

COURT OF COMMON PLEAS  
BUTLER COUNTY, OHIO

EMILY D. JOHNSON,

\*

Case Number: CV 2011 04 1400

Appellant,

Judge Andrew Nastoff

vs.

FILED BUTLER CO.  
COURT OF COMMON PLEAS  
DEC 9 / 2011

DECISION AND ENTRY  
GRANTING APPELLEE'S  
MOTION TO DISMISS

UNEMPLOYMENT COMPENSATION  
REVIEW COMMISSION, et al.,

MAION SWAIN  
CLERK OF COURTS

\*

Appellees.

\*

\*\*\*\*\*

This matter is before the Court upon the second motion to dismiss filed by Appellee, Ohio Unemployment Compensation Review Commission ("Review Commission"). For the reasons that follow, the Review Commission's motion is granted.

Johnson was an employee of Professional Physical Therapy Services from November 1, 2005 through August 6, 2010, when she was terminated for unsatisfactory work performance. On August 10, 2010, Johnson filed an application for determination of benefit rights with the Ohio Department of Job and Family Services ("ODJFS"). A determination issued on August 27, 2010 allowed Johnson's application for unemployment compensation benefits. Professional Physical Therapy Services appealed the determination. On September 24, 2010, ODJFS issued a Director's redetermination affirming the initial determination. Professional Physical Therapy Services appealed the redetermination, at which point ODJFS transferred jurisdiction to the Review Commission.

A Review Commission hearing officer held a telephone hearing on January 19,

Judge Andrew Nastoff  
Common Pleas Court  
Butler County, Ohio

2011, at which Johnson and Physical Therapy Services representative Chris Henkel appeared. On February 2, 2011, the hearing officer mailed a decision reversing the Director's redetermination and ordering Johnson to repay the benefits she had received. Johnson filed a request for review on February 8, 2011, which the Review Commission denied on March 24, 2011. Johnson then filed a notice of appeal with this Court on April 29, 2011. Johnson's notice of appeal names Professional Physical Therapy Services and the Review Commission as appellees.

The Review Commission initially moved to dismiss Johnson's appeal for failure to file a notice of appeal within thirty days of the March 24<sup>th</sup> administrative decision denying review. This Court denied the motion, finding that Johnson's appeal time equitably tolled while it considered her application to proceed *in forma pauperis*. The Review Commission then filed the instant motion to dismiss Johnson's notice of appeal for failure to name the Director of Job and Family Services as an interested party. In response, Johnson filed a letter requesting leave to amend her notice of appeal.

R.C. 4141.282 governs the instant appeal. It states, in relevant part:

(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.

The Review Commission met its R.C. 4141.282(D) obligation, conspicuously stating in its March 24, 2011 decision:

#### **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 . . . , 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.

The Supreme Court of Ohio has held that “[a]n 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 conditional upon compliance with the accompanying mandatory requirements.” *Zier v. Bur. Of Unemployment Comp.* (1949), 151 Ohio St. 123, 84 N.E.2d 746, paragraph one of the syllabus; see also, *In re Claim of King* (1980), 62 Ohio St.2d 87, 88, 403 N.E.2d 200 (holding “where a statute confers a right of appeal . . . strict adherence to the statutory conditions is essential for the enjoyment of that right.”). “Compliance with these specific and mandatory requirements governing the filing of such notice is essential to invoke jurisdiction of the Court of Common Pleas.” *Id.*, at paragraph two of the syllabus.

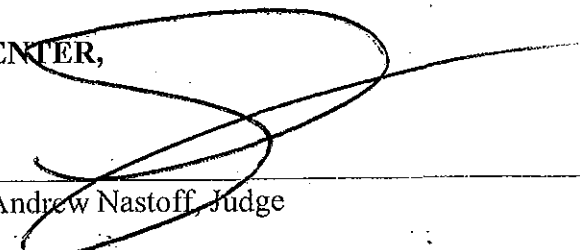
R.C. 4141.282 expressly required Johnson to name the Director of ODJFS in her notice of appeal. She failed to do so. Johnson’s failure to comply with R.C. 4141.282’s

mandates means that she has not invoked the subject matter jurisdiction of this Court and her appeal must be dismissed. *See Sydenstricker v. Donato's Pizzeria, LLC*, 11<sup>th</sup> Dist. App. No. 2009-L-149, 2010-Ohio-2953, at ¶ 22 (dismissing appeal for failure to name the Director of ODJFS as an interested party). Because the time limitation to file a perfected notice of appeal is jurisdictional, the Court cannot now allow Johnson to amend her notice of appeal after the time limitation has passed. Unlike the Review Commission's first motion to dismiss, where equitable principles tolled Johnson's appeal period, there are no equities at play in this instance. Nor can the Court grant Johnson leave pursuant to Civ.R. 15 to amend her notice of appeal. To do so would expand the jurisdiction of the common pleas court by allowing Johnson to file her notice of appeal well outside the statutory time period, in violation of Civ.R. 82 ("[t]hese rules shall not be construed to extend or limit the jurisdiction of the courts of this state."). The Review Commission's motion to dismiss is **GRANTED.**

**SO ORDERED.**

There is no just cause for delay. Civ.R. 54(B).

ENTER,

  
\_\_\_\_\_  
Andrew Nastoff, Judge

Judge Andrew Nastoff  
Common Pleas Court  
Butler County, Ohio

cc:

Robin A. Jarvis  
Health and Human Services Section  
1600 Carew Tower  
441 Vine Street  
Cincinnati, Ohio 45202

Emily D. Johnson  
4 Chapel Hill Drive  
Fairfield, Ohio 45014

Judge Andrew Nastoff  
Common Pleas Court  
Butler County, Ohio