

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-002191-MR

DARRELL J. CAIN

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE DAVID A. TAPP, JUDGE
ACTION NO. 10-CI-00785

COMMONWEALTH OF KENTUCKY,
KENTUCKY UNEMPLOYMENT INSURANCE
COMMISSION, AND ACTIVE DAY

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, STUMBO, AND WINE, JUDGES.

COMBS, JUDGE: Darrell J. Cain appeals from an order of the Pulaski Circuit Court dismissing his complaint against the Kentucky Unemployment Insurance Commission and Active Day, a medical adult day care facility. We affirm.

Cain is a former employee of Active Day, a company in Somerset that provides transportation for the handicapped and for low-income persons. He had been a van driver. Following his separation from employment in August of 2009, Cain filed an application for unemployment benefits, which was denied. That decision was affirmed by Kentucky's Unemployment Insurance Commission on May 12, 2010.

On June 1, 2010, Cain filed a complaint in the Pulaski Circuit Court seeking judicial review of the Commission's decision against him. The complaint was signed by Cain's attorney, but it was not verified either by his attorney or by him as required by the provisions of Kentucky Revised Statute(s) (KRS) 341.450(1). Based upon this defect, the Commission filed a motion to dismiss for lack of subject matter jurisdiction, which the circuit court granted. This appeal followed.

On appeal, Cain contends that the circuit court erred by concluding that it lacked subject matter jurisdiction. We disagree.

The provisions of KRS 341.450(1) require that a complaint against the Commission "shall be verified by the plaintiff or his attorney." Strict compliance with the statutory requirements for appealing the decision of an administrative agency is necessary in order to invoke the reviewing court's jurisdiction. *Bd. Of Adjustments of City of Richmond v. Flood*, 581 S.W.2d 1 (Ky. 1978). We have held that the verification requirement of KRS 341.450 is both mandatory and jurisdictional. *Pickhart v. U.S. Post Office*, 664 S.W.2d 939 (Ky.App.1983). It is undisputed that the complaint in this case was not verified.

Cain submits that his motion to proceed *in forma pauperis* and the affidavit submitted with that motion should be read in conjunction with the complaint to satisfy the verification requirement. However, Cain's verification of any other document filed in this matter is not material. The statute providing for an appeal to circuit court **required that the complaint be verified**. Because the complaint in this case was not verified, the requirements for invoking the trial court's jurisdiction were not met.

We affirm the order of the Pulaski Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Clayton O. Oswald
J. Warren Keller
London, Kentucky

BRIEF FOR APPELLEE
KENTUCKY UNEMPLOYMENT
INSURANCE COMMISSION:

Patrick B. Shirley
Frankfort, Kentucky