

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001697-MR

DONNA J. PETREY

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER L. CRITTENDEN, JUDGE
ACTION NO. 02-CI-01667

DIVISION OF UNEMPLOYMENT
INSURANCE AND
NORTHERN KY MH/MR BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE, AND TACKETT, JUDGES.

BUCKINGHAM, JUDGE: Donna Petrey appeals an order of the Franklin Circuit Court granting a motion of the Division of Unemployment Insurance to dismiss her complaint. The circuit court dismissed the complaint because Petrey did not name the Kentucky Unemployment Insurance Commission as a party, thereby failing to comply with KRS¹ 341.450(1). Because strict

¹ Kentucky Revised Statutes.

compliance with the terms of the statute is required for the circuit court to exercise jurisdiction, we affirm.

Petrey provided care for the mentally handicapped in her home under an agreement with the Northern Kentucky Mental Health/Mental Retardation Board (Board). After her contract with the Board was terminated on June 27, 2002, Petrey filed a claim for unemployment compensation benefits. Her claim was denied by the Kentucky Division of Unemployment Insurance, and thereafter by the Kentucky Unemployment Insurance Commission (Commission), on the ground that she had not been an employee of the Board but had been an independent contractor.

Petrey appealed the Commission's decision to the Franklin Circuit Court (2002-CI-01667), which dismissed the appeal in an order entered on July 22, 2003. It did so on the ground that it lacked jurisdiction to hear the case because Petrey had failed to name the Commission as a defendant. Petrey then appealed the dismissal of her case to this court (2003-CA-001697).

Meanwhile, however, Petrey had resubmitted an appeal of the same Commission decision to the Franklin Circuit Court (2003-CI-00602). She attempted to join her appeal with an appeal by Patricia Howard, a woman who was similarly challenging a ruling that she had not been an employee of the Board but had been an independent contractor.

The circuit court dismissed the Petrey/Howard appeal in an order entered on July 22, 2003, the same day as the order dismissing the earlier suit. Petrey appealed this second dismissal (2003-CA-001698). This court dismissed that appeal earlier this year.

Petrey submitted a brief in the present appeal (2003-CA-1697) that lists both her and Howard as appellants, even though Howard was not a party in the first action that is the subject of this appeal and was not designated in the notice of appeal as required under CR² 73.03(1).

In her brief, Petrey argues that the circuit court acted in an arbitrary and capricious manner in upholding the agency finding that she and Howard were independent contractors rather than employees. She also argues that the circuit court erred in holding that she could not join with Howard in appealing the agency decision. These arguments are not relevant to the present appeal.

The circuit court order from which Petrey appeals dismissed her case (2002-CI-1667) on the sole ground that it lacked jurisdiction over the appeal due to her failure to name the Commission as a party. The circuit court did not reach the merits of the appeal. The joinder issue was pertinent only in circuit court action 2003-CI-00602, which, as we have noted, was

² Kentucky Rules of Civil Procedure.

dismissed by the circuit court and thereafter was dismissed on appeal by this court. The only issue that may be considered here is whether the circuit court properly dismissed the first action (2003-CI-1667) for failure to name the Commission as a party.

KRS 341.450(1) states in pertinent part:

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 or reimbursing employer account is affected by such claims. (Emphasis added.)

In the complaint she filed in the circuit court, Petrey named as defendants/appellees the Division of Unemployment Insurance and the Northern Kentucky Mental Health/Mental Retardation Board. She characterizes her failure to name the Commission as a party as a "clerical misprision." She urges us to apply a standard of substantial compliance with the statute, arguing that because she named the "full Commission of the Division of Unemployment Insurance" in the first sentence of the body of her complaint, the Commission received adequate notice of suit, particularly since it is located at the same address as the Division of Unemployment Insurance. She argues

that the primary purpose of the statute is to ensure that all parties receive adequate notice. Thus, she asserts that because the requirement was fulfilled in her case, the action was improperly dismissed. She also claims that it is unjust to hold her to a standard of strict compliance with the statute when the Office of the General Counsel also committed various procedural errors, such as allegedly failing to mail a copy of the complaint to the employer (the Board).

But Kentucky case law is very clear that strict compliance with the terms of the statute is necessary to sustain an appeal of an administrative decision.

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.

Board of Adjustments of City of Richmond v. Flood, Ky., 581 S.W.2d 1, 2 (1978)(citations omitted).

"[S]tatutes which require the joinder of certain parties on appeal effectively transform those parties into indispensable ones." Kentucky Unemployment Ins. Com'n v. Providian Agency Group, Inc., Ky. App., 981 S.W.2d 138, 140 (1998)(citing CR 19.01).

In a case factually similar to Petrey's, where the appellant failed to name the employer as a party but argued that he had substantially complied with the statute by mentioning the employer in the recitation of facts and mailing a copy of the complaint to the employer's attorney, the Kentucky Supreme Court stated, "Even if we agreed with the claim, we find no authority before the court to authorize the doctrine of substantial compliance in a case where the appeal process is statutorily created and implemented." Kentucky Unemployment Ins. Com'n v. Carter, Ky., 689 S.W.2d 360, 361 (1985). Therefore, naming the Commission as a party is one of the conditions precedent to the exercise of jurisdiction by the circuit court. Id. at 362.

As to Petrey's claims that the Office of General Counsel also committed various procedural errors, these do not negate the fact that Petrey failed to comply with the terms of the statute. Petrey's argument that we should apply a "substantial compliance" standard is contrary to precedent. Regarding her argument that we reverse or partially vacate the holding in Flood, we note that as an intermediate appellate court, this court is bound by established precedents of the Kentucky Supreme Court. SCR 1.030(8)(a). The Court of Appeals cannot overrule the established precedents set by our supreme court or its predecessor court. Smith v. Vilvarajah, Ky. App., 57 S.W.3d 839, 841 (2000).

We affirm the order of the Franklin Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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