

RENDERED: DECEMBER 7, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001320-MR

FAYE RENNELL HOBSON

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KELLY MARK EASTON, JUDGE
ACTION NO. 17-CI-00757

COMMONWEALTH OF KENTUCKY,
UNEMPLOYMENT INSURANCE COMMISSION
AND DEPARTMENT OF DEFENSE,
EDUCATION ACTIVITY

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JOHNSON,¹ SMALLWOOD AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Faye Rennell Hobson appeals from an order of the Hardin Circuit Court dismissing her complaint seeking review of an adverse decision of

¹ Judge Robert G. Johnson concurred in this opinion prior to the expiration of his term of office. Release of the opinion was delayed by administrative handling.

the Kentucky Unemployment Commission (KUIC). Based on Kentucky Supreme Court precedent, the circuit court ruled that it was required to dismiss Hobson's complaint because it was not properly verified as required by Kentucky Revised Statutes (KRS) 341.450(1)(a). While the result reached is harsh, the circuit court and this Court are bound by the decisions of this state's highest court. Kentucky Supreme Court Rule 1.030(8). For that reason, we affirm.

Hobson filed a claim for unemployment insurance benefits. The Division of Unemployment Insurance issued a Notice of Determination concluding that Hobson voluntarily quit her employment and disqualified from receiving unemployment benefits. Hobson appealed to a referee who rendered a decision affirming the Notice of Determination.

On April 11, 2017, the KUIC affirmed the referee's decision. Hobson, *pro se*, timely filed a complaint in the Hardin Circuit Court seeking judicial review of KUIC's decision. Although the petition contained Hobson's signature, it did not bear the signature of a notary verifying her signature. KUIC filed a motion to dismiss on the grounds that Hobson failed to verify her complaint as required by KRS 341.450(1).

The circuit court granted the motion and issued an order dismissing the complaint on June 6, 2017. On June 15, 2017, Hobson filed an objection to the circuit court's order, which the circuit court treated as a motion to alter, amend or

vacate. Following a hearing, the circuit court denied the motion. This appeal followed.

The issue presented is whether the verification requirement of KRS 341.450(1) is mandatory. Based on our Supreme Court's interpretation of that statute, this Court must conclude that it is.

KRS 341.450(1) provides that after exhaustion of administrative remedies, any party aggrieved by a decision of the KUIC may secure review by a court if a complaint is filed in the appropriate circuit court within twenty days after the date of the decision. The statute expressly states: "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."

"Verification" is "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." *Taylor v. Kentucky Unemployment Insurance Com'n* 382 S.W.3d 826, 834 (Ky. 2012) (quoting Black's Law Dictionary, 1556 (7th ed. 1999)). Although Hobson signed the complaint, her signature was not verified.

In *Shamrock Coal Co., Inc. v. Taylor*, 697 S.W.2d 952, 953 (Ky.App. 1985) (overruled by *Kentucky Unemployment Ins. Comm'n v. Wilson*, 528 S.W.3d 336 (Ky. 2017)), this Court held that a good faith attempt at verification was sufficient compliance with the verification requirement. Although the *Shamrock*

opinion left unclear why the verification was flawed, implicit in that opinion was that strict compliance with the verification requirement of KRS 341.450(1) was not required. Our Supreme Court would later cast doubt on the viability of any construction of KRS 341.450(1) that requires less than strict compliance.

In *Taylor*, our Supreme Court held the “firmly rooted concept of law in this state that the courts have no jurisdiction over an appeal from an administrative agency action unless every statutory precondition is satisfied[,]” is applicable to KRS 341.450(1)’s verification requirement. *Taylor*, 382 S.W.3d at 831. While the Court stopped short of expressly overruling *Shamrock* and instead distinguished that decision based on the facts, the Court held that verification of the complaint filed pursuant to KRS 341.450(1) is mandatory. Certification of the complaint by either the claimant or an attorney was insufficient to satisfy that requirement. *Id.* at 834. Absent strict compliance with the statute, the Court held that jurisdiction was not conferred upon the circuit court over the controversy. *Id.* at 831.

Our Supreme Court revisited the issue of verification under KRS 341.450(1) in *Wilson*. Noting that it had not directly overruled *Shamrock* and “left the door open for its application by the Court of Appeal[s],” our Supreme Court closed that door by expressly overruling *Shamrock*. *Wilson*, 528 S.W.3d at 340. The Court reaffirmed that because there is no basic right of appeal from an

administrative agency, strict compliance with the preconditions to perfecting an appeal is required. *Id.* at 341. Only “an authorized officer’s statement attesting that [the claimant], or his attorney, swore under oath to the allegations of the complaint” satisfies KRS 341.450(1)’s verification requirement. *Id.*

Our Supreme Court has made clear that unless a verified complaint is filed within the twenty-day limitations period, the circuit court lacks jurisdiction over an appeal from a decision of the KUIC. Because absent jurisdiction the civil rules do not apply, *Board of Adjustments of City of Richmond v. Flood*, 581 S.W.2d 1, 2 (Ky. 1978), the circuit court had no jurisdiction to grant a motion to file a properly verified amended complaint after the twenty-day limitations period. *See Taylor*, 382 S.W.3d at 828 (affirming the circuit court’s ruling that it did not have jurisdiction to grant a motion to file a properly verified amended complaint).

Whether this Court agrees or disagrees with the Supreme Court, we are bound to follow those decisions holding that nothing short of actual verification of a complaint filed pursuant to KRS 341.450(1) within the time-limitations period is sufficient to perfect an appeal from a decision of the KUIC. Hobson failed to comply with the verification requirement and, therefore, we have no alternative but to hold that the circuit court properly dismissed her complaint.

For the reason stated, the order of the Hardin Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE,
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