

RENDERED: OCTOBER 28, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001148-MR
AND
NO. 2015-CA-001150-MR

COMMONWEALTH OF KENTUCKY,
KENTUCKY UNEMPLOYMENT
INSURANCE COMMISSION; AND
COMMONWEALTH OF KENTUCKY,
KENTUCKY DIVISION OF
UNEMPLOYMENT INSURANCE

APPELLANTS

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE ANDREW SELF, JUDGE
ACTION NO. 11-CI-01230

BILL A. PRIM; AND
DAY STAR GROUP, INC.

APPELLEES

OPINION
VACATING AND
REMANDING

** ** * ** * ** *

BEFORE: KRAMER, CHIEF JUDGE; DIXON AND TAYLOR, JUDGES.

DIXON, JUDGE: The Appellants, Kentucky Unemployment Insurance Commission (“Commission”) and the Kentucky Division of Unemployment Insurance (“Division”), appeal an order of the Christian Circuit Court denying their motions for post-judgment relief pursuant to CR 59.05 and CR 60.02(e). Because the circuit court lacked jurisdiction, we vacate the judgment and remand the matter to the circuit court.

In January 2011, Prim filed a claim for unemployment benefits.¹ The Division’s Tax Audit and Enforcement Branch issued a Notice of Covered Employment and Wage Determination finding Prim ineligible for Kentucky unemployment benefits. The Division concluded Prim’s employment was localized in Alabama and that no wages were reported to Kentucky for the purposes of unemployment insurance. Prim appealed the Division’s administrative determination to the Commission, which affirmed. The Commission’s order explained the procedure for judicial review of the decision, stating:

APPEAL RIGHTS

This order of the Kentucky Unemployment Insurance Commission may be appealed to the Franklin Circuit Court within twenty (20) days of the mailing date of the order under the combined provisions of KRS 341.430 (2), KRS 341.460 (1), and KRS 341.450 (1). Statutory requirements set forth in KRS 341.450 (1) for filing such an appeal apply except that an appeal to this decision must be filed in Franklin Circuit Court.

KRS 341.450 provides:

¹ Prim’s employer, Day Star Group, Inc., did not participate in the circuit court proceedings and did not file an appellate brief in this appeal.

‘(1) Except as provided in KRS 341.460, within twenty (20) days after the date of the decision of the Commission, any party aggrieved thereby may, after exhausting his remedies before the Commission, secure judicial review thereof by filing a complaint against the Commission in the Circuit Court of the county in which the claimant was last employed by a subject employer whose reserve account is affected by such claims. Any other party to the proceeding before the Commission shall be made a defendant in such action. The complaint shall state fully the grounds upon which review is sought, assign all errors relied on, and shall be verified by the plaintiff or his attorney. The plaintiff shall furnish copies thereof for each defendant to the commission, which shall deliver one (1) copy to each defendant.’

Thereafter, Prim filed a complaint in Christian Circuit Court seeking judicial review of the Commission’s order. The Commission filed an answer and did not raise the issue of the circuit court’s jurisdiction. In August 2012, the court rendered a judgment reversing and remanding the Commission’s decision, concluding Prim’s employment was located in Kentucky. On remand, the Commission issued a “Compliance Order,” setting aside the Division’s administrative determination that Prim was ineligible for benefits and referring the matter to the Division for any further determinations necessary for Prim’s claim for unemployment benefits. In March 2013, the Division issued a determination that Prim was allowed unemployment benefits because his discharge from employment was for reasons other than misconduct.

A year later, in March 2014, Prim filed a motion in Christian Circuit Court to enforce the previous order from August 2012, alleging the Commission had failed to pay him the unemployment benefits to which he was entitled. The court

granted Prim's motion; thereafter, Appellants filed post-judgment motions alleging the August 2012 judgment was void because the court lacked jurisdiction.

Appellants specifically contended the original complaint was required to be filed in Franklin Circuit Court pursuant to KRS 341.460(1). The Christian Circuit Court denied post-judgment relief, and these appeals followed.

Appellants contend the circuit court erred by denying their motions to vacate the judgment for lack of jurisdiction. In response, Prim asserts he properly appealed to the Christian Circuit Court pursuant to KRS 341.450(1).

The record reflects the Division's Tax Audit and Enforcement Branch issued a Notice of Covered Employment and Wage Determination. The Division concluded Prim's employment was localized in Alabama and that no wages were reported to Kentucky for the purposes of unemployment insurance. The Notice further stated, "KRS 341.430 provides for an appeal from this determination." In *Kentucky Unemployment Ins. Comm'n v. Providian Agency Group, Inc.*, 981

S.W.2d 138 (Ky. App. 1998), this Court explained:

Any decision affecting an employing unit's liability, contribution rate, or amount of contributions arises under KRS 341.430(2). KRS 341.450 and KRS 341.460 outline the appropriate procedures for judicial review of these decisions. KRS 341.460 provides that any appeal of a decision arising under KRS 341.430(2) shall be taken to the Franklin Circuit Court. KRS 341.450 reads in pertinent part:

(1) Except as provided in KRS 341.460, within twenty (20) days after the date of the decision of the commission, any party aggrieved thereby may, after exhausting his remedies before the commission, secure

judicial review thereof by filing a complaint against the commission in the Circuit Court.

Id. at 139 (internal footnote omitted).

In the case at bar, the administrative decision was a wage determination arising under KRS 341.430(2); accordingly, KRS 341.460(1) applied and required that judicial review shall be taken to the Franklin Circuit Court. “It is a firmly rooted concept of law in this state that the courts have no jurisdiction over an appeal from an administrative agency action unless every statutory precondition is satisfied.” *Taylor v. Kentucky Unemployment Ins. Comm'n*, 382 S.W.3d 826, 831 (Ky. 2012). By filing his complaint in Christian Circuit Court, Prim failed to comply with the jurisdictional requirements of KRS 341.460(1). 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. We conclude the Christian Circuit Court lacked jurisdiction when the judgment was entered; consequently, the judgment was void *ab initio*. *Foremost Ins. Co. v. Whitaker*, 892 S.W.2d 607, 610 (Ky. App. 1995).

Pursuant to CR 60.02(e), a party may move the trial court to relieve it from a final judgment on the ground that the judgment is void. In *Soileau v. Bowman*, 382 S.W.3d 888 (Ky. App. 2012), this Court explained:

CR 60.02 provides ‘[t]he motion shall be made within a reasonable time[.]’ While trial courts are afforded discretion to address what constitutes a reasonable time under CR 60.02, *see Gross v. Commonwealth*, 648 S.W.2d 853, 858 (Ky. 1983), the law is clear that void judgments are ‘not entitled to any respect or deference by the courts.’ *Foremost Ins. Co. v. Whitaker*, 892 S.W.2d 607, 610 (Ky. App. 1995) (citation omitted). Despite a court’s discretion to determine a reasonable time period to file a CR 60.02 motion, ‘[a] void judgment is a legal nullity, and a court has no discretion in determining whether it should be set aside.’ *Id.* (citing Bertelsman and Philips, *Kentucky Practice*, CR 60.02, Vol. 7, p. 396 (4th ed. 1984)).

Id. at 890. Here, we recognize that two years had elapsed when Appellants moved the court to vacate the judgment; however, the record clearly reflects the Christian Circuit Court’s judgment was void *ab initio*. “[A] void judgment does not acquire validity with the passage of time.” *Rogers Group, Inc. v. Masterson*, 175 S.W.3d 630, 635 (Ky. App. 2005). After careful review, we conclude the Christian Circuit Court’s refusal to vacate the judgment was an abuse of discretion.

For the reasons stated herein, the judgment of the Christian Circuit Court is vacated, and this matter is remanded with instructions to dismiss in accordance with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Patrick B. Shirley
Frankfort, Kentucky

BRIEF FOR APPELLEE

Bill A. Prim:

Ben S. Fletcher III
Hopkinsville, Kentucky