

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2014-CA-001514-MR

LOUISVILLE GRAPHITE, INC.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE A. C. MCKAY CHAUVIN, JUDGE  
ACTION NO. 09-CI-003047

VERNON STARR

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON, D. LAMBERT AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Louisville Graphite, Inc. appeals from a denial of its motion challenging a garnishment filed by Vernon Starr after Starr was awarded a judgment against it in the Jefferson Circuit Court. Louisville Graphite contends that the proceeds from the garnishment should be paid to the Cabinet for Education and Work Force Development as recoupment for unemployment compensation benefits received by Starr. We affirm.

Starr was employed by Louisville Graphite for twenty-two years. He was discharged from his employment on March 6, 2009, and filed for unemployment insurance benefits and was awarded benefits. Louisville Graphite appealed and the referee affirmed the initial determination. As a result, Starr continued to receive unemployment insurance benefits.

Louisville Graphite appealed the referee's ruling to the Kentucky Unemployment Commission. On May 25, 2011, the Commission reversed the referee's decision and held that Starr was not entitled to unemployment benefits because he was discharged for misconduct. In the interim, Starr received benefits.

Starr unsuccessfully appealed to the Jefferson Circuit Court. He then appealed to this Court which affirmed the Commissioner's denial of benefits in *Starr v. Louisville Graphite Inc.*, 2012-CA-0001368-MR, 2013 WL 5676819 (Ky. App. 2013).

While his unemployment benefits claim was pending, Starr filed a civil action in the Jefferson Circuit Court alleging violation of the Kentucky Civil Rights Act and retaliatory discharge for his pursuit of a workers' compensation claim. He later amended his complaint to add claims for violations of the Kentucky's Wages and Hours Act.

Starr was only successful on his claims under the Wages and Hours Act. A jury awarded Starr \$16,000 for overtime pay to which he was entitled but not paid and \$4,000 for unauthorized withholdings. The trial court later awarded Starr

\$45,229 in attorney fees incurred for successfully pursuing the wage-and- hour claims.

Following entry of the judgment in this action, Starr commenced garnishment proceedings against Louisville Graphite to collect the judgment. Louisville Graphite challenged the garnishment arguing that the garnishment proceeds should be paid to the Cabinet as recoupment of the unemployment benefits paid to Starr. Pursuant to the applicable local rule, the matter was referred to the master commissioner. The master commissioner recommended that Louisville Graphite's challenge be overruled and the Jefferson Circuit Court issued an order overruling the challenge.

Louisville Graphite relies on Kentucky Revised Statutes (KRS) 341.470(1), which provides in part: "In cases involving awards to a worker by an arbitrator, court, or other administrative body or mediator, the secretary may require the employer to withhold benefits paid under this chapter from the award and pay the amount withheld into the unemployment insurance trust fund." Starr argues that Louisville Graphite does not have standing to challenge the garnishment on the basis that the Cabinet is entitled to recoup the benefits paid.

Standing requires that a party "would suffer some injury distinct from the general public," and that a party's interest "must be 'judicially recognizable.'" *Deters v. Kenton County Pub. Library*, 168 S.W.3d 62, 63 (Ky.App. 2005) (quoting *City of Ashland v. Ashland F.O.P. #3, Inc.*, 888 S.W.2d 667, 668 (Ky. 1994)). We agree that other than as a member of the public, Louisville Graphite

has no interest in seeing that the money it is legally obligated to pay is paid to the Cabinet rather than Starr.

Even if Louisville Graphite has standing, its argument is without merit. At the master commissioner's hearing, a Cabinet attorney testified that the Cabinet has exercised its discretion and refrained from pursuing a lien for overpayment of unemployment benefits from an award that is based on wages earned during a time period other than the period covered by benefits paid. In this case, the unemployment benefits were paid for a period after Starr's discharge while the judgment was for wage-and-hour violations for a period while he was employed.

As observed in *Gatliff Coal Co. v. Anderson*, 814 S.W.2d 564, 566 (Ky. 1991), "unemployment benefits are intended to provide relatively short term assistance to the unemployed[.]" A judgment for unpaid wages and unauthorized withholdings from wages are necessarily for a period of employment. In such instances, the undisputed testimony was that the Cabinet does not pursue a lien to recoup unemployment benefits.

Where the General Assembly has entrusted an administrative agency with the application of a statutory scheme, the courts will "afford deference to an administrative agency's interpretation of the statutes and regulations it is charged with implementing." *Com., ex rel. Stumbo v. Kentucky Pub. Serv. Com'n*, 243 S.W.3d 374, 380 (Ky.App. 2007). We conclude there is nothing inconsistent with the Cabinet's decision not to pursue recoupment and the wording of KRS 341.470(1).

Based on the foregoing, the denial of Louisville Graphite's challenge to the garnishment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Stephen A. Schwager  
Louisville, Kentucky

BRIEF FOR APPELLEE:

David Leightty  
Louisville, Kentucky