

RENDERED: NOVEMBER 9, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000247-MR

JODY ELAINE KEMP-GONZALEZ

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE ERNESTO SCORSONE, JUDGE
ACTION NO. 10-CI-06703

KENTUCKY UNEMPLOYMENT
INSURANCE COMMISSION and
UNIVERSITY OF KENTUCKY

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, KELLER, AND THOMPSON, JUDGES.

CAPERTON, JUDGE: Appellant, Jody Elaine Kemp-Gonzalez, appeals from an order dismissing her complaint for failure to comply with the verification requirement contained in Kentucky Revised Statute(s) (KRS) 341.450(1). She argues that her attorney's signature upon the complaint constitutes sufficient

compliance with KRS 341.450(1) and that the trial court erred by denying her motion to amend her complaint. We affirm.

Kemp-Gonzalez was terminated from her employment with the University of Kentucky on June 17, 2009. On August 9, 2009, Kemp-Gonzalez filed a claim for unemployment insurance benefits. On July 27, 2010, a hearing officer found that Kemp-Gonzalez was eligible to receive unemployment benefits. The University appealed the decision to the Kentucky Unemployment Insurance Commission. In a two-to-one decision, the Commission reversed the finding of the hearing officer. On November 24, 2010, Kemp-Gonzalez sought judicial review of the Commission's decision in Fayette Circuit Court. The University and the Commission filed motions to dismiss the complaint, arguing that Kemp-Gonzalez failed to satisfy the verification requirement contained in KRS 341.450(1). Following a hearing, the trial court granted the motions to dismiss the complaint and denied Kemp-Gonzalez's motion for leave to file an amended complaint. This appeal followed.

Kemp-Gonzalez first argues that her attorney's signature upon the complaint constitutes substantial compliance with KRS 341.450(1). KRS 341.450(1) states:

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. 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.

In *Board of Adjustments of City of Richmond v. Flood*, 581 S.W.2d 1, 2 (Ky. App. 1978), this 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.

This Court has consistently held that the verification requirement contained in KRS 341.450(1) is mandatory and that the failure to strictly comply with the requirement is fatal. *Fisher v. Kentucky Unemployment Ins. Com'n*, 880 S.W.2d 891 (Ky. App. 1994) *Monyhan v. Kentucky Unemployment Ins. Com'n*, 709 S.W.2d 837 (Ky. App. 1986); *Pickhart v. U.S. Post Office*, 664 S.W.2d 939 (Ky. App. 1984).

In *Fisher*, this Court specifically rejected the argument that an attorney's signature on the complaint sufficiently complied with KRS 341.450(1). 880 S.W.2d at 892. The decision of this Court in *Shamrock Coal Co., Inc. v. Taylor*, 697 S.W.2d 952 (Ky. App. 1985), is distinguishable from the case at bar because

the verification attempt in *Shamrock* was made within the statutory time period. Further, the more recent *Fisher* decision reaffirmed the application of strict compliance with KRS 341.450. Based upon the authority cited above, we conclude that the trial court properly dismissed the complaint.

Kemp-Gonzalez next argues that the trial court erred by denying her motion for leave to file an amended complaint. This Court has held that the doctrine of strict compliance with the statutory requirements for perfecting an appeal preclude the filing of an amended complaint to cure the failure to comply with the verification requirement of KRS 341.450(1). *Fisher, supra; Pickhart, supra*. “The civil rules which would normally permit amendment do not apply to appeals of administrative decisions until after the appeal has been perfected and jurisdiction has attached.” *Cabinet for Human Resources v. Holbrook*, 672 S.W.2d 672, 675 (Ky. App. 1984). We conclude that the trial court properly denied the motion for leave to file an amended complaint.

Accordingly, the order of the Fayette Circuit Court is affirmed.

KELLER, JUDGE, CONCURS.

THOMPSON, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

John Frith Stewart
Crestwood, Kentucky

BRIEF FOR APPELLEE
UNIVERSITY OF KENTUCKY:

Robert L. Roark
Beth A. Howell
Lexington, Kentucky

BRIEF FOR APPELLEE
KENTUCKY UNEMPLOYMENT
INSURANCE COMMISSION:

James C. Maxson
Frankfort, Kentucky