[Cite as *Gatewood v. United Steelworkers of Am.*, 2021-Ohio-3272.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

EMMA GATEWOOD,

Plaintiff-Appellant,

v.

UNITED STEELWORKERS
OF AMERICA et al.,

Defendants-Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 20 MA 0111

Civil Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2020 CV 00621

BEFORE:
Carol Ann Robb, Gene Donofrio, David A. D'Apolito, Judges.

JUDGMENT:
Affirmed.

Atty. Percy Squire, 341 South Third Street, Columbus, Ohio 43215, for Plaintiff-Appellant and

Atty. Dave Yost, Ohio Attorney General, *Atty. Sandra L. Nimrick,* Senior Assistant Attorney General, 615 West Superior Avenue 11th Floor, Cleveland, OH 44113, *Atty.*

Timothy Gallagher, Fusco Gallagher Porcaro & Monroe LLP, 1215 Superior Avenue East, Suite 225, Cleveland, OH 44114 for Defendants-Appellees.

Dated: September 13, 2021

Robb, J.

{¶1} Plaintiff-Appellant Emma G. Gatewood appeals the decision of the Mahoning County Common Pleas Court dismissing her workers' compensation notice of appeal and complaint for lack of subject matter jurisdiction. The trial court agreed with the motions of Defendants-Appellees United Steelworkers of American (USW) and the Administrator of the Bureau of Workers' Compensation (BWC) and concluded Appellant's failure to name the Administrator in her original notice of appeal deprived the court of jurisdiction in the refiled action after the first action was voluntarily dismissed. Appellant contends her notice of appeal substantially complied with the workers' compensation statute and the failure to name the Administrator did not divest the court of jurisdiction. For the following reasons, the trial court's judgment is affirmed.

STATEMENT OF THE CASE

{¶2} Appellant's husband died of lung cancer in December 2015. She filed a workers' compensation claim, which was denied on March 15, 2018. A staff hearing officer affirmed the denial of the claim in an order mailed on August 21, 2018. An appeal to the Industrial Commission was refused in an order mailed on September 13, 2018.

{¶3} On November 14, 2018, Appellant filed a timely notice of appeal in the common pleas court. *See* R.C. 4123.512 (the appellant shall file the notice of appeal within 60 days after the *receipt* of the order of the commission refusing to hear an appeal). In that action, 2018 CV 2755, she named as defendants: USW; V & A Risk Services; Ohio Group Management LLC; and entities related to Youngstown Sheet and Tube and LTV Steel. Appellant's complaint also named "the Ohio Attorney General as LTV Steel is bankrupt" and O'Halloran and Ohanian LLC, but she subsequently dismissed these defendants. (2/20/19 J.E. & 3/8/19 J.E.).

{¶4} Appellant simultaneously filed a timely complaint. *See* R.C. 4123.512(D) (within 30 days of the notice of appeal, the claimant shall file a petition, also called a

complaint, which shows a cause of action to participate in the fund and sets forth the basis of the court's jurisdiction).

{¶5} On February 18, 2019, USW filed a motion to dismiss alleging a lack of subject matter jurisdiction as Appellant's notice of appeal did not name the Administrator in violation of R.C. 4123.512(B), which states the "notice of appeal shall state the names of the administrator of workers' compensation, the claimant, and the employer * * *."

{¶6} On March 5, 2019, without seeking leave, Appellant attempted to electronically file an amended notice of appeal to add the Administrator to the caption and the certificate of service (and to add John Doe employers). The amended notice of appeal was not docketed. (A copy of this amended notice of appeal, which had the electronic filing stamp for March 5, 2019, was attached to USW's 4/10/20 motion to dismiss in the refiled action.)

{¶7} On March 13, 2019, Appellant voluntarily dismissed 2018 CV 2755 under Civ.R. 41(A). Later the same day, the Administrator filed a motion to dismiss for lack of subject matter jurisdiction, which was not addressed due to the dismissal.

{¶8} On March 16, 2020, Appellant filed a second notice of appeal in the trial court, resulting in 2020 CV 621. The notice of appeal disclosed it was a refiled action and cited 2018 CV 2755. The same defendants as named in the original notice of appeal were listed with the addition of the Administrator (and John Doe employers) and the subtraction of the Ohio Attorney General. (Appellant then dismissed the same company she had dismissed from the prior suit.)

{¶9} Appellant simultaneously filed a complaint alleging the right to participate in the fund. Upon motion, the case was transferred to the judge who presided in 2018 CV 2755.

{¶10} In April 2020, USW and the Administrator each filed a motion to dismiss for lack of subject matter jurisdiction under Civ.R. 12(B)(1). USW argued the failure to name the Administrator in the original notice of appeal was jurisdictional and could not be cured in an amended notice of appeal filed four months after the appeal was initiated. It was then urged the one-year savings statute could not be used in this action because the court never acquired jurisdiction in the previously filed action. *See* R.C. 2305.19 (the savings

statute provides the plaintiff may commence a new action within one year after the date of the failure otherwise than upon the merits).[1]

{¶11} The Administrator made similar arguments and also pointed out the amended notice of appeal was not docketed.[2] Both Appellees cited the Supreme Court's *Spencer* case and the legislature's 2014 response.

{¶12} Appellant's August 26, 2020 response urged the March 5, 2019 amended notice of appeal could cure the deficiency in the November 14, 2018 notice of appeal because the deficiency was not jurisdictional due to her substantial compliance with the workers' compensation statute. USW asked to strike this response as it was untimely filed after multiple extensions. Appellant then filed a supplement to her response arguing the trial court had discretion to accept the appeal, similar to an appellate court's discretion in accepting a notice of appeal where the appellant forgets to name a particular appellee, citing law construing an appellate rule.

{¶13} On September 23, 2020, the trial court granted the motions to dismiss for lack of subject matter jurisdiction. The court agreed: "Plaintiff's failure to timely name the BWC Administrator in her previously filed action (Case No. 2018 CV 02755) deprives the Court of subject matter jurisdiction over Plaintiff's instant complaint and notice of appeal." Appellant filed a timely notice of appeal.

ASSIGNMENT OF ERROR

{¶14} Appellant's sole assignment of error contends:

"THE TRIAL COURT ERRED WHEN IT DISMISSED APPELLANT'S APPEAL FOR FAILURE TO NAME THE ADMINISTRATOR OF THE BUREAU OF WORKERS COMPENSATION IN APPELLANT'S ORIGINAL NOTICE OF APPEAL."

{¶15} Appellant's brief argues her original, timely notice of appeal substantially complied with R.C. 4123.512(B). She notes the substantial compliance test is based in

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[1] The parties do not dispute the savings statute applies to a workers' compensation appeal and complaint filed in the common pleas court. *See Lewis v. Connor*, 21 Ohio St.3d 1, 4, 487 N.E.2d 285 (1985) ("in the absence of any provision to the contrary in [the former workers' compensation appeal to court statute], the savings statute applies"). *See also* R.C. 4123.512(D) ("the claimant may not dismiss the complaint without the employer's consent if the employer is the party that filed the notice of appeal to court").

[2] The Administrator also pointed out the savings statute's one-year period (beginning on the March 13, 2019 dismissal) had already expired when the action was refiled on March 16, 2020. As Appellant responded, the state of Ohio tolled the time deadlines on March 27, 2020 due to the pandemic, and this tolling was retroactive to March 9, 2020. *See* Am.Sub.H.B. 197, Section 22.

the judicial principle that cases should be determined on their merits, citing *Fisher v. Mayfield*, 30 Ohio St.3d 8, 11, 505 N.E.2d 975 (1987). Appellant describes the failure to name the administrator as a clerical error. She claims there was "sufficient information, in intelligent form, to place on notice all parties to a proceeding that an appeal has been filed from an identifiable final order" quoting *Fisher* at paragraph two of the syllabus. Appellant's brief does not discuss the Supreme Court's *Spencer* case.

{¶16} Appellees point out there is no inherent right to appeal a workers' compensation decision to the common pleas court; the right is conferred solely by statute. *See Felty v. AT&T Techs. Inc.*, 65 Ohio St.3d 234, 237, 602 N.E.2d 1141 (1992). They further quote: "naming proper parties and fulfilling service requirements are jurisdictional requirements in cases that involve statutes that clearly require such for jurisdiction." *Spencer v. Freight Handler, Inc.*, 131 Ohio St.3d 316, 2012-Ohio-880, 964 N.E.2d 1030, ¶ 19. Appellees emphasize the Court's call for the legislature to change a prior version of the workers' compensation statute to clarify whether naming the administrator was jurisdictional and the legislature's 2014 changes in response to *Spencer*.

{¶17} Appellees argue: Appellant failed to file a notice of appeal which complied with R.C. 4123.512(B) within the 60-day deadline; this failure to vest jurisdiction within the time for filing the appeal cannot be remedied by an untimely amended notice of appeal or a dismissal and refiling; and there was nothing to be "saved" by R.C. 2305.19 as the original action was a nullity due to a jurisdictional flaw in the notice of appeal. It is additionally noted the amended notice of appeal was not docketed, and the savings statute does not apply if the parties are different.

{¶18} Appellant does not dispute the principle that the savings statute cannot be utilized if the court lacked jurisdiction in the previously-filed action.

{¶19} "Where a notice of appeal is filed within the time prescribed by [the workers' compensation statute] and the action is dismissed without prejudice after expiration of that time, R.C. 2305.19, the savings statute, is applicable to workers' compensation complaints filed in the common pleas court." *Lewis v. Connor*, 21 Ohio St.3d 1, 4, 487 N.E.2d 285 (1985) (unless the workers' compensation statute is amended to say otherwise). The question is whether a sufficient notice of appeal was filed to vest the

common pleas court with jurisdiction in the 2018 case where Appellant failed to name the Administrator in the notice of appeal.

{¶20} The right to appeal an order of a staff hearing officer from which the Industrial Commission has refused to hear an appeal is established in R.C. 4123.512(A). The statute shall be liberally construed in favor of the employee and the dependents of a deceased employee. *See* R.C. 4123.95. The appellant shall file the notice of appeal with the described court of common pleas within sixty days after the date of receipt of the order of the commission refusing to hear an appeal of a staff hearing officer's decision. R.C. 4123.512(A). "The filing of the notice of the appeal with the court is the only act required to perfect the appeal." *Id.* The next division states:

> (B) The notice of appeal shall state the names of the administrator of workers' compensation, the claimant, and the employer; the number of the claim; the date of the order appealed from; and the fact that the appellant appeals therefrom.
>
> The administrator, the claimant, and the employer shall be parties to the appeal and the court, upon the application of the commission, shall make the commission a party. The party filing the appeal shall serve a copy of the notice of appeal on the administrator at the central office of the bureau of workers' compensation in Columbus. The administrator shall notify the employer that if the employer fails to become an active party to the appeal, then the administrator may act on behalf of the employer and the results of the appeal could have an adverse effect upon * * *.

R.C. 4123.512(B). (Formerly R.C. 4123.519, renumbered in 1993). As explained below after our review of some historical case law, a notable distinction has been drawn between the first and second paragraphs of division (B).

{¶21} The Supreme Court previously required strict compliance with the workers' compensation statute in order to invoke the jurisdiction of the common pleas court. *Cadle v. General Motors Corp.*, 45 Ohio St.2d 28, 340 N.E.2d 403 (1976). The Court then adopted a substantial compliance test. *See, e.g., Mullins v. Whiteway Mfg. Co.*, 15 Ohio St.3d 18, 21, 471 N.E.2d 1383 (1984) (in examining the sufficiency of a notice of appeal, the Court considered "whether appellant has substantially complied with the statutory

appeal provisions and whether the purpose of the unsatisfied provision is sufficiently important to require compliance for jurisdictional purposes" and concluded the failure to include the date of the order being appealed was not jurisdictional).

{¶22} Subsequently, the Supreme Court described the items listed in the first paragraph of division (B) of R.C. 4123.512 as the "jurisdictional dictates" or "elements" of the notice of appeal but said substantial compliance would suffice. *Fisher v. Mayfield*, 30 Ohio St.3d 8, 9, 11, 505 N.E.2d 975 (1987), paragraph one of the syllabus ("The jurisdictional requirements of R.C. 4123.519 are satisfied by the filing of a timely notice of appeal which is in substantial compliance with the dictates of that statute."). "Substantial compliance for jurisdictional purposes occurs when a timely notice of appeal filed pursuant to R.C. 4123.519 includes sufficient information, in intelligible form, to place on notice all parties to a proceeding that an appeal has been filed from an identifiable final order which has determined the parties' substantive rights and liabilities." *Id.* at paragraph two of the syllabus.

{¶23} Appellees also rely on the Supreme Court's *Spencer* case and the legislative changes in response thereto. When *Spencer* was decided, the second paragraph of division (B) in R.C. 4123.512 contained the current language stating the administrator shall be a party to the appeal and shall be served at the central office of the bureau of workers' compensation. However, the first paragraph in division (B) did not include "the administrator of workers' compensation" where it says, "The notice of appeal shall state the names of * * *." At that time, the first paragraph of division (B) only listed "the claimant and the employer" as the names to be stated in the notice of appeal.

{¶24} The claimant in *Spencer* did not name the BWC administrator as an appellee in the notice of appeal (or complaint). *Spencer v. Freight Handlers Inc.*, 131 Ohio St.3d 316, 2012-Ohio-880, 964 N.E.2d 1030, ¶ 3 (and did not serve the administrator at the central office). The claimant thereafter filed a motion for leave to amend the complaint to name the administrator. *Id.* at ¶ 5. The trial court dismissed for lack of subject matter jurisdiction. The Supreme Court found the failure to name the administrator was not jurisdictional under the version of the statute being evaluated.

{¶25} In doing so, the Court described "the first paragraph of R.C. 4123.512(B)" as containing "what a valid notice of appeal must contain: 'The notice of appeal shall state

the names of the claimant and the employer, the number of the claim, the date of the order appealed from, and the fact that the appellant appeals therefrom.'" *Spencer,* 131 Ohio St.3d 316 at ¶ 9. The Court agreed the first paragraph of division (B) listed the jurisdictional items but found the second paragraph did not address jurisdiction. *Id.* at ¶ 10, 12.

{¶26} The Court concluded there was "complete compliance" with the required contents of the notice of appeal notwithstanding the failure to name and serve the administrator, finding the second paragraph was not a continuation of the first paragraph and did not provide additional contents of the notice of appeal. *Id.* at ¶ 17. "Instead, the second paragraph lists a number of things that are required in addition to or subsequent to a notice of appeal. Because the statute's jurisdictional requirements are explicitly limited to filing a notice of appeal, the additional requirements in the second paragraph of subsection (B) are not jurisdictional." *Id.* Thus, naming the administrator in the notice of appeal was not jurisdictional under that version of the first paragraph of R.C. 4123.512(B). *Id.* at ¶ 17-23 ("under the current statutory scheme the administrator need not be included in the notice of appeal to invoke the subject-matter jurisdiction of the court").

{¶27} In emphasizing how the first paragraph of division (B), which sets forth the contents of the notice of appeal, did not list the administrator, the Court observed: "The General Assembly could have easily added the administrator as a party to be named in the notice of appeal, but it did not do so." *Spencer,* 131 Ohio St.3d 316 at ¶ 20. The Court "urge[d] the General Assembly to clarify the jurisdictional requirements for initiating a workers' compensation appeal" after concluding: "The only *jurisdictional requirement* for a workers' compensation appeal is to file with the court a notice of appeal that states *the names of the* claimant and employer, the claim number, the date of the order being appealed from, and the fact that the appellant is appealing from the order. Naming and sending notice to the administrator are simply not on this list." *Id.* at ¶ 21, 23.[3]

{¶28} Two years after the *Spencer* Court emphasized the statute's failure to list the administrator amongst the jurisdictional elements within the first paragraph of division

[3] Although not a jurisdictional requirement under the prior version of the statute, the Court pointed out "the appeal could be dismissed pursuant to Civ.R. 19, for failure to name an indispensable party." *Spencer,* 131 Ohio St.3d 316 at ¶ 21-22 (also noting the court could allow the complaint to be amended to add a necessary party under Civ.R. 21). The case was remanded to the trial court.

(B) and urged the legislature to clarify whether naming the administrator was a jurisdictional requirement, the legislature amended the first paragraph of division (B) by adding the administrator to the beginning of the list of parties to be named in the notice of appeal. The first paragraph of division (B) now states: "The notice of appeal shall state the names of the administrator of workers' compensation, the claimant, and the employer; the number of the claim; the date of the order appealed from; and the fact that the appellant appeals therefrom." R.C. 4123.512(B) (eff. 9/17/14). This addition would appear to be a direct response to the suggestion and request of the Supreme Court in *Spencer*.

{¶29} As pointed out in USW's brief, the Supreme Court subsequently mentioned and distinguished *Spencer* in the context of a different statute. In *Pryor*, a notice of appeal from an unemployment decision to the common pleas court properly named the director of ODJFS (Ohio Department of Job and Family Services) but failed to name the employer (United States Department of the Army). *Pryor v. Dir., Dept. of Job & Family Servs.*, 148 Ohio St.3d 1, 2016-Ohio-2907, 68 N.E.3d 729, ¶ 8. The Supreme Court concluded the naming of the employer was not jurisdictional under the particular statute at issue.

{¶30} The unemployment statute being evaluated in *Pryor* provided a thirty-day deadline and the location for filing the appeal in R.C. 4141.282(A)-(B). The next two divisions provided: "(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.[4] The notice of appeal shall identify the decision appealed from"; and (D) "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." R.C. 4141.282(C)-(D).

{¶31} The Court began with the premise: "When a statute confers a right to appeal, the appeal can be perfected only in the mode the statute prescribes." *Pryor*, 148 Ohio St.3d 1 at ¶ 12 (compliance with the statute's specific mandatory requirement is

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[4] The Supreme Court also noted the language in the workers' compensation statute evaluated in *Spencer* was "more open-ended" as it said "to perfect the appeal" while the unemployment statute specified "to perfect the appeal and vest jurisdiction in the court."

essential to invoke the court's jurisdiction).[5] Yet, it was then pointed out, "not every requirement, even if mandatory, is jurisdictional in nature." *Id.* at ¶ 15. The *Pryor* Court observed: as the filing of the notice of appeal was the only act required to perfect the workers' compensation appeal, the *Spencer* Court "looked to the rest of the statute to see what 'filing of the notice of appeal' entailed: [listing the requirements in the first paragraph of R.C. 4123.512(B)]." *Id.* at ¶ 16-17, citing *Spencer,* 131 Ohio St.3d 316 at ¶ 9.

{¶32} "Because R.C. 4123.512(A) expressly sets forth the 'filing of the notice of the appeal' as the only jurisdictional requirement, we concluded that inclusion of the information required in the notice of appeal itself was the only condition precedent to vest jurisdiction." *Id.* at ¶ 17, citing *Spencer,* 131 Ohio St.3d 316 at ¶ 15, 17. Any other requirements were considered "nonjurisdictional items" required "in addition to or subsequent to a notice of appeal." *Pryor*, 148 Ohio St.3d 1 at ¶ 17 (such as labeling the individuals as particular parties as opposed to the jurisdictional requirement to "state the names of" those listed in the first paragraph of division (B), which was considered a condition precedent to vesting jurisdiction), citing *Spencer,* 131 Ohio St.3d 316 at ¶ 16-17. The Supreme Court basically confirmed the jurisdictional portions of the statute at issue here (when distinguishing the unemployment compensation statute) and essentially equated division (D) of the unemployment statute to the second paragraph of division (B) in the workers' compensation statute. *See Pryor*, 148 Ohio St.3d 1.

{¶33} Considering *Spencer* and the legislature's response to the call in the *Spencer* case, the naming of the administrator in the notice of appeal is a "jurisdictional requirement for a workers' compensation appeal" just as the naming of the claimant and the employer are jurisdictional requirements. *See Spencer,* 131 Ohio St.3d 316 at ¶ 21.

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[5] This principle of perfecting the appeal only in the manner provided by the *statute* granting the right to appeal distinguishes the case from the law related to the contents of a notice of appeal which are not mandated by statute but are set forth in an appellate rule. Regardless, Appellant no longer relies on the law cited in her untimely supplemental opposition to the motion to dismiss filed below where she cited *Transamerica Ins. Co. v. Nolan*, 72 Ohio St.3d 320, 322, 649 N.E.2d 1229 (1995) ("Pursuant to App.R. 3(A), the only jurisdictional requirement for the filing of a valid appeal is the timely filing of a notice of appeal. When presented with other defects in the notice of appeal, a court of appeals is vested with discretion to determine whether sanctions, including dismissal, are warranted, and its decision will not be overturned absent an abuse of discretion."). A further distinguishing feature is that a notice of appeal initiating an appellate case is filed in and connected to an existing trial court case, whereas an appeal from the Industrial Commission involves the initiation of a new action in the trial court.

See also Pryor, 148 Ohio St.3d 1 at ¶ 17 (the information required to be contained in the notice of appeal itself is a "condition precedent to vest jurisdiction"). To recap, under the prior version of R.C. 4123.512(B), the naming of the administrator was not on the list with the naming of the claimant and the employer, and the Supreme Court voiced the legislature "could have easily added the administrator as a party to be named in the notice of appeal, but it did not do so." *Id.* at ¶ 20. The Court ""urge[d] the General Assembly to clarify the jurisdictional requirements for initiating a workers' compensation appeal." *Id.* at ¶ 23. The legislature then added the administrator as a party to be named in the notice of appeal. R.C. 4123.512(B) (first paragraph).

{¶34} Contrary to Appellant's contention, the notice of appeal did not contain "sufficient information, in intelligible form, to place on notice *all parties* to a proceeding that an appeal has been filed from an identifiable final order * * *." (Emphasis added.) *Fisher*, 30 Ohio St.3d 8 at paragraph two of the syllabus. The administrator was not named in the notice of appeal or the complaint filed the same day, and the administrator was not served. There was no notice to the administrator that an appeal was filed. The failure to name the Administrator was more than a clerical error as claimed by Appellant. The importance of naming the administrator was emphasized in the concurring opinion in *Spencer* (issued before the administrator was added to the jurisdictional list by the legislature upon the Court's prompting). *See Spencer,* 131 Ohio St.3d 316 at ¶ 25-28 (Cupp. J., concurring with two justices signing). The administrator protects the state fund and has the corresponding right to respond to arguments, defend decisions, and approve settlements. *Id.*

{¶35} We conclude the November 14, 2018 notice of appeal filed in the trial court did not substantially comply with the jurisdictional requirements in R.C. 4123.512 due to the failure to name the Administrator in the notice of appeal.

{¶36} We add an observation as to the amended notice of appeal Appellant attempted to file on March 5, 2019. This was long after the deadline for timely appeals, and this amendment was attempted without leave of the trial court. Appellant then voluntarily dismissed the action without having sought leave to amend (and waiting for a ruling by the trial court, which could have been appealed if it resulted in a denial of leave

and dismissal of the case). Even if the issue was not jurisdictional then, Appellant did not follow through with the attempted amendment before dismissal.

{¶37} Notably, Appellant's brief does not rely on the May 5, 2019 attempt to amend the original notice of appeal as a jurisdictional cure (mentioning the document only in the reply brief). Rather, Appellant argues the original notice of appeal substantially complied with the list of jurisdictional requirements in the statute and thus did not deprive the trial court subject matter jurisdiction. As Appellees point out, the savings statute cannot be applied against a party in whose favor the statute of limitations has run where that party was not a defendant in the earlier lawsuit. *See, e.g., Purushealth L.L.C. v. Day Ketterer L.L.P.*, 2019-Ohio-2002, 136 N.E.3d 923, ¶ 35 (8th Dist.).

{¶38} In conclusion, the parties agree the savings statute cannot be relied upon if an appeal was never perfected by the filing of a notice of appeal in substantial compliance with the jurisdictional requirements of R.C. 4123.512. *See Fisher,* 30 Ohio St.3d 8 at paragraph two of the syllabus (defining substantial compliance with workers' compensation appeal statute); *Lewis* 21 Ohio St.3d at 4 (the savings statute applies if the workers' compensation notice of appeal is *filed within the prescribed time* and dismissed after the expiration of that time). As we conclude a notice of appeal substantially complying with the jurisdictional requirements was not timely filed, Appellant could not use the savings statute to refile the notice of appeal and complaint within a year after the voluntary dismissal. Appellant's assignment of error is overruled.

{¶39} As a final note, Appellant's reply brief raises a new argument. Appellant claims the Administrator was not named as an "interested party" in the Industrial Commission's decision refusing to hear the appeal of the staff hearing officer's decision, noting the Commission listed the BWC Law Director as a recipient of the order. Citing an additional holding in the *Pryor* case, Appellant claims this rendered the order improper and non-final.

{¶40} A reply is not the proper place for new arguments. *See State v. Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034, 19 N.E.3d 900, ¶ 18; *Oxford Mining Co. LLC v. Ohio Gathering Co. LLC*, 7th Dist. Belmont No. 19 BE 0016, 2020-Ohio-1363, ¶ 73.

{¶41} Regardless, as reviewed supra, *Pryor* applied the unemployment compensation statute, which is distinct from the workers' compensation statute in various

ways. In addition to the holding reviewed supra, the *Pryor* Court also held: "the commission's decision did not meet the procedural requirements of R.C. 4141.282(D) because it did not identify the Army, Pryor's former employer, as an interested party. Pryor's 30–day period to appeal, therefore, never started." *Pryor*, 148 Ohio St.3d 1 at ¶ 20

{¶42} However, on this topic, the unemployment compensation statute specifically stated: "*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." (Emphasis added.) R.C. 4141.282(D). The workers' compensation statute we are applying here does not contain a similar mandate as to the content of the order, and Appellant provides no support for the application of such a requirement to the workers' compensation order in the absence of a statutory mandate. As such, the argument improperly raised for the first time in the reply brief is without merit.

{¶43} For the foregoing reasons, the trial court's judgment is affirmed.

Donofrio, P J., concurs.

D'Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate P judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.rocedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.