

RENDERED: November 7, 1997; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 96-CA-1223-MR

MARLENA LYNCH, d/b/a
GENTLE COMPANIONS

APPELLANT

V. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER L. CRITTENDEN, JUDGE
ACTION NO. 96-CI-202

KENTUCKY UNEMPLOYMENT INSURANCE
COMMISSION; KENTUCKY DIVISION OF
UNEMPLOYMENT INSURANCE; TRACEY
HERITAGE; and SUSAN RYAN

APPELLEES

OPINION AFFIRMING

* * * * *

BEFORE: BUCKINGHAM, GUDGEL, and HUDDLESTON, Judges.

GUDGEL, JUDGE: This is an appeal from an order entered by the Franklin Circuit Court dismissing an appeal from a decision of the Kentucky Unemployment Insurance Commission (commission). For the reasons stated hereafter, we affirm.

In March 1995, a Kentucky Division of Unemployment Insurance (division) referee affirmed determinations that two alleged former employees of appellant were entitled to receive unemployment benefits. Appellant responded by filing an application for review before the commission, naming the division

and the alleged employees as the appellees. The commission affirmed the referee's decision in January 1996.

In February 1996, appellant filed a complaint in the circuit court seeking judicial review of the "determination of the Commissioners of the Kentucky Division of Unemployment Insurance, rendered January 19, 1996 that she is a covered employer for purposes of unemployment compensation contribution." Named as defendants/appellees in the caption of the case were the alleged employees and the "Commissioners Kentucky Division of Unemployment Insurance." Appellant further caused the issuance of a civil summons to the division, with service effected upon one of the division's auditors.

The division filed a motion to dismiss the complaint, asserting that the circuit court lacked subject-matter jurisdiction both because the commission was not named in the complaint, and because process was improperly issued and served. Although appellant then attempted to amend the complaint to add the commission as a party, the division renewed its motion for dismissal for lack of subject-matter jurisdiction. In April 1996, the circuit court dismissed the appeal for failure to comply with the mandatory provisions of KRS 341.450(1). This appeal followed.

A party may appeal from an unemployment compensation determination by timely filing with the "division" a written statement indicating that intent. A referee shall then hear the appeal and render a decision. See KRS 341.420; 787 KAR 1:110.

The referee's decision may be appealed to the "commission," which is defined for purposes of KRS Chapter 341 as the Unemployment Insurance Commission. See KRS 341.005(3); KRS 341.430. That three-person commission serves "as an appeals board to hear and decide appeals filed in accordance with the provisions of KRS 341.430." KRS 341.115. An appeal from the commission's decision may be taken to the circuit court pursuant to KRS 341.450, which provides in pertinent part as follows:

- (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.
- (2) Summons shall issue upon the complaint directing the commission to file answer within twenty (20) days after service thereof. Such summons shall be served upon a member of the commission, or upon such person as the commission designates, and such service shall be deemed complete service upon all

members of the commission.
(Emphasis added.)

Here, as noted above, the record shows that appellant initially named the division rather than the commission as the defendant in her appeal to the circuit court. Thus, appellant's initial complaint clearly did not name and join the proper parties pursuant to KRS 341.450. Contrary to appellant's contention, such an error was fatal rather than inconsequential. See Kentucky Unemployment Insurance Commission v. Carter, Ky., 689 S.W.2d 360 (1985); Fisher v. Kentucky Unemployment Insurance Commission, Ky. App., 880 S.W.2d 891 (1994); Board of Adjustments of City of Richmond v. Flood, Ky., 581 S.W.2d 1 (1978). Further, appellant clearly erred by serving a summons upon persons other than those expressly authorized in KRS 341.450(2) to accept receipt of such service.

Moreover, we do not agree with appellant's contention that the circuit court erred by failing to permit her to amend the complaint pursuant to CR 15.01. Indeed, it is well established that the requirements for perfecting statutorily-authorized appeals are mandatory, and that the Kentucky Rules of Civil Procedure do not apply to a statutorily-authorized appeal from an administrative action until the appeal has been perfected and the circuit court has properly acquired jurisdiction. See Flood, *supra*; Cabinet for Human Resources v. Holbrook, Ky. App., 672 S.W.2d 672 (1984); Compton v. American Commercial Barge Line, Ky. App., 664 S.W.2d 950

(1984). Hence, because appellant failed to name and join the commission as a defendant in her initial complaint on appeal, subject-matter jurisdiction over the action was not properly acquired and the circuit court did not err by dismissing the proceeding.

The court's order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

William H. Van Herp
Covington, KY

BRIEF FOR KENTUCKY DIVISION
OF UNEMPLOYMENT INSURANCE:

Randall K. Justice
Frankfort, KY