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TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-000676-MR

ALEXANDER LONGSHORE

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE FRED A. STINE, V., JUDGE
ACTION NO. 14-CI-01318

KENTUCKY UNEMPLOYMENT
INSURANCE COMMISSION AND
M&M SERVICE STATION EQUIPMENT

APPELLEES

OPINION
REVERSING
AND REMANDING

** ** * ** * ** *

BEFORE: DIXON, D. LAMBERT AND MAZE, JUDGES.

D. LAMBERT, JUDGE: Alexander Longshore comes before this Court seeking reversal of the Campbell Circuit Court's dismissal of his petition for review of an administrative decision by the Kentucky Unemployment Insurance Commission (hereinafter, "the Commission"). Longshore argues he substantially complied with

the verification requirements mandated by KRS 341.450(1), or in the alternative, that the trial court erred in denying his motion to file an amended petition. We find that Longshore exhibited sufficient effort to comply with the statutory provisions to trigger the application of the doctrine of substantial compliance, and therefore reverse.

This appeal originated as an application for unemployment benefits. Longshore was terminated by his former employer, M&M Service Station Equipment (hereinafter, "M&M"), and filed an application for unemployment benefits on June 8, 2014. The Commission issued its initial Notice of Determination on July 9, 2014. The Commission, in said Notice, concluded Longshore had been fired for misconduct and was disqualified from receiving benefits.

Longshore appealed the initial decision to a referee, who conducted an evidentiary hearing on September 26, 2014. The referee, after hearing the evidence, issued an opinion contradicting and reversing the initial determination on October 23, 2014.

M&M then appealed the referee's decision to the Commission. The Commission reversed the referee's decision and reaffirmed the conclusions reached in the initial Notice of Determination. An order issued by the Commission on December 11, 2014, reflected this ruling.

Longshore filed a petition for judicial review of the Commission's decision before the Campbell Circuit Court on December 29, 2014. Longshore's

brief depicts a peculiar situation leading to the filing of the petition. Longshore filed the petition himself, and not the attorney who prepared it, who was unavoidably otherwise occupied. However, according to counsel's brief to this Court, Longshore unintentionally filed a draft of the brief rather than the final version. This version, while bearing the signatures of both client and counsel, did not bear the signature of a notary public verifying the petition. According to Longshore's brief, the final version, which Longshore's counsel had intended to file, was in fact verified by a notary public.

The Commission and M&M both responded to the petition with a motion to dismiss for lack of jurisdiction, arguing Longshore's failure to properly verify the petition according to the provisions of KRS 341.450(1) was a fatal defect in the invocation of jurisdiction. Longshore filed a response to the motions and moved to amend, seeking to replace the petition filed with the final version bearing the proper verification. The trial court denied Longshore's motion and granted the Commission and M&M's, dismissing the petition for lack of jurisdiction. This appeal followed.

The sole issue presented in this appeal is whether Longshore's failure to strictly comply with the requirements of KRS 341.450(1) deprived the trial court of jurisdiction to review the Commission's ruling. As interpretation of a statute is a question of law, the proper standard of review is *de novo*, without deference to the trial court's ruling. *Wilson v. SKW Alloys, Inc.*, 893 S.W.2d 800, 801-02 (Ky.App. 1995).

Neither party disputes that KRS 341.450(1) controls in situations where claimants seek judicial review of agency decisions relating to unemployment benefits. That provision reads as follows:

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.

KRS 341.450(1).

The Kentucky Supreme Court addressed the verification requirement specifically in *Taylor v. Kentucky Unemployment Ins. Comm'n*, 382 S.W.3d 826 (Ky. 2012), noting that the provision requires strict compliance with the verification procedures. The Supreme Court further concluded that “verification” as used in the provision necessarily implied the administration of an oath by a sworn officer such as a notary public to supplement the veracity of the attestations of the claimant found within the petition. *Id.* at 834 (citing BLACK’S LAW DICTIONARY, 1556 (7th ed. 1999)). The Supreme Court affirmed the dismissal of the claimant’s petition in *Taylor*, but intentionally left open the possible applicability

of the doctrine of substantial compliance when declining to overrule another case in which this Court applied it to similar facts.

The Supreme Court in *Taylor*, distinguished, but did not overrule *Shamrock Coal Co., Inc. v. Taylor*, 697 S.W.2d 952 (Ky.App. 1985) (*abrogated on other grounds by Kentucky Unemployment Ins. Comm'n v. Cecil*, 381 S.W.3d 238 (Ky. 2012)). *Shamrock* stands for the proposition that substantial compliance excuses a failure to fully comply with the verification requirement when the claimant made a good faith effort to do so. In *Shamrock*, the record reflected “the petition filed by [claimant] was verified, though not under oath[,]” and such imperfection in the verification “was no more than a technical defect” according to the Court. *Shamrock* at 953. Even the *Taylor* Court recognized *Shamrock* as authoritative: “[In *Taylor*,] there was no effort at verification at all. . . . If *Shamrock Coal* is our guide for substantial compliance, *Taylor* falls short of that mark.” *Taylor* at 833.

Here the facts unquestionably fall closer to *Shamrock* than to *Taylor*, and we agree with Longshore that the filing of the wrong draft, which included the verification statement, but not the notarized signatures, indicates a good faith attempt at compliance with KRS 341.450(1). Based on this, we conclude that the trial court erred in both denying Longshore’s motion to amend the petition and in dismissing it. Having reached our conclusion on the issue of substantial compliance, Longshore’s alternative argument regarding the denial of the amended petition is obviated.

We reverse the ruling of the Campbell Circuit Court and remand for further proceedings consistent with this opinion.

DIXON, JUDGE, CONCURS.

MAZE, JUDGE, DISSENTS AND FILES A SEPARATE OPINION.

MAZE, JUDGE, DISSENTING: Respectfully, and reluctantly, I must dissent from the majority opinion. As the circuit court correctly noted, there is no appeal to the courts from an action of an administrative agency as a matter of right. *Bd. of Adjustments of City of Richmond v. Flood*, 581 S.W.2d 1, 2 (Ky. 1978). When a statute grants a right of appeal, strict compliance with its terms is required. *Id.* In the absence of strict compliance with the statute, the appeal must be dismissed for lack of jurisdiction. *Id.* See also *Kentucky Unemployment Ins. Comm'n v. Carter*, 689 S.W.2d 360, 362 (Ky. 1985).

The Kentucky Supreme Court specifically addressed the verification requirement of KRS 341.450(1) in *Taylor v. Kentucky Unemployment Ins. Comm'n*, 382 S.W.3d 826, 832 (Ky. 2012). In that case, the complaint was signed by the appellant's counsel, but the complaint did not include any verification provision. The Supreme Court held that the word "verification," as used in the statute, means, "a formal declaration made in the presence of an authorized officer, such as a notary public, by which one swears to the truth of the statements in the document." *Id.* at 834, citing *Black's Law Dictionary*, 1556 (7th ed. 1999). In other words, verification requires the statement of a third party (i.e., the notary or officer administering the oath) showing that the declarant has sworn an oath to the

truthfulness of what is asserted in the document. *Id.* While the mere signature by counsel may be sufficient to meet the certification requirements of CR¹ 11, it was insufficient to meet the verification requirement of KRS 341.450(1). Given the absence of strict compliance with this term, the Supreme Court concluded that the appeal must be dismissed. *Id.*

The majority and Longshore rely upon *Shamrock Coal Co., Inc. v. Taylor*, 697 S.W.2d 952 (Ky. App. 1985), abrogated on other grounds by *Kentucky Unemployment Ins. Comm'n v. Cecil*, 381 S.W.3d 238 (Ky. 2012), for the proposition that substantial compliance is sufficient where a party has made a good-faith effort to comply with the verification requirement. Longshore concedes that the verification statement in his complaint was not signed under oath. However, he argues that it nonetheless constitutes a good-faith effort to comply with the verification requirement.

The Supreme Court in *Taylor* declined to specifically overrule this aspect of *Shamrock Coal*, but instead distinguished its application.

Thus it appears that in *Shamrock Coal*, there was a good faith attempt at verification but that, for reasons the opinion fails to make clear, upon verification there was an irregularity in the administration of the oath. *Id.* The lack of detail in *Shamrock Coal* as to exactly what the defect in the verification was hampers our ability to fully consider the merits of the holding. However, it is apparent that in that case, some definitive effort at verification of the petition was made because the court refers to “a clear attempt at verification.” *Id.* Thus, whereas in *Shamrock Coal*, there was a deliberate and,

¹ Kentucky Rules of Civil Procedure.

presumably, good faith effort at verification, here there was no effort at verification at all. As Taylor noted in his motion to amend his petition, “the original Petition herein inadvertently omitted the verification of the Petitioner.” Consequently, *Shamrock Coal* is easily distinguishable from this case. If *Shamrock Coal* is our guide for substantial compliance, Taylor falls short of that mark.

Taylor, 382 S.W.3d 833.

As an initial matter, this discussion is clearly dicta, as it is addressing a situation that was not before the Court. Furthermore, as the majority correctly notes, this discussion implies that an otherwise deficient administrative appeal could continue based on the substantial compliance doctrine. However, such a reading is at odds with the rest of the decision in *Taylor*. The Court emphasized that verification under oath is a prerequisite for the circuit court to have jurisdiction to hear the appeal. *Id.* at 831-32.

I must conclude that the strict-compliance standard set out in *Taylor* is incompatible with the substantial-compliance approach followed in *Shamrock Coal*. Unfortunately, the above-cited language in *Taylor* has created a great deal of confusion concerning the applicable standard. I would strongly urge our Supreme Court to clearly state that the substantial compliance doctrine has no place in determining the sufficiency of an administrative appeal. Otherwise, we are simply inviting additional litigation over this issue.

I agree with the majority that the application of the strict-compliance doctrine creates a hardship for Longshore. Longshore made a good-faith effort to comply with the requirements of KRS 341.450(1), and his filing of the wrong

version of his complaint was an unfortunate oversight. However, the statute requires that the complaint must be sworn under oath as attested by a third-party. Longshore's petition was clearly deficient in this regard. Since Longshore failed to invoke the circuit court's subject matter jurisdiction within the twenty days allowed by KRS 341.450(1), the circuit court was without authority to grant the motion to amend the petition. Consequently, I would hold that the circuit court properly dismissed the petition.

BRIEF FOR APPELLANT:

Ellen M. Longshore
Alexandria, Kentucky

BRIEF FOR APPELLEE:

Patrick B. Shirley
Education and Workforce
Development Cabinet
Office of Legal and Legislative
Services
Frankfort, Kentucky

Brian F. Eviston
Covington, Kentucky