

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

KEVIN A. BROWN,	:	O P I N I O N
Appellant,	:	
- vs -	:	CASE NO. 2011-P-0004
STATE OF OHIO UNEMPLOYMENT	:	
COMPENSATION REVIEW COMMISSION,	:	
Defendant,	:	
DIRECTOR, OHIO DEPARTMENT OF JOB	:	
AND FAMILY SERVICES,	:	
Appellee.	:	

Civil Appeal from the Portage County Court of Common Pleas, Case No. 2010 CV 1454.

Judgment: Affirmed.

Kevin A. Brown, pro se, 9329 Infirmary Road, C-34, Mantua, OH 44255 (Appellant).

Mike DeWine, Ohio Attorney General, State Office Tower, 30 East Broad Street, Columbus, OH 43215; *Susan M. Sheffield*, Assistant Attorney General, 20 West Federal Street, Third Floor, Youngstown, OH 44503; and *Patrick MacQueeney*, Assistant Attorney General, 615 West Superior Avenue, 11th Floor, Cleveland, OH 44113-1899 (For Appellee).

THOMAS R. WRIGHT, J.

{¶1} This is an accelerated-calendar appeal, taken from a final judgment of the Portage County Court of Common Pleas. In that judgment, the trial court dismissed the administrative appeal of appellant, Kevin A. Brown, due to lack of jurisdiction because

appellant failed to name his employer in the notice of appeal. Before this court, appellant solely contests the legal propriety of the procedure followed by the Ohio Employment Compensation Review Commission.

{¶2} The subject matter of the underlying proceedings pertains to appellant's claim for unemployment benefits, based upon the termination of his job with Godfrey & Wing, Inc. In September 2010, he initiated the administrative action at the trial level by filing of a notice of appeal from the Commission's final determination on the merits of his claim. Essentially, the Commission disallowed appellant's request for further review of the dismissal of the matter.

{¶3} After the certified transcript of the Commission proceedings had been filed before the trial court, a motion to dismiss the entire administrative appeal was submitted by appellee, the Director for the Department of Job and Family Services. As the basis for the motion, appellee argued that appellant's notice of appeal had been insufficient to invoke the trial court's jurisdiction because he had failed to name all interested parties in the notice. Specifically, appellee maintained that appellant was required to name the employer, Godfrey & Wing, Inc., as a separate party.

{¶4} Even though appellant filed a brief in support of his administrative appeal, he did not respond to the motion to dismiss. Approximately twenty-two days following the submission of the motion, the trial court rendered its judgment dismissing the appeal for lack of jurisdiction. In granting appellee's motion, the trial court expressly adopted the argument regarding the failure to name the proper parties in the notice of appeal.

{¶5} In appealing the foregoing judgment to this court, appellant has asserted two assignments of error:

{¶6} "[1.] The trial court committed prejudicial error in that it did not send notice

of a missed telephone hearing according to Section 4141.281(D)(5) of the Ohio Revised Code that states a Dismissal Notice is mailed to all interested parties either the day of (morning hearings) or the day after (afternoon hearings) the schedule date.

{¶7} “[2.] The trial court committed error in losing the appeal notice that was sent by Kevin A. Brown within the twenty-one calendar days. The appeal was mailed to the Review Commission on January 20, 2010 within the twenty-one day allotment. {ORC 4141.281(D)(1)}. In so losing the appeal notice the Review Commission determined that Kevin A. Brown did not file an appeal in a timely manner and requesting for a dismissal.”

{¶8} Although each of appellant’s assignments refer to an “error” on the part of the trial court, a review of the arguments accompanying the assignments indicates that he has failed to raise any challenge to the substance of the appealed judgment. That is, appellant has not raised any argument regarding whether it was proper for the trial court to dismiss his administrative appeal for failing to name all interested parties in his notice of appeal. Instead, the two assignments focus solely upon the procedure employed by the Employment Compensation Review Commission prior to the release of its final ruling. Specifically, appellant only argues that he was not given proper notice of a possible dismissal order by the hearing officer, and that the Commission misplaced a written notice of appeal he filed as to the hearing officer’s ruling.

{¶9} In applying basic tenets of appellate review, the courts of this state have held that an appellant cannot contest issues which were not before the trial court when it issued the appealed decision. For example, in *State v. Grimes*, 2d Dist. No. 20746, 2005-Ohio-4510, the appellate court concluded that it could not review issues as to the merits of the criminal defendant’s actual conviction when the present appeal was from a

decision to revoke her community control sanctions. Similarly, in *Miller v. Rhodes* (Nov. 15, 1996), 11th Dist. No. 95-T-5290, 1996 Ohio App. LEXIS 5066, this court held that an appeal from a judgment involving the distribution of proceeds cannot be used to contest the merits of a separate judgment concerning the dismissal of certain claims.

{¶10} This court has followed this basic logic as to an administrative appeal to a common pleas court. In *White v. Ravenna* (Sept. 28, 1981), 11th Dist. No. 1114, 1981 Ohio App. LEXIS 14557, we concluded that when the appeal is from a ruling of a trial court, we cannot review assignments which pertain solely to the actions of the civil service commission. Instead, the scope of our review is limited to the judgment of the common pleas court. *Id.* at *2.

{¶11} In the instant matter, the trial court never addressed the substance of the commission's final decision or the propriety of the procedure used prior to the issuance of that decision. Rather, the trial court predicated its dismissal of the appeal solely upon a jurisdictional ruling. Before this court, appellant has not raised any argument relating to the merits of that jurisdictional ruling, but has focused only upon the procedure before the commission. Since the scope of this appeal is limited to the substance of the trial court's determination, appellant has failed to assert any argument which could form the basis of a reversal of the appealed judgment.

{¶12} In light of the foregoing analysis, both of appellant's assignments of error lack merit. It is the order of this court that the judgment of the trial court is affirmed.

TIMOTHY P. CANNON, P.J.,

DIANE V. GRENDALL, J,

concur.