

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-001013-MR

MITCHELL C. MOODY

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE STEVE ALAN WILSON, JUDGE
ACTION NO. 09-CI-02124

KENTUCKY UNEMPLOYMENT INSURANCE
COMMISSION; AND WARREN COUNTY
PARKS AND RECREATION DEPARTMENT

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON AND NICKELL, JUDGES; SHAKE,¹ SENIOR JUDGE.

DIXON, JUDGE: Mitchell C. Moody appeals an order of the Warren Circuit Court dismissing his complaint on jurisdictional grounds. We affirm.

Moody sought judicial review of a decision rendered by the Kentucky Unemployment Insurance Commission denying his claim for unemployment

¹ Senior Judge Ann O'Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

benefits. The Commission moved the court to dismiss the action due to Moody's failure to verify the complaint as required by Kentucky Revised Statutes (KRS) 341.450(1). The circuit court granted the Commission's motion to dismiss, and this appeal followed.

Moody alleges that KRS 341.450 did not apply to his complaint because he asserted constitutional due process violations by the Commission. Alternatively, Moody contends that if KRS 341.450 applied to his complaint, the statute is unconstitutional because there is no rational basis for requiring a verified complaint. Finally, Moody opines the trial court was obligated to allow him to file an amended complaint to remedy the defect. Moody's arguments are without merit.

In *Board of Adjustments of City of Richmond v. Flood*, 581 S.W.2d 1 (Ky. 1978), our Supreme Court stated:

There is no appeal to the courts from an action of an administrative agency as a matter of right. When grace to appeal is granted by statute, a strict compliance with its terms is required. Where the conditions for the exercise of power by a court are not met, the judicial power is not lawfully invoked. That is to say, that the court lacks jurisdiction or has no right to decide the controversy.

Id. at 2.

KRS 341.450(1) clearly sets forth the procedure for seeking judicial review of a Commission decision and requires that the complaint "state fully the grounds upon which review is sought, assign all errors relied on, and shall be verified by

the plaintiff or his attorney.” In *Pickhart v. U.S. Post Office*, 664 S.W.2d 939, 940 (Ky. App. 1983), a panel of this Court concluded that the verification requirement of KRS 341.450 is mandatory and jurisdictional.

In the case at bar, it is undisputed that Moody failed to follow the statutory mandate; however, he contends the statute did not apply to his claim. Moody filed his complaint “[p]ursuant to KRS 341.450” and alleged the Commission failed to afford him a fair hearing in violation of his right to due process. Moody characterizes his complaint as a constitutional claim rather than as an appeal of a Commission decision on the merits.

We find Moody’s argument unpersuasive. It is apparent Moody sought judicial review of a Commission decision; consequently, the verification requirement of KRS 341.450(1) applied to his claim. Since Moody did not file a verified complaint, he failed to invoke the jurisdiction of the Warren Circuit Court. *Flood*, 581 S.W.2d at 2. We conclude the court properly dismissed the complaint, and we find Moody’s alternative argument relating to the constitutionality of the statute without merit.

Finally, we address Moody’s claim that the court should have allowed him to amend his complaint. Moody opines that amendment was proper pursuant to Kentucky Rules of Civil Procedure (CR) 15.01, which allows a party to amend a pleading one time “as a matter of course . . . before a responsive pleading is served.”

Moody erroneously relies on CR 15.01. “The civil rules which would normally permit amendment do not apply to appeals of administrative decisions until after the appeal has been perfected and jurisdiction has attached.” *Cabinet for Human Resources v. Holbrook*, 672 S.W.2d 672, 675 (Ky. App. 1984). Here, Moody failed to perfect his appeal pursuant to KRS 341.450(1) and did not invoke the jurisdiction of the Warren Circuit Court. As a result, “the civil rules never became effective,” *id.*, and Moody was not entitled to amend his complaint.

For the reasons stated herein, the judgment of the Warren Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE
KENTUCKY UNEMPLOYMENT
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