While the Commission is directed by statute to provide that information, any mistakes made by the Commission, such as providing the wrong address or statute for appeals, would affect an appellant's right to access the

courts. As such, because the appellant is dependent on the Commission and the Naming Requirements are imposed on both parties, it is clear that the Naming Requirements cannot be jurisdictional.

While it seems unlikely that the Commission could make such mistakes, in fact, the Commission frequently does make such errors. Here, the Commission listed the Department of Army twice and then provided an inaccurate address for one of the entries. *See* App-8 (showing the docket entry for insufficient address, provided by the Commission, for one of the Army parties). And on other final decisions, the Commission has mistakenly informed parties that appeals must be filed pursuant to R.C. 4141.26. *See* App-5 (showing four recent final decisions issued by the Commission citing the wrong statute). While the Commission's errors are surely unintentional, the Director's interpretation jeopardizes an appellant's right to appeal based on the fact that the appellant must rely on an unreliable Commission.

**3. The Naming Requirements do not relate to the informative content of the notice.**

The second prong of the *Shinkle* Test is whether the statutory requirement relates to the informative content of the notice itself. *Shinkle* at ¶ 19. While the Director argues that nothing can be more informative than naming which parties are in the suit, such an argument misses the point of what this Court means when it says *informative* content. Director's Merit Brief at 2, 11.

Subject matter jurisdiction is the power of a court to hear a case. When a party appeals from an administrative agency, it is important for the court to identify whether the appeal is one over which the court has jurisdiction. The best way for courts to do that is to look at the content of the notice and see what information is contained within it that tells the court whether it has jurisdiction to hear the appeal. For example, trial courts have jurisdiction over unemployment appeals but not over tax appeals. As such, most statutes require an appellant to identify the

decision being appealed from and any other information that would inform the court on whether it has jurisdiction. Because opposing parties can be named anything, the specific parties in the caption of a notice of appeal are not considered informative for purposes of determining jurisdiction. Instead, it is the information contained in the *content*, i.e, the body, of the notice that tells the court whether it may hear the appeal.

Thus, while the Director argues that the Naming Requirements are informative contents of the notice of appeal, the Director is wrong. Sixty-five years ago this Court said as much when it separated provisions related to parties from provisions regarding the content of the notice:

> 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 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.) *Zier*, 151 Ohio St. 123, 127, 84 N.E.2d 746 (1949). While the Director disagrees, the fact remains that the Naming Requirements are *still* provisions related to parties and thus, still are not jurisdictional.

Without any unemployment cases to support its argument, the Director argues that the unemployment statute's Naming Requirements are jurisdictional based on analysis of the workers' compensation statute.[12] Director's Merit Brief at 11-13. However, the Director's argument fails under that analysis as well.

## V. This Court interprets naming requirements under the workers' compensation statute as non-jurisdictional.

[12] Notably, up until now, the Director has argued that *Spencer* cannot be used to determine whether the Naming Requirements are jurisdictional because it is not an unemployment case and the workers' compensation statutory scheme is different than the unemployment statutory scheme. *E.g.*, App-9 (showing Director's Reply Brief at the trial court for *Pryor*, at 1; Director's Merit Brief for *Luton*, 8th Dist. Cuyahoga No. 97996, 2012-Ohio-3963, at 3-4).

Assuming this Court needs to look at other statutes to determine whether the Naming Requirements are jurisdictional, Pryor is not opposed to this Court using its analysis interpreting naming requirements under the workers' compensation statute. In *Spencer*, this Court held that naming parties under the workers' compensation statute, R.C. 4123.512(B), is not a jurisdictional requirement. *Spencer*, 131 Ohio St.3d 316, 2012-Ohio-880, 964 N.E.2d 1030, at ¶ 22. The Director ignores the holding and instead focuses on the analysis of content requirements. Director's Brief at 11-13. The following is *Spencer's* exact holding:

> We hold that because R.C. 4123.512(B) does not require that the administrator be named in the notice of appeal itself and because filing the notice is "the only act required to perfect the appeal" pursuant to R.C. 4123.512(A), naming and sending notice to the administrator are not requirements to vest the court of common pleas with subject-matter jurisdiction under R.C. 4123.512.

*Id.* at ¶ 8. Thus, *Spencer's* holding is based on limiting language in the statute and the fact that the naming of parties is not a content requirement of the notice of appeal. Based on *Spencer*, the Naming Requirements still are not jurisdictional.

### A. When the General Assembly limits the jurisdictional requirements to the timely filing of the notice of appeal, additional statutory requirements are not jurisdictional.

In *Spencer*, the statute read: "The filing of the notice of the appeal with the court is the only act required to perfect the appeal." R.C. 4123.512(A); *Spencer* at ¶ 9. The statute also required an appellant to make the administrator a party to the appeal. *Id.* at ¶ 16; prior version of R.C. 4123.512(B), effective July 29, 2011 – September 16, 2014. The *Spencer* Court held that the requirement to name the administrator is non-jurisdictional "because the statute's jurisdictional requirements are explicitly limited to filing a notice of appeal." *Spencer* at ¶ 17.

Here, the plain language of the Perfecting Requirements explicitly limits the jurisdictional requirements to the timely filing of a notice of appeal, just like *Spencer*. Thus, this

Court should interpret the Naming Requirements as non-jurisdictional based on the limiting language of the Perfecting Requirements, just as it did in *Spencer*.

The Director ignores this portion of *Spencer* and instead relies on the content requirement aspect. Director's Merit Brief at 11-13. Still, even under a content requirement analysis, the Naming Requirements are not jurisdictional.

**B. Content requirements are jurisdictional.**

In addition to the limiting language, *Spencer* also says that items to be included in the content of a notice of appeal are jurisdictional. *Spencer* at ¶ 20. *Spencer* explains that content requirements are those items that the General Assembly requires to be in the notice. *Id.* However, everything required to be in a notice of appeal is not necessarily a content requirement. *Id.*

The Court explained the difference between content and non-content requirements by examining two statutory requirements in the workers' compensation statute, both of which must be completed in the notice of appeal. The first requirement is that certain items must be pled in the notice of appeal itself, while the second requirement directs the appellant on whom to make a party to the appeal:

> The notice of appeal shall state the names of the claimant and the employer, the number of the claim, the date of the order appealed from, and the fact that the appellant appeals therefrom.
>
> The administrator, the claimant, and the employer shall be parties to the appeal and the court, upon the application of the commission, shall make the commission a party. * * *

*Id.* at ¶ 9; prior version R.C. 4123.512(B), effective July 29, 2011 - Sep. 16, 2014. The *Spencer* appellant's notice of appeal contained all of the items required to be included in the body of the notice, but it failed to name the administrator as a party in the caption. *Spencer* at ¶ 3.

The Court determined that the naming requirement is not a content requirement because it is not something to be "pled in the notice of appeal," i.e, in the body of the notice of appeal, whereas the other items are. *Id.* at ¶ 20. The Court stated:

> [The statute reads:] "The notice of appeal shall state the names of the claimant and the employer, the number of the claim, the date of the order appealed from, and the fact that the appellant appeals therefrom." This sentence does not say "names of the claimant and the employer *and the administrator*.

*Id.* As such, the Court held that, "By complying with the provisions of R.C. 4123.512(B) regarding the *contents* of the notice of appeal, Spencer had perfected his appeal * * *"(Emphasis added.) *Id.* at ¶ 24.[13]

Thus, content requirements are the ones that follow a statute's plain language that a "notice of appeal shall state or identify" specific information that must be pled in the body of the notice itself. However, items that must be in the notice but not in the *body* of the notice, such as parties named as appellees, are not 'content' requirements. As *Shinkle* explained, those requirements are directory. *Shinkle* at ¶ 19; *supra* at 16.

**C. The Naming Requirements are not content requirements.**

The Director mistakes the fact that the General Assembly identified where to name the parties, "in the notice of appeal," as making the Naming Requirements content requirements. However, *Spencer* makes it clear that content requirements are only those items that are to be "pled in the notice of appeal." *Spencer* at ¶ 20.

---

[13] The *Spencer* Court urged the General Assembly to clarify the jurisdictional requirements. *Spencer* at ¶ 23. Effective September 17, 2014, the General Assembly added that the administrator's name must be included in the body of the notice of appeal, along with the name of the claimant and the employer. R.C. 4123.512(B). This change supports Pryor's position that the jurisdictional requirements are only the items that must be included in the content, i.e., the body, of the notice of appeal and that items to be included in the caption are not 'content requirements.'

Here, the Perfecting Requirements state, "The notice of appeal shall identify the decision appealed from." That sentence does not say, "the notice of appeal shall identify the decision appealed from *and the interested parties as appellees*." While the Naming Requirements do state, "the appellant shall name all interested parties in the notice of appeal," this requirement is not something to be pled in the body, i.e, content, of the notice itself. Thus, the Naming Requirements are not content requirements and cannot be jurisdictional.

As both this Court and the Ninth District point out, "failing to name and notify the administrator would subject an appellant's appeal to dismissal, pursuant to Civ.R. 19, for failure to name an indispensable party. But naming and sending notice to the administrator are simply not jurisdictional requirements." *Spencer* at ¶ 21; *see Pryor*, Ninth Dist. No. 27225, 2015-Ohio-1255, at ¶ 11 (using the Civil Rules in the same manner as the *Spencer* Court); *see supra* at 13 (explaining that the Civil Rules apply to this appeal because the Rules do not alter the basic statutory purpose).

**D. The Court applies the substantial compliance doctrine to perfecting appeals under the workers' compensation statute.**

If this Court applies the workers' compensation analysis to the Naming Requirements, then there should be no dispute over Pryor's second proposition of law, which calls for this Court to apply the substantial compliance doctrine.[14] *Infra* at 24. In *Spencer*, the Court explained its

[14] In fact, the same cases the Director relies on to support its argument about the Naming Requirements being jurisdictional, also support Pryor's second proposition of law. *See* Director's Merit Brief at 11-12 (citing six cases, albeit the only unemployment case is *Zier*, to support its argument about the Naming Requirements); *see Wells v. Chrysler Corp.*, 15 Ohio St.3d 21, 23, 472 N.E.2d 331 (1984) (explaining the Court's reversal from its inflexible standard to one that considers mitigating factors, such as "whether [an] appellant has substantially complied with the statutory appeal provisions"); *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150, 70 N.E.2d 93 (1946) (explaining "that substantial compliance with these mandatory requirements constitutes a condition precedent to the right to be heard;" this is also the case cited by the *Zier* Court that brought the mandatory requirement language to unemployment appeals); *see also*

evolution to perfecting appeals from a strict-compliance standard to substantial compliance under the workers' compensation statute. *Spencer* at ¶ 12-14. However, the Court did not use substantial compliance because the Court found that the appellant had completely complied with the statute. *Id.* ¶ 15.

Here, if this Court uses *Spencer* to find that the Naming Requirements are jurisdictional, then it should also use *Spencer* to find that Pryor's substantial compliance vested the trial court with jurisdiction. Unless the Director makes an argument similar to its Civil Rules argument, there should be no dispute over this Court applying the substantial compliance doctrine to find that the trial court had jurisdiction. *See supra* at 14 (explaining the Director's hypocritical approach to the use of the Civil Rules).

**PRYOR'S SECOND PROPOSITION OF LAW:**

*The right to appeal an unemployment decision to the common pleas court can be perfected only in the manner provided by the statute in R.C. 4141.282, and, absent substantial compliance with the statute, the reviewing body lacks jurisdiction to review the Review Commission's final decision.*

## ARGUMENT

### I. The doctrine of substantial compliance has long been applied to unemployment appeals.

#### A. Substantial compliance means an appellant has put an opposing party on reasonable notice that an appeal is taking place.

This Court holds that "substantial compliance occurs when a notice of appeal includes sufficient information, in intelligible form, to place on notice all parties to a proceeding that an appeal has been filed from an identifiable final order which has determined the parties' substantive rights and liabilities." *State ex rel. Jones v. Indus. Comm.*, 65 Ohio St.3d 133, 136,

---

*Nucorp, Inc. v. Montgomery Cty. Bd. of Revision*, 64 Ohio St.2d 20, 22, 412 N.E.2d 947 (1980) (explaining that "this court * * * has been unwilling to find or enforce jurisdictional barriers not clearly statutorily or constitutionally mandated, which tend to deprive a supplicant of a fair review of his complaint on the merits").

1992-Ohio-16, 601 N.E.2d 36; *e.g.*, *Fisher v. Mayfield*, 30 Ohio St.3d 8, 11, 505 N.E.2d 975 (1987); *Spencer* at ¶ 14.

While the cases cited above refer to appeals under the workers' compensation statutes, the substantial compliance doctrine applies to unemployment appeals as well. Two years after *Zier*, the Court further explained the concept behind 'mandatory statutory requirements' by adopting the substantial compliance doctrine for unemployment appeals. *Moore v. Foreacher*, 156 Ohio St. 255, 102 N.E.2d 8 (1951). In *Moore*, the argument was that the trial court lacked jurisdiction because the notice of appeal failed to "set forth" the decision appealed from because the appellant did not provide an exact copy of the decision being appealed, either as an attachment or incorporated in the notice itself. *Id.* at 260. The Court rejected this argument, and in doing so, distinguished this case from *Zier* in that the *Moore* notice of appeal was "so complete in its terms and recitals that no uncertainty can exist as to the particular decision appealed from. The notice of appeal in the case is *sufficiently complete*."[15] (Emphasis added.) *Id.* Thus, *Moore* is the precedent that applied the substantial compliance doctrine to an unemployment appeal.

**B. The Ohio appellate courts apply the doctrine of substantial compliance to the unemployment statute but are unaware that the doctrine can be used in regards to the Naming Requirements.**

Reconciling *Moore* and *Zier*, the appellate courts understand that:

> Because a right to appeal is conferred by statute in R.C. 4141.282, an appeal to the common pleas court can be perfected only in the manner provided by the statute, and, absent *substantial compliance* with the statute, the reviewing body lacks jurisdiction to review ODJFS's [Review Commission's] decision.

(Emphasis added.) *Anderson v. Interface Elec., Inc.*, 10th Dist. Franklin No. 03AP-354, 2003-Ohio-7031, ¶ 17; *e.g.*, *Wolmack v. Bd. of Rev.*, 10th Dist. Franklin No. 94APE12-1780, 1995 WL

[15] *See Moore* at 260 (detailing the information contained in the *Moore* appellant's notice of appeal).

373547, *3 (June 22, 1995) (citing *Moore* and explaining that "the Ohio Supreme Court recognized that a party need not conform exactly to the procedures set out by statute," and that "a notice of appeal sufficiently invokes the jurisdiction of a reviewing body when there is substantial compliance with statutory requirements * * *"); *Dragon v. Ohio Unemp. Comp. Rev. Comm.*, 11th Dist. Ashtabula No. 2005-A-0017, 2006-Ohio-1447, ¶ 18 (citing *Moore* for the proposition that a "notice of appeal from a decision of the board of review is sufficient where the notice of appeal clearly and without any ambiguity or uncertainty identifies the decision from which the appeal is taken") (Quotations omitted.); *Arcuragi v. Bd. of Rev., Ohio Bur. of Emp. Servs.*, 12th Dist. Preble No. 305, 1982 WL 3275, *2 (Nov. 24, 1982) (holding that "there was substantial compliance with the statutory requirements of R.C. 4141.28(O) [prior version of R.C. 4141.282] and by reason thereof, the trial court has subject matter jurisdiction to entertain the appeal," and that "the principle function of a notice of appeal is to notify the opposite party of the taking of the appeal"); *Gustinski v. Bur. of Emp. Servs.*, 8th Dist. Cuyahoga No. 49094, 1985 WL 9006, *2 (May 16, 1985) (explaining that, "where the statute clearly stated the method by which an appeal is initiated, substantial compliance with these mandatory requirements constituted a condition precedent to the right to be heard") (Citations and quotations omitted.); *Triplett v. Bd. of Rev., Bur. of Unemp. Comp.*, 118 Ohio App. 515, 517, 196 N.E.2d 107 (2d Dist.1963) (reconciling *Zier*, *Moore*, and *Castleberry*[16] to conclude that notice of appeals must substantially comply with the statute); *see also*, *Giese v. Dir., Ohio Dept. of Job & Family Servs.*, 6th Dist. Erie No. E-06-034, 2007-Ohio-2395, ¶ 41 (finding under R.C. 5101.35, a statute providing the right to appeal from *any* decision issued from the Ohio Dept. of Job and Family Servs., that "the notification was in substantial compliance with the statute * * *"); *Kempf v.*

[16] *Castleberry v. Evatt, Tax Com'r., et al.*, 147 Ohio St. 30, 67 N.E.2d 861 (1946) (cited by the *Moore* Court to support the sufficiently complete argument).

*Arnold Corp.*, 5th Dist. Richland No. 93CA27, 1993 WL 535497, *3 (Dec. 7, 1993) (finding that the appellant "in fact demonstrated substantial compliance in spite of OBES's [predecessor to Ohio Dept. of Job and Family Servs.] mistakes" with the unemployment statute); *but see*, *Sydenstricker*, 11th Dist. Lake No. 2009-L-149, 2010-Ohio-2953, at ¶ 12 (failing to recognize that, despite *Zier's* mandatory statutory language, the Ohio Supreme Court and appellate courts have long accepted and applied the doctrine of substantial compliance to unemployment appeals); *Luton*, 8th Dist. Cuyahoga No. 97996, 2012-Ohio-3963, at ¶ 15 (rejecting the appellant's argument to apply the substantial compliance doctrine based on *Sydenstricker*).

**II. This Court should find that Pryor substantially complied with the statutory requirements to perfect the appeal and vest the trial court with jurisdiction.**

Here, Pryor has substantially complied with the statutory requirements to perfect his appeal. He timely filed the notice, he filed the notice in the proper court, he identified the decision being appealed in the notice, he named the Director as an appellee in the notice, he served the notice on all of the interested parties, and he filed an amended notice naming the Army as an appellee. If this Court finds the Naming Requirements to be jurisdictional, then there is no question that Pryor nonetheless substantially complied with the jurisdictional requirements. As such, in the interest of justice, Pryor requests this Court to use *Moore* and the long line of appellate decisions that followed to find that, because Pryor substantially complied with the statutory requirements, the trial court did have jurisdiction to hear the appeal.

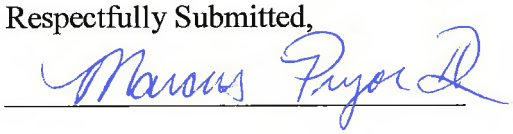
## CONCLUSION

The Ninth District correctly held that the trial court had jurisdiction. In addition to the reasons stated above, the Ninth District's decision is correct because it gives trial courts the needed flexibility to deal with appeals where the trial court may not have jurisdiction over a particular party, such as an agency of the United States government, and the question of

sovereign immunity has not been resolved. Furthermore, it gives an interested party the freedom to participate in the appeal if it chooses, as opposed to forcing parties to needlessly incur the publicity and financial expense of appellate litigation when that party has no interest in the appeal. Most importantly, it gives trial courts the flexibility to deal with situations where all interested parties have not been joined.

As the Court weighs whether the Naming Requirements are jurisdictional, it should keep in mind that in Ohio, the fundamental tenant of judicial review is to decide cases on the merits. Pryor requests this Court to affirm the Ninth District's decision. In the alternative, Pryor requests this Court to find that the trial court did have jurisdiction based on Pryor's substantial compliance with the statutory requirements so that this case may be decided as it should, on its merits.

Respectfully Submitted,



Marcus Pryor II
809 Mishler Road
Mogadore, OH 44260
Mpryorii25@live.com

*Pro Se* Appellee Marcus Pryor II

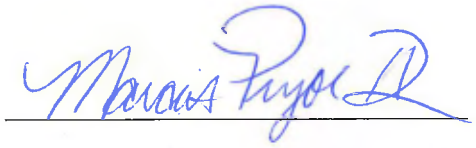
## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing BRIEF OF APPELLEE, MARCUS PRYOR II was served by regular U.S. mail this 23rd day of November, 2015, upon the following:

MICHAEL DEWINE (0009181)
Attorney General of Ohio

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

Counsel for Appellant
Director, Ohio Department of Job and Family Services



Marcus Pryor II
809 Mishler Road
Mogadore, OH 44260
Mpryorii25@live.com

*Pro Se* Appellee Marcus Pryor II

Original Decision

225055915-1

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

OFFICE OF UNEMPLOYMENT COMPENSATION

# DETERMINATION OF UNEMPLOYMENT COMPENSATION BENEFITS

JFS-83000 07/18/2011

| Claimant's Name | | Social Security # | Determination Identification Number |
|---|---|---|---|
| MARCUS H. PRYOR II | | [redacted] | 225055915-1 |
| **Benefit Year Beginning Date** | **Benefit Year Ending Date** | **Application Date** | **Date Issued** |
| 08/19/2012 | 08/17/2013 | 08/20/2012 | 09/10/2012 |

MARCUS H. PRYOR II
3328 BAILEY ST NW
MASSILLON, OH 44646-3618

ODJFS Office

Special Claims Processing Center
PO Box 1618
Columbus, OH 43216-1618

Phone: (866) 458-0007
Fax: (614) 752-4809

**THIS NOTICE IS A DETERMINATION OF AN INITIAL APPLICATION FOR UNEMPLOYMENT BENEFITS, ISSUED IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 4141.28(D) & (E), OHIO REVISED CODE**

The Ohio Department of Job and Family Services has ALLOWED the claimant's application for unemployment compensation benefits with a benefit year that begins 08/19/2012. During this one-year benefit period, the claimant's benefits rights are as follows:

| | |
|---|---|
| Weekly Benefit Amount is: | **$400.00** |
| Dependency Class is: | **A1** |
| Total Benefits Payable Amount is: | **$10,400.00** |

The claimant's employment during the base period, **04/01/2011 to 03/31/2012**, met the weeks and wages eligibility requirement. The chart below shows the claimant's Total Base Period Wages and Total Qualifying Weeks with each base period employer.

| Employer Name | Total Base Period Wages | Total Qualifying Weeks |
|---|---|---|
| HUMAN RESOURCES COMMAND | $48,297.36 | 49 |

Interested Parties: **HUMAN RESOURCES COMMAND**

**APPEAL RIGHTS:** If you do not agree with this determination, you may file an appeal by mail or fax to the ODJFS office provided. You may also file an appeal online at https://unemployment.ohio.gov. The appeal should include the determination ID number, name, claimant's social security number, and any additional facts and/or documentation to support the appeal. **TO BE TIMELY, YOUR APPEAL MUST BE RECEIVED/POSTMARKED NO LATER THAN 10/01/2012** (21 calendar days after the 'Date Issued'). If the 21st day falls on a Saturday, Sunday, or legal holiday, your deadline has already been extended to include the next scheduled work day. If you do not file your appeal within the 21-day calendar period, include a statement with the date you received the determination and your reason for filing late. If your appeal is late due to a physical or mental condition, provide certified medical evidence that your condition prevented you from filing within the 21-day period. In order for your appeal to be considered timely, it must be received/postmarked no later than 21 calendar days after the ending date of the physical or mental condition. If **unemployed**, claimants should continue to file weekly claims for benefits while the determination is under appeal. For additional information, call the ODJFS automated telephone system at 1-877-644-6562 and select the General Information option or visit the agency's website at https://unemployment.ohio.gov. Claimants may also review the **Worker's Guide to Unemployment Compensation.**

Si usted no puede leer esto, llame por favor a 1-877-644-6562 para una traduccion.

Decision Reversing the Original Decision but still granting Pryor benefits.

225055915-2

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

OFFICE OF UNEMPLOYMENT COMPENSATION

DIRECTOR'S REDETERMINATION

JFS-83100 09/04/2011

| | | |
|---|---|---|
| Claimant's Name: MARCUS H. PRYOR II | | Social Security Number: [redacted] |
| Benefit Year Beginning Date: 08/19/2012 | Benefit Year Ending Date: 08/17/2013 | Application Date: 08/20/2012 |
| | | Date Issued: 10/09/2012 |
| | | Determination Identification Number: 225055915-2 |
| MARCUS H. PRYOR II<br>32 NORTH AVE<br>CINCINNATI, OH 45215-2120 | | ODJFS Office: Redetermination Unit |

THIS NOTICE IS A DETERMINATION OF AN INITIAL APPLICATION FOR UNEMPLOYMENT BENEFITS, ISSUED IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 4141.28(D) & (E), OHIO REVISED CODE

**APPELLANT** A determination with ID # 225055915-1, issued on 09/10/2012, was appealed as follows:

By: HUMAN RESOURCES COMMAND on 09/17/2012

**DECISION & REASONING** REVERSED. A review of the original facts plus those submitted in the appeal supports a change in the initial determination.

The determination with ID # 2250559151, issued on 09/10/2012, is hereby reversed.

The Ohio Department of Job and Family Services has ALLOWED the claimant's application for unemployment compensation benefits with a benefit year that begins 08/19/2012. During this one-year benefit period, the claimant's benefits rights are as follows:

| | |
|---|---|
| Weekly Benefit Amount is: | $400.00 |
| Dependency Class is: | A1 |
| Total Benefits Payable Amount is: | $10,400.00 |

The claimant's employment during the base period, 04/01/2011 to 03/31/2012, met the weeks and wages eligibility requirement. The chart below shows the claimant's Total Base Period Wages and Total Qualifying Weeks with each base period employer.

| *Employer Name* | *Total Base Period Wages* | *Total Qualifying Weeks* |
|---|---|---|
| HUMAN RESOURCES COMMAND | $47,505.60 | 52 |

*Typographical error that has not yet been reviewed*

Si usted no puede leer esto, llame por favor a 1-877-644-6562 para una traduccion.

Docket No: H-2013012737

**State of Ohio**
**Unemployment Compensation Review Commission**
**P.O. Box 182299**
**Columbus, Ohio 43218-2299**

*RCE013184X000000020G*

## DECISION

**In re claim of:**
Marcus H. Pryor II - Appellant

**Employer:**
Department of Army
UCO No.: 0950801000-0001

## CASE HISTORY

Claimant filed an Application for Determination of Benefit Rights on August 20, 2012.

On April 18, 2013, the Director issued a Redetermination disallowing the claimant's application based on a finding that the claimant did not have at least twenty qualifying weeks of employment that was subject to an unemployment compensation law or did not earn an average weekly wage of at least $222.00 before taxes during the base period as required by Section 4141.01(R) (1) of the Ohio Revised Code. It was further held that due to the reported character of service, all remuneration earned and qualifying weeks worked with this branch of the Armed Services will be excluded and will not be used to determine the total benefits payable, weekly benefit amount, or charges to employer accounts. The findings of Federal military service are final and conclusive. It was further held that the claimant was overpaid benefits of $10,400.00 for the weeks ending September 1, 2012 through March 9, 2013.

On May 7, 2013, claimant appealed the Director's Redetermination.

On July 2, 2013, a hearing was held by telephone before Hearing Officer Joseph Blaker. Claimant appeared. Department of Army did not appear.

## FINDINGS OF FACT

Claimant began working for Department of Army on January 4, 2011 as a medic. He enlisted for a four year term. He did not complete his first full term of service and was honorably discharged on August 10, 2012, to enter an officer training program. Claimant's DD 214 Form states that he did not complete his first full term. Claimant is no longer in that program. Claimant was not part of a reduction in force.

Claimant received benefits of $10,400.00 for the weeks ending September 1, 2012 through March 9, 2013.

## ISSUE

Did the claimant meet the monetary requirements for filing a valid Application for Determination of Benefit Rights?

An individual is entitled to a valid application if the individual is unemployed when they file and has been employed in covered employment in at least 20 qualifying weeks within the base period, has had an average weekly wage of at least $222.00, and for applications filed on or after August 1, 2004, the reason for separation from the individual's most recent employment is not disqualifying under sections 4141.29 (D)(2) or 4141.291 ORC. The base period is the first four of the last five completed calendar quarters prior to filing. 4141.01 (O)(Q)(R) ORC.

The appellant shown above filed a Request for Review to the Review Commission, pursuant to the provisions of Section 4141.281 (C) (3), Revised Code of Ohio, from the Hearing Officer's decision.

Upon consideration thereof, and upon a review of the entire record, the Commission concludes that the Request for Review should be disallowed.

## DECISION

The Request for Review is hereby disallowed.

**Unemployment Compensation Review Commission**

Gregory Gantt, Chairman
Sylvester Patton, Vice-Chairman

## APPEAL RIGHTS

An appeal from this decision may be filed to the Court of Common Pleas of the county where the appellant, if an employee, is resident or was last employed, or of the county where the appellant, if an employer, is resident or has the principal place of business in this state, within thirty (30) days from the date of mailing of this decision, as set forth in Section 4141.282, Revised Code of Ohio. The appellant must name all interested parties as appellees in the notice of appeal, including the Director of the Department of Job and Family Services.

If your appeal is filed more than thirty (30) days from the date of mailing, then you may ask the Court of Common Pleas to determine the timeliness of your appeal. The court may find the appeal to be timely if you did not receive this decision within thirty (30) days after it was mailed to you. For more information refer to the booklet "Workers' Guide to Unemployment Compensation (JFS-55213), available from Ohio Department of Job and Family Services or visit the agency's website at https://unemployment.ohio.gov.

This decision was sent to the following:

Marcus H. Pryor II
32 NORTH AVE
CINCINNATI, OH 45215-2120
Via Email

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

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

Director
Ohio Department of Job Family Services
30 E. Broad Street, 32nd Floor
Columbus, Ohio 43215

**Cases filed from September 1 – November 13, 2015, that should be dismissed if the Naming Requirements are jurisdictional.**

1. *Hanson USA Corp. v. Ohio State Department of Job and Family Services*- 15CV010147- Filed on 11/13/15- Franklin.

2. *Amil S. Hunter v. Cleveland Housing Network; Director of Ohio Department of Job and Family Services*- CV-15-854010- Filed on 11/9/15- Cuyahoga.

3. *BNA Construction Ltd. v. Ohio Department of Job and Family Services; Ohio Unemployment Review Commission*- 15CV009594- Filed on 10/27/15- Franklin.

4. *Money Goines v. Fortuna Management Ohio; Ohio Unemployment Compensation Review Commission*- 15CV009474- Filed on 10/23/15- Franklin.

5. *RCJ Petroleum 6 LLC v. Director, ODJFS; Kathy E. Cameron*- 15CIV1050- Filed on 10/19/15- Medina- appears to be correct.

6. *LeeAnne B. Lambert v. Menorah Park; Ohio Department of Job and Family Services; Administrator of the Unemployment Review Commission*- CV-2015-10-4884- Filed on 10/16/15- Summit.

7. *Friendship Supported Living, Inc. v. Ohio State Department Job and Family Services; Ohio State Unemployment Compensation Review Board*- 15CV008721- Filed on 10/1/15- Franklin.

8. *Alfred Devengencie v. Ohio Director of Job and Family Services*- 2015-CV-01767- Filed on 9/30/15- Trumball **(unable to retrieve electronic version)**

9. *Great Lakes Courier Service LLC v. Ohio State Unemployment Compensation Review Commission*- 15CV008444- Filed on 9/25/15- Franklin.

IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

| | | |
|---|---|---|
| HASON USA CORP.<br>1262 U.S. Highway 50<br>Milford, Ohio 45150 | : | Case No._____ |
| Plaintiff/Appellant, | : | Judge _____ |
| v. | : | |
| DIRECTOR,<br>OHIO DEPARTMENT OF JOB & FAMILY SERVICES<br>30 E. Broad Street, 32nd Floor<br>Columbus, Ohio 43215 | : | **NOTICE OF APPEAL** |
| Defendant/Appellee. | : | |

---

Plaintiff/Appellant Hason USA Corp. ("Hason"), through the undersigned counsel, hereby gives notice of its appeal of the Decision of the Unemployment Compensation Review Commission, Docket No. T-2015009350, UCO No. 1602828006-0000, with a mailing date of October 21, 2015, attached hereto as Exhibit A (the "Decision"). The errors in the Decision complained of by Hason include the following:

(i) The Unemployment Compensation Review Commission ("UCRC") incorrectly concluded in its Decision that Hason did not file a timely request for reconsideration of the Ohio Unemployment Tax Notification Detemination of Employer's Liability and Contribution Rate Determination, with a mailing date listed on the document of February 14, 2015 (the "New Determination"), which was apparently an attempt to amend the original Ohio Unemployment Tax Notification Contribution Rate

Determination Calendar Year 2015, with a mailing date noted of 11/09/2014 which had already become final (the "Original Determination").

(ii) The UCRC incorrectly interpreted R.C. §4141.26(D)(2) and the deadline to file a request for reconsideration set forth therein where the New Determination was not mailed to the employer or delivered to it.

(iii) The UCRC incorrectly determined that the New Determination was sent to the employer by electronic mail on February 14, 2015.

(iv) The UCRC incorrectly determined that the email of February 14, 2015 sent to the employer was sufficient to begin the running of the 30-day deadline for filing a request for reconsideration.

(v) The UCRC incorrectly determined that the email of February 14, 2015 sent to the employer, which merely notified that employer that a new message was available for viewing if the employer logged in through the ODJFS' website but which did not attach the rate determination to the email, satisfied the requirement of §4141.26(D)(2) that the rate determination be mailed to the employer or delivered to it by the ODJFS.

(vi) Neither the Director nor the UCRC has addressed the merits of Hason's appeal and have instead made their decisions solely on the basis of the timeliness of Hason's request for reconsideration. To the extent this Court desires to hear the merits of the appeal, Hason asserts:

a. That the ODJFS has erroneously determined in the New Determination that Hason is a "successor in interest" to Odom Industries, Inc. ("Odom"), and has

erroneously made Hason responsible and liable for Odom's unemployment tax liabilities;

b. The New Determination is in contravention and violation of the Sale Order of the Bankruptcy Court, which specifically orders that Hason shall not be treated as a successor to Odom or be responsible for its liabilities.

The Appellant also hereby demands that the Director and/or Commission file, within 30 days, a certified transcript of the record of the proceedings before the commission pertaining to the Decision.

Date: November 13, 2015

Respectfully submitted

W. Kelly Lundrigan (0059211)
Nicole M. Lundrigan (0075146)
Lundrigan Law Group Co. LPA
Zimcom Building
1080 Nimitzview Drive
Suite 201
Cincinnati, Ohio 45230
Phone (513) 340-0112
Fax (513) 826-9335
Email: klundrigan@lundrigan-law.com
Nlundrigan@lundrigan-law.com
*Attorneys for Appellant Hason USA Corp.*

**CERTIFICATE OF SERVICE**

The undersigned certifies that this Notice of Appeal was served upon all parties listed on the below service list by regular U.S. Mail on this 13th day of November, 2015.

Nicole M. Lundrigan

**SERVICE LIST:**

Director
Ohio Department of Job and Family Services
30 East Broad Street, 32nd Floor
Columbus, Ohio 43215

State of Ohio
Unemployment Compensation Review Commission
P.O. Box 182299
Columbus, Ohio 43218-2299

CV15854010

91669076

STATE OF OHIO ) IN THE COURT OF COMMON PLEAS

COUNTY OF CUYAHOGA

**NOTICE OF APPEAL**

Judge: ROBERT C MCCLELLAND

CV 15 854010

**AMIL S. HUNTER,**
**1245 E.145 ST**
**CLEVELAND OH, 44112**
*Appellant,*

Vs.

**CLEVELAND HOUSING NETWORK**
**2999 PAYNE AVE. STE 306**
**CLEVELAND OH, 44114-4443**

**DIRECTOR OF (ODJFS)**
**30 EAST BROAD STREET 32 fl.**
**COLUMBUS OH, 43215**
*APPELLEES.*

FILED
2015 NOV -9 P 12: 51
CLERK OF COURTS
CUYAHOGA COUNTY

TO WHOM IT MAY CONCERN:

I Amil Hunter disagree with the hearing decision from the Unemployment Compensation Review Commission (UCRC). I was never given a chance to have my case heard by the UCRC and my previous employer (Cleveland Housing Network Inc.) simply because I missed a *telephone hearing* that was supposed to take place on September 30, 2015 at 10:00 am. I made a one-time simple error and misread the instructions; during that time as well as now I'm under a lot of mental stress due to my loss of income. I had another telephone hearing on October 15, 2015 and made sure I got it right. However, it was only to explain why I missed the first initial telephone hearing. I thought I read that the commission would call me at 10:00 o'clock so I waited by the phone for an hour and called them at 11:00 am and that is when they informed me of my terrible mistake. I truly apologize for my mistake and would like to take this time to request another telephone hearing between me, UCRC, and Cleveland Housing Network (CHN).

I wasn't given the opportunity to have all parties present and hear the employer's (CHN) side of the story about my discharge. My issue is that I was discharged "*without just cause*" and there wasn't any sign of *fault* or *misconduct* on my part to deny me my unemployment benefits.

Losing my job has been a traumatic event. From one day to the next, my whole life has changed. The sudden loss of income has been devastating, especially in the face of monthly bills, child support and other financial obligations.

Amil Hunter
1245 E. 145
Clev OH, 44112
(216) 509-5364

**IN THE COURT OF COMMON PLEAS FRANKLIN COUNTY, OHIO**

BNA CONSTRUCTION., LTD
3962 Santa Maria Drive
Grove City, Ohio 43123-2823

Appellant

v.

DIRECTOR
OF THE STATE OF OHIO
DEPARTMENT OF JOB AND FAMILY
SERVICES
30 E. Broad Street, 32nd floor
Columbus, Ohio 43215

And,

MEGAN ROBINSON
PROGRAM SERVICES/TAX APPEALS
OHIO DEPARTMENT OF JOB AND
FAMILY SERVCIES
4020 E. 5TH Ave
Columbus, Ohio 43219

And,

DIRECTOR
OF THE STATE OF OHIO
UNEMPLOYMENT REVIEW COMMISSION
P.O. Box 182299
Columbus, Ohio 43218

Appellees

**NOTICE OF APPEAL**

Pursuant to the Ohio Revised Code Section 4141.26, BNA Construction Ltd, Appellant, herein gives NOTICE OF APPEAL of a DECISION by the State of Ohio Unemployment Compensation Review Commission, dated September 30, 2015.

A true and correct copy of the State of Ohio Unemployment Compensation Review Commission decision is attached hereto as "Ex. A" (Docket No. T-2014021537).

Appellant appeals said decision because said decision is not supported by law and the decision is contrary to the evidence presented during the administrative appeal hearings, which were held on April 2, 2015, May 12, 2015, June 11, 2015 and August 19, 2015.

Respectfully Submitted,

Attorney at Law
The One Crosswoods Building
100 E. Campus View Blvd., Ste. 250
Worthington, Ohio 43235
Phone: 614 804-9918
Fax: 614 343-2222
E-mai: AlgVelez@aol.com

ment

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Appeal was sent via regular U.S. mail, postage prepaid to the addresses listed below on October 27, 2015. Moreover, a true and correct copy of the appeals was sent via e-mail to the attorney of record for the Ohio Unemployment Compensation Review commission, Ms. Chandler, at: Lucy.Chandler@jfs.ohio.gov, on October 27, 2015.

Ms. Lucy M. Chandler, Esq.
ODJFS Attorney
UC Program Services
P.O. Box 182830
Columbus, Ohio 43218

DIRECTOR
OF THE STATE OF OHIO
DEPARTMENT OF JOB AND FAMILY
SERVICES
30 E. Broad Street, 32nd floor
Columbus, Ohio 43215

DIRECTOR
OF THE STATE OF OHIO
UNEMPLOYMENT REVIEW COMMISSION
P.O. Box 182299
Columbus, Ohio 43218

MEGAN ROBINSON
PROGRAM SERVICES/TAX APPEALS
OHIO DEPARTMENT OF JOB AND
FAMILY SERVCIES
4020 E. 5TH Ave
Columbus, Ohio 43219

Attorney at Law
The One Crosswoods Building
100 E. Campus View Blvd., Ste. 250
Worthington, Ohio 43235
Phone: 614 804-9918
Fax: 614 343-2222
E-mai: AlgVelez@aol.com

Franklin County Ohio Clerk of Courts of the Common Pleas- 2015 Oct 23 11:57 AM-15CV009474

Money G. Goines
2853 Apt. G. Citizens Place
Columbus, Oh 43232

-vs-

Unemployment Compensation Review Commission
P.O Box 182299
Columbus, Ohio 43218-2299

Fortuno Management Ohio, Inc.
711 Southwood AVE
Columbus, Oh 43207-1391

I was discharged from Fortuno Management without any reason at all. Never written up and no unexscused abscences. Fortuno Management had three Leesees moving out of their properties and suffered severe financial loss, so they fired me. I was granted unemployment for being terminated without cause. Fortuno Management later appealled to the Unemployment Compensation review commission and set up a meeting with me via telephone where I never received the phone call, and granted Fortuno Management a win, for me not being available. Fortuno Mangagement appealled two other times, and was still unable to present the reason I was fired for many months. They finally won the right to be reimbursted my unemployment money when I was not available by review commission via telephone. The review commisson ordered me to re-pay $480.00 to Fortuno Management for failing to be available. I was never written up and there are no records of why I was fired. I should not have to pay this money back

COPY

COMMON PLEAS COURT
15 OCT 16 AM 11: 12
FILED
DAVID B. WADSWORTH
MEDINA COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
MEDINA COUNTY, OHIO

| | |
|---|---|
| RCJ Petroleum 6, LLC<br>2496 E. Aurora Rd.<br>Twinsburg, OH 44087<br><br>Appellant,<br><br>-vs-<br><br>Director ODJFS<br>30 E. Broad St., 32nd Floor<br>Columbus, OH 43215<br><br>and<br><br>Kathy E. Cameron<br>490 Medina Rd.<br>Medina, OH 44256<br><br>Appellees. | CASE NO. 15CIV1050<br><br>JUDGE<br>CHRISTOPHER J. COLLIER, JUDGE<br><br>NOTICE OF APPEAL<br>OF ODJFS DECISION<br>DOCKET No. 2015-010343 |

Appellant, RCJ Petroleum 6, LLC ("RCJ"), hereby petitions this Court for review of the Decision Determination, Docket No. 2015-010343, entered by Appellee, ODJFS on or about May 21, 2015 (attached hereto as Exhibit A); RCJ's request for review of the decision was disallowed on September 16, 2015. (attached hereto as Exhibit B)

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action under O.R.C. §4141.282.

COPY

## FACTUAL ALLEGATIONS

2. On, or about, April 23, 2015, Kathy E. Cameron ("Ms. Cameron") was terminated from her employment for failure to perform her duties per company policy and in connection with $25,485.62 of missing monies that she was to have deposited and accounted for as store manager.

3. The ODJFS's determination RCJ's termination was without just cause was unreasonable, arbitrary, capricious, and unconstitutional.

WHEREFORE, RCJ requests that this Honorable Court reverse the ODJFS determination and deny unemployment benefits to Ms. Cameron.

Respectfully submitted,

Andrej Cuturic (0083703)
38109 Euclid Avenue
Willoughby, Ohio 44094
Phone: 216.280.2840
Facsimile: 216.393.0058
andrejcuturic@gmail.com
***Counsel for RCJ***

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

| | | |
|---|---|---|
| LeeAnne B. Lambert<br>161 Kenilworth Drive<br>Akron, Ohio 44313<br><br>Appellant<br><br>vs.<br><br>Menorah Park<br>The Mandel Building<br>25701 Science Park D<br>Beachwood, Ohio 44122<br><br>and<br><br>Ohio Department of Job and Family Services<br>30 E. Broad Street, 32nd<br>Columbus, Ohio 43215<br><br>and<br><br>Administrator of the Unemployment<br>Review Commission<br>PO Box 18229<br>Columbus, OH 43218-2299<br><br>and<br><br>Menorah Park<br>Center for Health Affairs<br>1226 Huron Road, East<br>Cleveland, Ohio 44115-1712<br><br>and<br><br>Menorah Park<br>27100 Cedar Road<br>Beachwood, Ohio 44112-1109<br><br>Appellees | ) | Case No.<br><br>Judge<br><br><br>

1. Now comes LeeAnne D. Lambert, Appellant and states that this appeal is being taken from the order of the Unemployment Review Commission in Docket No. C2015-010417. Said decision dated, September 16, 2015, was mailed by said Unemployment Review Commission on the date of September 16, 2015 to Appellant and received by her thereafter. The order denied Appellant unemployment benefits. See Exhibit A attached hereto.

2. The Unemployment Review Commission's decision was unlawful, unreasonable or against the weight of the evidence for the following reasons:

3. This court has jurisdiction of this appeal under the provisions of R.C. §§ 4141.282 and 4141.28.

WHEREFORE, employee-claimant demands that the Court overturn the Unemployment Review Commission's decision and grant unemployment benefits to employee-claimant.

Respectfully submitted,

s/ John F. Myers

John F. Myers #0032779
960 Wye Drive
Akron, Ohio 44303
(330) 535-0850 (office)
(330) 819-3695 (cell)
johnmyerscolpa@gmail.com
Attorney for Appellant

**IN THE COURT OF COMMON PLEAS**
**FRANKLIN COUNTY, OHIO**

| | | |
|---|---|---|
| FRIENDSHIP SUPPORTED LIVING, INC.<br>1251 Greenleaf Road<br>Columbus, Ohio 43223-3824<br><br>Claimant/Appellant/Plaintiff,<br><br>v.<br><br>DIRECTOR, OHIO DEPT. OF JOBS &<br>FAMILY SERVICES,<br>30 East Broad Street, 32nd Floor<br>Columbus, Ohio 43215<br><br>and<br><br>UNEMPLOYMENT COMPENSATION<br>REVIEW COMMISSION<br>4020 East Fifth Avenue<br>Columbus, Ohio 43219<br><br>Respondents/Appellees/Defendants. | ) | Case No. _____<br>UCRC Docket No.: T-2015000070<br>Judge _____ |

**NOTICE OF APPEAL**

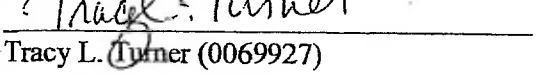
Pursuant to Ohio Revised Code § 4141.26, Friendship Supported Living, Inc. ("Friendship Supported Living"), hereby appeals to the Franklin County, Ohio, Court of Common Pleas, from State of Ohio Unemployment Compensation Review Commission's ("UCRC") Decision mailed on September 2, 2015, which was adverse to Friendship Supported Living. A true and accurate copy of the Decision of the UCRC is attached as Exhibit A.

Friendship Supported Living appeals the decision because Yvonne Bruce was not engaged in services that would be considered covered employment under Ohio Revised Code § 4141.01 and Ohio Administrative Code § 4141-3-05; and, therefore, Friendship Supported Living was not a liable employer for the services she performed as an independent contractor. The decision is unlawful, unreasonable and/or against the manifest weight of the evidence

The Court has jurisdiction and venue over this matter pursuant to Section 4141.26.

WHEREFORE, Claimant/Plaintiff/Appellant, Friendship Supported Living, respectfully requests this Court to reverse and/or vacate the decision of the Review Commission and find that Friendship Supported Living was not a liable employer for the services that Yvonne Bruce performed as an independent contractor.

Respectfully submitted,



Tracy L. Turner (0069927)
Law Office of Tracy L. Turner, LLC
P.O. Box 29492
Columbus, OH 43229
614-657-3454
tturner@tltlawoffice.com

Attorney for Claimant/Appellant/Plaintiff,
Friendship Supported Living, Inc.

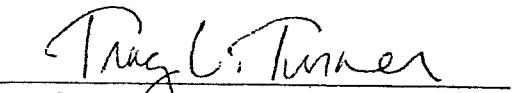
**CERTIFICATE OF SERVICE**

A copy of the foregoing Notice of Appeal has been served this 1st day of October, 2015, via regular U.S. Mail upon the following parties:

DIRECTOR, OHIO DEPT. OF JOBS &
FAMILY SERVICES,
30 East Broad Street, 32nd Floor
Columbus, Ohio 43215

and

UNEMPLOYMENT COMPENSATION
REVIEW COMMISSION
P.O. Box 182299
Columbus, Ohio 43218-2299



Tracy L. Turner

Franklin County Ohio Clerk of Courts of the Common Pleas- 2015 Sep 24 3:31 PM-15CV008444
0C695 - W60

**FRANKLIN COUNTY COURT OF COMMON PLEAS**
**CIVIL DIVISION**

| | | |
|---|---|---|
| **GREAT LAKES COURIER SERVICE, LLC**<br>**1597 Jennifer Drive**<br>**Twinsburg, OH 44087-2712** | : | |
| **Appellant,** | : | **Case No.** |
| **v.** | : | |
| **STATE OF OHIO**<br>**UNEMPLOYMENT COMPENSATION**<br>**REVIEW COMMISSION**<br>**PO Box 182299**<br>**Columbus, OH 43218** | : | **Judge** |
| **Appellee,** | : | |

**NOTICE OF ADMINISTRATIVE APPEAL**

Appellant, Great Lakes Courier Service, LLC, by and through undersigned counsel, hereby gives notice of its appeal of the action taken by the State of Ohio, Unemployment Compensation Review Commission ("Commission"), attached hereto as Exhibit A, and mailed August 26, 2015. The Commission's Decision is not supported by reliable, probative and substantial evidence and is not in accordance with Ohio law. The Commission erred in finding the independent contractor of Appellant is an employee pursuant to Ohio Rev. Code sec. 4141.01 et seq. This *Notice of Administrative Appeal* is being filed with the Commission as well with the Franklin County Court of Common Pleas.

Respectfully submitted,

PETERSON CONNERS FERGUS & PEER LLP

/s/ Jerry E. Peer, Jr.
Jerry E. Peer, Jr. (0075128)
Two Miranova Place, Suite 330
Columbus, OH 43215
Telephone: (614) 365-7000
Facsimile: (614) 220-0197
E-mail:jpeer@petersonconners.com
*Counsel to Great Lakes Courier Service, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been sent via facsimile, electronic mail and regular U.S. Mail, postage pre-paid, this 24th day of September, 2015, to the following:

Unemployment Compensation
Review Commission
PO Box 182299
Columbus, OH 43218-229
Facsimile: (614) 387-3694
ucrc_fax@jfs.ohio.gov

/s/ Jerry E. Peer, Jr.
Jerry E. Peer, Jr. (0075128)

**Unemployment Compensation Review Commission**

Gregory Gantt, Chairman
Sylvester Patton, Vice-Chairman
Ed Good, Member

**APPEAL RIGHTS**

This decision was mailed on : August 26, 2015

An appeal from this decision may be filed in the Court of Common Pleas of Franklin County, Ohio, within thirty (30) days after the date of mailing, in the manner set forth in Section 4141.26, Revised Code of Ohio.

If your appeal is filed more than thirty (30) days from the date of mailing, then you may ask the Common Pleas Court to determine the timeliness of your appeal. The court may find the appeal to be timely if you did not receive this decision within thirty (30) days after it was mailed to you.

This decision was sent to the following:

Great Lakes Courier Service, LLC
1597 JENNIFER DR
TWINSBURG, OH 44087-2712

Attn: Lucy Chandler
Program Services/Tax Appeals
4020 E 5TH AVE
COLUMBUS, OH 43219-1811

Director
Ohio Department of Job Family Services
30 E. Broad Street, 32nd Floor
Columbus, Ohio 43215

**Unemployment Compensation Review Commission**

Gregory Gantt, Chairman
Sylvester Patton, Vice-Chairman
Ed Good, Member

## APPEAL RIGHTS

This decision was mailed on : September 30, 2015

An appeal from this decision may be filed in the Court of Common Pleas of Franklin County, Ohio, within thirty (30) days after the date of mailing, in the manner set forth in Section 4141.26, Revised Code of Ohio.

If your appeal is filed more than thirty (30) days from the date of mailing, then you may ask the Common Pleas Court to determine the timeliness of your appeal. The court may find the appeal to be timely if you did not receive this decision within thirty (30) days after it was mailed to you.

This decision was sent to the following:

BNA Construction, Ltd.
3962 SANTA MARIA DR
GROVE CITY, OH 43123-2823

Attn: A.G. Velez
The Law Office of A.G. Velez
100 E CAMPUS VIEW BLVD STE 250
THE ONE CROSSWOODS BUILDING
COLUMBUS, OH 43235-4682

Attn: Megan Robinson
Program Services/Tax Appeals
4020 E 5TH AVE
COLUMBUS, OH 43219-1811

Director
Ohio Department of Job Family Services
30 E. Broad Street, 32nd Floor
Columbus, Ohio 43215

**Unemployment Compensation Review Commission**

Gregory Gantt, Chairman
Sylvester Patton, Vice-Chairman
Ed Good, Member

## APPEAL RIGHTS

This decision was mailed on : September 02, 2015

An appeal from this decision may be filed in the Court of Common Pleas of Franklin County, Ohio, within thirty (30) days after the date of mailing, in the manner set forth in Section 4141.26, Revised Code of Ohio.

If your appeal is filed more than thirty (30) days from the date of mailing, then you may ask the Common Pleas Court to determine the timeliness of your appeal. The court may find the appeal to be timely if you did not receive this decision within thirty (30) days after it was mailed to you.

This decision was sent to the following:

Friendship Supported Living, Inc.
1251 GREENLEAF RD
COLUMBUS, OH 43223-3824

Attn: Tracy L. Turner
Law Office of Tracy L. Turner, LLC
PO BOX 29492
COLUMBUS, OH 43229-0492

Attn: Lucy Chandler
Program Services/Tax Appeals
4020 E 5TH AVE
COLUMBUS, OH 43219-1811

Director
Ohio Department of Job Family Services
30 E. Broad Street, 32nd Floor
Columbus, Ohio 43215

**Unemployment Compensation Review Commission**

Gregory Gantt, Chairman
Sylvester Patton, Vice-Chairman
Ed Good, Member

## APPEAL RIGHTS

This decision was mailed on : October 21, 2015

An appeal from this decision may be filed in the Court of Common Pleas of Franklin County, Ohio, within thirty (30) days after the date of mailing, in the manner set forth in Section 4141.26, Revised Code of Ohio.

If your appeal is filed more than thirty (30) days from the date of mailing, then you may ask the Common Pleas Court to determine the timeliness of your appeal. The court may find the appeal to be timely if you did not receive this decision within thirty (30) days after it was mailed to you.

This decision was sent to the following:

Hason USA Corp
1262 US HIGHWAY 50
MILFORD, OH 45150-9767

Attn: Nicole M Lundrigan
Lundrigan Law Group
1080 NIMITZVIEW DR STE 201
THE ZIMCOM BLDG
CINCINNATI, OH 45230-4300

Director
Ohio Department of Job Family Services
30 E. Broad Street, 32nd Floor
Columbus, Ohio 43215

## APPEAL RIGHTS

This decision was mailed on : October 16, 2015

An appeal from this decision may be filed to the Court of Common Pleas of the county where the appellant, if an employee, is resident or was last employed or of the county where the appellant, if an employer, is resident or has the principal place of business in this state, within thirty (30) days from the date of mailing of this decision, as set forth in Section 4141.282 (A)(B)(C), Revised Code of Ohio. The appellant must name all interested parties as appellees in the notice of appeal, including the Director of the Department of Job and Family Services.

If your appeal is filed more than thirty (30) days from the date of mailing, then you may ask the Court of Common Pleas to determine the timeliness of your appeal. The court may find the appeal to be timely if you did not receive this decision within thirty (30) days after it was mailed to you. For more information refer to the booklet Worker's Guide to Unemployment Compensation (JFS-55213), available from Ohio Department of Job and Family Services or visit the agency's website at https://unemployment.ohio.gov.

This decision was sent to the following:

Amil S. Hunter
1245 E 145TH ST
EAST CLEVELAND, OH 44112-2619
Via Email

Cleveland Housing Network, Inc.
2999 PAYNE AVE STE 306
CLEVELAND, OH 44114-4443

Attn: Cleveland Housing Network, Inc.
UC EXPRESS
PO Box 182366
Columbus, OH 43218-2366

*R
CE
11
28
X0
00
00
30
*

COPY

IN THE COURT OF APPEALS
NINTH APPELLATE DISTRICT
SUMMIT COUNTY, OHIO

2014 MAR 20 AM 9:15

| | | |
|---|---|---|
| MARCUS PRYOR, II, | ) | CASE NO. CA 27225 |
| | ) | |
| Appellant, | ) | |
| | ) | **MOTION OF DIRECTOR, ODJFS TO DISMISS PARTY FROM APPEAL** |
| vs. | ) | |
| | ) | |
| | ) | |
| | ) | |
| DIRECTOR, ODJFS | ) | Summit County Court of Common Pleas |
| | ) | Case No. CV 2013 08 4088 |
| Appellee | ) | |

AND NOW COMES Director, ODJFS, and hereby respectfully requests that this Honorable Court DISMISS the Ohio Attorney General, Mike DeWine[1], as a party in this appeal. The reason for this Motion is that the Attorney General is not a proper party to this case. The Attorney General's authority and duties are set forth in R.C. 109.01 *et seq.*

One of the duties of the Ohio Attorney General is to provide Counsel for various state agencies. *See R.C. 109.36-109.361.* In the case at bar, the Attorney General's office provides the undersigned Counsel as attorney for the Director, ODJFS. The Attorney General is therefore not a proper party to this appeal and should be dismissed as a party.

WHEREFORE, the Director respectfully requests this Honorable Court to DISMISS Ohio Attorney General Mike DeWine as a party in this appeal.

Respectfully submitted,

**MICHAEL DEWINE (0009181)**
Attorney General of Ohio

Susan M. Sheffield

**SUSAN M. SHEFFIELD (0079012)**
Associate Assistant Attorney General

[1] Appellant refers to the Attorney General erroneously as "Mark" DeWine.

COPY

20 West Federal Street, 3rd Floor
Youngstown, OH 44503
330-884-7500 Office
330-884-7551 Fax

Attorney for Appellee,
Director, Ohio Department of
Job and Family Services

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing ***Motion of Director, ODJFS, to Dismiss Party From Appeal*** was sent to Marcus Pryor, II, 809 Mishler Rd., Mogadore, Oh 44260; Department of Army Attention: Army Personnel Records Division Fort Knox, KY 40122-5500; and Department of Army, 040664 Apen Home Det C, Fort Stewart TC, GA 31314, via First Class U.S. Mail on March 17, 2014.

Susan M. Sheffield
**SUSAN M. SHEFFIELD (0079012)**
Associate Assistant Attorney General

| | | | |
|---|---|---|---|
| 10/21/2013 | PRYOR II, MARCUS | APPELLANTS MOTION IN OPPOSITION TO APPELLEES MOTION TO DISMISS | View Document |
| 10/16/2013 | SHEFFIELD, SUSAN | DEFENDANT'S MOTION TO DISMISS FOR LACK OF JURISDICTION | View Document |
| 10/15/2013 | PRYOR II, MARCUS | APPELLANT'S BRIEF FILED BY NOVEMBER 14,2013, APPELLEES BRIEF FILED BY DECEMBER 16,2013 , AND APPELLANTS REPLY BRIEF FILED BY DECEMBER 30,2013, THERE WILL BE NO HEARING OR TRIAL IN THIS MATTER. LC | View Document |
| 10/03/2013 | PRYOR II, MARCUS | TRANSCRIPT OF PROCEEDINGS WITH COPY OF DIRECTOR FILE AND COPY OF U.C. REVIEW COMMISSION FILE. | No Image |
| 09/10/2013 | SHEFFIELD, SUSAN | NOTICE OF APPEARANCE OF SUSAN SHEFFIELD AS COUNSEL ON BEHALF OF DEFENDANTS, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES. | View Document |
| 09/03/2013 | PRYOR II, MARCUS | NOTIFICATION OF FAILURE TO OBTAIN SERVICE DEPARTMENT OF ARMY | No Image |
| 09/03/2013 | PRYOR II, MARCUS | FEDEX SERVICE - INSUFF. ADDRESS DEPARTMENT OF ARMY | No Image |
| 08/30/2013 | SUMMIT COUNTY CLERK OF COURTS | FEDEX SERVICE - SERVED DEPARTMENT OF ARMY | No Image |
| 08/30/2013 | SUMMIT COUNTY CLERK OF COURTS | FEDEX SERVICE - SERVED JOB AND FAMILY SERVICES | No Image |
| 08/26/2013 | PRYOR II, MARCUS | NOTICE ISSUED JOB AND FAMILY SERVICES | View Document |
| 08/26/2013 | PRYOR II, MARCUS | NOTICE ISSUED DEPARTMENT OF ARMY | View Document |
| 08/26/2013 | PRYOR II, MARCUS | NOTICE ISSUED DEPARTMENT OF ARMY | View Document |
| 08/26/2013 | PRYOR II, MARCUS | PRAECIPE FOR TRANSCRIPT OF RECORDS | View Document |
| 08/23/2013 | PRYOR II, MARCUS | INSTRUCTIONS TO CLERK FOR SERVICE | View Document |
| 08/23/2013 | PRYOR II, MARCUS | CIVIL COMPLAINT FILED | View Document |

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

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

Insuff. address

Director
Ohio Department of Job Family Services
30 E. Broad Street, 32nd Floor
Columbus, Ohio 43215

DANIEL M. HORRIGAN

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

2013 OCT 28 AM 8:27

SUMMIT COUNTY
CLERK OF COURTS

| | | |
|---|---|---|
| MARCUS PRYOR, II, | ) | CASE NO. 2013 08 4088 |
| Appellant, | ) | JUDGE LYNNE S. CALLAHAN |
| vs. | ) | |
| | ) | **REPLY TO APPELLANT'S MOTION IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS** |
| DIRECTOR, ODJFS | ) | |
| Appellee. | ) | |

NOW COMES the Director, ODJFS and responds to Appellant's Motion in Opposition to Appellee's Motion to Dismiss. Appellant urges this Court to deny the Director's Motion to Dismiss based on several cases and statutes, none of which apply in this matter.

This case arises as an administrative appeal under R.C. §4141.282. Appellant seeks to have this Court deny the Director's Motion to Dismiss under the law of the following cases: *Spencer v. Freight Handlers, Inc.*, 131 Ohio St.3d 316, 2012-Ohio-880; and *Welsh Development Co. Inc. v. Warren County Regional Planning Commission* 128 Ohio St. 3d 471, 2011 Ohio-1604, and numerous statutes. However, Appellant is wrong. Neither *Spencer* not *Welsh* apply to this matter. *Spencer* is an appeal of a worker's compensation final administrative decision pursuant to R.C. 4123.512, and is heard by the Court of Common Pleas on a *de novo* basis; therefore, workers' compensation cases proceed in the Common Pleas Courts as a civil trial matter. *Welsh* is an administrative appeal of a County Regional Planning Commission decision and was filed pursuant to R.C. 2505.04. R.C. 2505.03 governs applicability of the statute:

**2505.03 Appeal of final order, judgment, or decree.**

(A) Every final order, judgment, or decree of a court and, when provided by law, the final order of any administrative officer, agency, board, department, tribunal, commission, or other instrumentality may be reviewed on appeal by a court of

common pleas, a court of appeals, or the supreme court, whichever has jurisdiction.

(B) **Unless, in the case of an administrative-related appeal, Chapter 119. or other sections of the Revised Code apply**, such an appeal is governed by this chapter and, to the extent this chapter does not contain a relevant provision, the Rules of Appellate Procedure.

(Emphasis added). The appellate statute applicable in *Welsh* does not apply in this case. The case at bar is not appealed pursuant to R.C. 2505 or R.C. 119.2. The case *sub judice* presents to this Court as an administrative appeal pursuant to R.C. 4141.282, and not pursuant to R.C. 2505 or 119.12, as Claimant would have this Court believe. The case at bar is a special statutory proceeding, designed by the legislature to be reviewed pursuant to its special standard of review, and under which a specific body of case law has developed.

Finally, Appellant's argument that this Court should apply R.C. 2719.05 to issue an order to correct defective language is without merit. R.C. 2719.05 is utilized by the courts to make corrections to deeds and other filed instruments to effect the intent of the parties. For example, *see The Guarantee Title and Trust Co. and Green tree Financial Servicing Corp., v. American Mortgage Solutions, Inc., et al*, (5th District Court of Appeals No. 00CAE12036, 01-LW-3285), August 23, 2001, appended hereto as *Exhibit A*, in which the Court permitted a reformation of a deed under R.C. Chapter 2719. The Director argues that R.C. Chapter 2719, Correction of Defects in Instruments or Proceedings, simply does not apply to appeals of final administrative decisions pursuant to R.C. 4141.282.

The cases pertinent to final administrative decisions appealed pursuant to R.C. 4141.282 specifically hold that failure to name all interested parties as appellees, including a claimant's former employer, is a jurisdictional defect, requiring dismissal of the appeal. *See the Director's Motion to Dismiss*, which is hereby incorporated by reference.

Wherefore, the Director respectfully urges this Honorable Court, after consideration of all filed documents and statutory and case law thereunder, to DISMISS the instant appeal for lack of jurisdiction on the basis that Appellant failed to name his former Employer as a party-appellee.

Respectfully submitted,

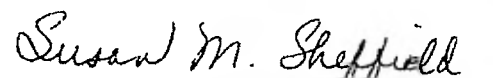
**MICHAEL DEWINE (0009181)**
Attorney General of Ohio

**SUSAN M. SHEFFIELD (0079012)**
Associate Assistant Attorney General
Health and Human Services Section
Unemployment Compensation Unit
20 West Federal Street, 3rd Floor
Youngstown, OH 44503
330-884-7500 Office
330-884-7551 Fax

Attorney for Appellee,
Director, Ohio Department of
Job and Family Services

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ***Reply to Appellant's Motion in Opposition to Appellee's Motion to Dismiss*** was sent to Marcus Pryor, II, 809 Mishler Road, Mogadore, OH 44260 via First Class U.S. Mail on October 23, 2013.



**SUSAN M. SHEFFIELD (0079012)**
Associate Assistant Attorney General

FILED
COURT OF APPEALS
MAY 31 2012
GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY, OHIO

IN THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO

| | | |
|---|---|---|
| BRYAN LUTON,<br><br>Appellant,<br><br>-vs-<br><br>STATE OF OHIO UNEMPLOYMENT REV. COMM. et al.,<br><br>Appellees. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | CASE NO. 97996<br><br>On Appeal from the Cuyahoga County Common Pleas Court Case No. 766212 |

**BRIEF OF APPELLEE, DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES**

BRYAN LUTON
3764 East 127th Street
Cleveland, Ohio 44105
(216)664-4333
bluton2010@yahoo.com

Appellant, pro se

MICHAEL DEWINE (0009181)
OHIO ATTORNEY GENERAL

LAUREL BLUM MAZOROW (0021766)
Assistant Attorney General
Health and Human Services Section
Unemployment Compensation Unit
State Office Bldg., 11th Fl.
615 W. Superior Ave.
Cleveland, OH 44113-1899
(216) 787-3288/FAX (216) 787-3480
laurel.mazorow@ohioattorneygeneral.gov

Attorneys for Appellee, Director, Ohio Department of Job and Family Services

Date of Hearing: 08/21/2012 Case #: 97996
Record Type: 9A Panel: (EG) RO KI
Transcript #: ____ Exhibits: ____
Oversize(circle): Yes / (No) Cabinet: E
Location: ____

## APPELLANT'S ASSIGNMENTS OF ERROR

Appellant, Bryan Luton, asserts the following assignments of error:

1. The Trial Court Erred In Granting the Appellees' Motion to Dismiss By Misapplying the 11th District Court of Appeals' Decision in *Sydenstricker v. Donato's Pizzeria*, 11th DIST. No. 2009-L-149, 2010-OHIO-2953, 2010 WL 2557705, And, Thus, Relied On R.C. 4141.282(O) Which Has Been Amended And Is No Longer A Governing Statute.

2. The Trial Court Erred In Granting The Appellees' Motion To Dismiss For Failure To Strictly Comply With R.C. 4141.282.

3. The Trial Court Erred In Granting The Appellees' Motion To Dismiss And In Failing To Grant Appellant Leave To Amend His Notice Of Appeal.

## STATEMENT OF THE ISSUE PRESENTED

Did the Lower Court err in granting the Director, Ohio Department of Job and Family Services' Motion to Dismiss Appellant's appeal for failure to name all interested parties in his notice of appeal as required by R.C. 4141.282(D).

## STATEMENT OF THE CASE AND FACTS

This case involves an administrative appeal from the Ohio Unemployment Compensation Review Commission ("Review Commission") pursuant to R.C. 4141.282. The Review Commission denied Appellant, Bryan Luton ("Luton") unemployment benefits, finding that he was discharged from employment with LNE & Associates, LLP ("Employer") for just cause in connection with work. (copy of decision in Review Commission file and attached as Appendix A-1 – A- 3).

Luton then appealed the Review Commission's decision to the Cuyahoga County Common Pleas Court, pursuant to R.C. 4141.282. On October 31, 2011, the Director, Ohio Department of Job and Family Services ("Director") filed a motion to dismiss Luton's appeal because he failed to name his former employer as an Appellee in violation of R.C. 4141.282(D). Luton only named the Director, Ohio Department of Job and Family Services and the

Unemployment Compensation Review Commission as Appellees. (first page of appeal attached as Appendix A-4).

On January 24, 2012, the Common Pleas Court granted the Motion to Dismiss because Luton failed to name all interested parties in his notice of appeal. (copy of decision attached as Appendix A-5). From this decision, Luton appeals to this Honorable Court.

## LAW AND ARGUMENT

THE COMMON PLEAS COURT PROPERLY DISMISSED LUTON'S APPEAL BECAUSE HE FAILED TO NAME ALL INTERESTED PARTIES AS REQUIRED BY R.C. 4141.282(D).

### A. R.C. 4141.282(D) mandates that all interested parties be named in the notice of appeal to the Common Pleas Court.

In his notice of appeal to the common pleas court, Luton failed to name his former employer as an Appellee in violation of R.C. 4141.282(D). He only named the Director, Ohio Department of Job and Family Services and the Unemployment Compensation Review Commission as Appellees.

According to R.C. 4141.282(D), Luton was required to name all interested parties identified in the decision of the Review Commission as appellees in his notice of appeal. Specifically, R.C. 4141.282(D) provides as follows:

> 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 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. (Emphasis added).

Page two (2) of the Review Commission decision notified Luton that he was required to name all interested parties as appellees in the notice of appeal. (Appendix A - 2). Page three (3) of the decision listed the address of his former employer. (Appendix A-3).

The Eleventh District Court of Appeals has opined that R.C. 4141.282 unequivocally states that an appellant must name all interested parties as appellees in the notice of appeal. *Sydenstricker v. Donato's Pizzeria*, 2010 Ohio 2953, Eleventh App. No. 2009-L-149. In *Sydenstricker*, as in the matter herein, the appellant asserted that she substantially complied with R.C. 4141.282 in filing her notice of appeal although she failed to include either the Director, Ohio Department of Job and Family Services or the Unemployment Compensation Review Commission as appellees. The appellant only named her former employer as an appellee. The Eleventh District found the argument of substantial compliance with R.C.414.282 to be without merit. It should likewise be rejected by this Honorable Court.

As long recognized by the Ohio Supreme Court:

> 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. Bureau of Unemployment Compensation* (1949), 151 Ohio St. 123, 84 N.E. 2d 746, paragraph one of the syllabus. Failure of a party to strictly comply with the statutory requirements will cause the appeal to be dismissed for lack of jurisdiction.

Luton's reliance on *Karnofel v. Cafaro Management* (June 26, 1998), Eleventh App. No. 97-T-0072 is misplaced. *Karnofel* involved an appeal pursuant to R.C. 4123.512 from a decision issued by the Industrial Commission involving workers' compensation benefits. The appellate court specified the naming of the administrator as a party is not a jurisdictional requirement in the filing of a notice of appeal pursuant to R.C. 4123.512. In fact, the court noted that conspicuously absent is the requirement that the administrator be named as a party.

Similarly, Luton's reliance on *Spencer v. Freight Handlers* (2012), 131 Ohio St. 3d 316, 2012-Ohio-880 is also misplaced. The Supreme Court found that R.C. 4123.512(B) did not

require that the administrator of the bureau of workers' compensation be named as a party in the notice of appeal. The Supreme Court emphasized in *Spencer* that workers' compensation cases follow a specific statutory procedure. R.C. 4123.512(B) does not mandate that the administrator of the Bureau of Workers' Compensation be named as a party and served with the notice of appeal to vest the court with subject matter jurisdiction.

Workers' compensation appeals also differ from unemployment compensation appeals in other respects. Specifically, an unemployment compensation appeal that is filed pursuant to R.C. 4141.282 is a "special statutory proceeding" that is not governed by the Ohio Rules of Civil Procedure. See Civ. R. 1(C)(7); R.C. 4141.282. The workers' compensation statute specifically provides that the case shall proceed under the Rules of Civil Procedure whereas the unemployment compensation statute does not provide that the case shall proceed under the Rules of Civil Procedure. See R.C. 4123.512(D); R.C. 4141.282; Civ. Rule 1(C (7).

The reasoning of *Sydenstricker* has been followed by numerous courts of common pleas. In Cuyahoga County, the decision and reasoning has been applied in the case of *Chrysanthe Houchens v. Director, Ohio Department of Job and Family Services*, Cuyahoga County Common Pleas Court Case No. 725458 (July 8, 2010), (Appendix A - 6). In *Houchens*, the appellant's appeal was dismissed because she failed to name her former employer in her notice of appeal as mandated by R.C. 4141.282(D). See also *Abbas v. Dept. of Job and Family Services*, Cuyahoga County Common Pleas Court Case No. 733841 (October 8, 2010), (Appendix A -7); *Alecia Smith* v. *Cleveland Clinic Foundation*, Cuyahoga County Common Pleas Court Case No. 764334 (October 20, 2011), (Appendix A - 8). In *Smith*, appellant's appeal was dismissed because she failed to name all interested parties in her notice of appeal as required under R.C. 4141.282(D).