

COMMON PLEAS COURT

2017 FEB 21 PM 3:08

FILED
DAVID B WADSWORTH
MEDINA COUNTY
CLERK OF COURTS

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

Jennifer L. McKenna

CASE NO. 16CIV1006

Appellant

v.

JUDGE JOYCE V. KIMBLER

**Unemployment Compensation
Review Commission**

**Judgment Entry with Instructions
to the Clerk**

Appellee

This matter came on before the court upon the motion of the appellee, the Unemployment Compensation Review Commission (the Commission), to dismiss the appeal of the appellant Jennifer McKenna (McKenna) for lack of jurisdiction.

This matter was filed by McKenna as an Administrative Appeal from the decision of the Commission on Case #2016011983. A copy of the actual decision being appealed was not attached to the filing with the court. What was attached was a letter from the Commission dated September 28, 2016 in response to a letter sent to them by McKenna referencing the decision mailed September 21, 2016. Thus we know that McKenna received the decision of September 21, 2016 before September 28, 2016. Also attached the Administrative Appeal is page 4 of 5 of the decision mailed September 21, 2016. This page sets forth the appeal rights and how an appeal is to be perfected. The appeal rights states:

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 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.

According to the information provided by the court, the Commission mailed its final decision to McKenna on September 2, 2016. McKenna does not dispute this. Rather she argues, "if the document was sent September 21, 2016 then it is reasonable to believe that it should take approximately 5-7 days to be processed and delivered which make the time frame for the thirty-day period." Essentially, McKenna is arguing that her 30 day time frame to appeal should be extended past the date of mailing to include the date of delivery.

If an appeal is filed after the 30 day appeal period, the court of common pleas must determine if there is any provision under division (D)(9) of section 4141.281 of the Revised Code which would extend the appeal period.

R.C. 4141.281(D)(9), which addresses specifically how the time for appeal is counted or may be extended, pertaining to the administrative levels and to the common pleas court, states:

The time for filing an appeal or a request for review under this section or a court appeal under section 4141.282 of the Revised Code shall be extended in the manner described in the following four sentences. When the last day of an appeal period is a Saturday, Sunday, or legal holiday, the appeal period is extended to the next work day after the Saturday, Sunday, or legal holiday. When an interested party provides certified medical evidence stating that the interested party's physical condition or mental capacity prevented the interested party from filing an appeal or request for review under this section within the appropriate twenty-one-day period, the appeal period is extended to twenty-one days after the end of the physical or mental condition, and the appeal or request for review is considered timely filed if filed within that extended period. When an interested party provides

evidence, which evidence may consist of testimony from the interested party, that is sufficient to establish that the party did not actually receive the determination or decision within the applicable appeal period under this section, and the director or the commission finds that the interested party did not actually receive the determination or decision within the applicable appeal period, then the appeal period is extended to twenty-one days after the interested party actually receives the determination or decision. *When an interested party provides evidence, which evidence may consist of testimony from the interested party, that is sufficient to establish that the party did not actually receive a decision within the thirty-day appeal period provided in section 4141.282 of the Revised Code, and a court of common pleas finds that the interested party did not actually receive the decision within that thirty-day appeal period, then the appeal period is extended to thirty days after the interested party actually receives the decision.* (Emphasis added.)

The only reason that an appeal period may be extended when appealing to the common pleas court is when the appeal deadline falls on a Saturday, Sunday, or holiday, or the party did not receive the decision within the 30 day appeal period. See R.C. 4141.281 and 4141.282. No such evidence was presented in this matter.

Essentially what McKenna is arguing is a variation of the “mailbox” rule which would not start the time for appeal until such time as the decision would be delivered rather than the time it was mailed. In *Proctor v. Giles* (1980), 61 Ohio St.2d 211, 214, 400 N.E.2d 393, the Supreme Court of Ohio has specifically noted that the mailbox rule under Civ. R. 6(E) does not apply to extend the 30 day time limitation for filing a notice of appeal from the determination of the Unemployment Compensation Review Commission.

The *Proctor* court noted that, since the time limitation for filing a notice of appeal is jurisdictional, an extension of this limitation by the application of Civ. R.

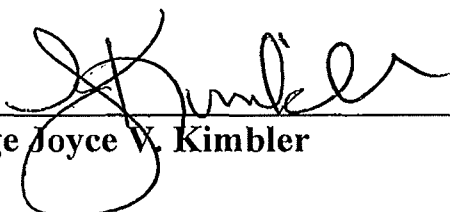
6(E) to R.C. 4141.28 would serve to expand the jurisdiction of the court of common pleas, in direct violation of Civ. R. 82.

The jurisdiction of the court may not be extended by the mailbox rule or any similar rationale based on postal system delays.

The decision of the Commission was mailed on September 21, 2016. The appeal was required to be filed with the common pleas court on October 21, 2016. The appeal was not filed until October 25, 2016. Therefore, since the common pleas court's jurisdiction was not properly invoked, the court must conclude that it must GRANT appellee's motion to dismiss the appeal for lack of jurisdiction.

IT IS SO ORDERED.

This entry constitutes a final appealable order within the meaning of Civil Rule 54(A).



Judge Joyce W. Kimbler

INSTRUCTIONS TO THE CLERK

Pursuant to Civ.R. 58, the clerk is directed to serve on the following parties, notice of this judgment and its date of entry on the docket:

Jennifer L. McKenna
AKA Jennifer L. May
991 Lonetree Ct.
Brunswick, OH 44212

Unemployment Compensation Review Commission

PO BOX 182299
Columbus, OH 43218-2299

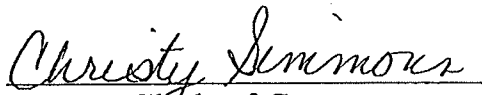
The Reserves Network, Inc.
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Notice was sent by U.S. mail on 2-22-17.


Deputy Clerk of Court