

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000838-MR

MARK BRENGELMAN

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 16-CI-00475

ELMER C. MAGGARD, Ph.D.

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * ** * ** *

BEFORE: CLAYTON, CHIEF JUDGE; KRAMER AND LAMBERT, JUDGES.

KRAMER, JUDGE: On March 17, 2016, the Kentucky Board of Claims dismissed various claims Elmer C. Maggard asserted against the appellant, Mark Brengelman, in his individual capacity. Maggard filed an original action in Franklin Circuit Court to appeal the Board's order. The circuit court, in turn, entered an order on May 9, 2018, vacating the Board's order and remanding the

matter for a hearing. Brengelman now appeals to this Court. Upon review, we dismiss.

Kentucky Revised Statute (KRS) 49.150(3)¹ mandates that the Board's successor entity, the Kentucky Claims Commission,² shall be a "necessary" party to appeals before the circuit court. If the Commission is necessary at circuit court, it follows that the Commission is also necessary to further appeals and that its absence would render a further appeal to this Court jurisdictionally defective. Indeed, this was our interpretation of KRS 44.140(3),³ the identical predecessor statute of KRS 49.150(3). *See Smith v. Commonwealth, Dep't of Justice*, 686 S.W.2d 831, 832 (Ky. App. 1985). Where the statute is reenacted without change, the legislature's intent is presumed to include the constructions already given to the statute. *See Epling v. Four B & C Coal Co., Inc.*, 858 S.W.2d 216 (Ky. App. 1993) (citing *Inland Steel Co. v. Hall*, 245 S.W.2d 437, 438 (Ky. 1952)).

¹ KRS 49.150(3) provides, "The commission, the state agency, and the claimant shall be necessary parties to such appeals. It shall not be necessary for the commission to file responsive pleadings unless it so desires."

² Maggard filed his appellate action before the Franklin Circuit Court on May 2, 2016. In 2017, KRS Chapter 44 was repealed, amended and reenacted as KRS Chapter 49, and the Kentucky Claims Commission was established as the Board's successor entity.

³ KRS 44.140(3) formerly provided, "The board, the state agency and the claimant shall be necessary parties to such appeals. It shall not be necessary for the board to file responsive pleadings unless it so desires."

Neither party raises as an issue on appeal Brengelman's failure to name the Board as a party, but "[i]t is well-established that failure to name an indispensable party in the notice of appeal results in dismissal of the appeal." *Slone v. Casey*, 194 S.W.3d 336, 337 (Ky. App. 2006). Moreover, the matter of our jurisdiction is an issue we are required to raise *sua sponte*, "as it cannot be acquired by waiver, consent, or estoppel." *Doe v. Golden & Walters, PLLC*, 173 S.W.3d 260, 270 (Ky. App. 2005) (footnotes omitted). In the context of administrative appeals such as the one presented herein,

the courts have no jurisdiction over an appeal from an administrative agency action unless every statutory precondition is satisfied." [*Taylor v. Kentucky Unemployment Insurance Comm'n*, 382 S.W.3d 826, 831 (Ky. 2012)]. As a general rule, "[t]here 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." *Board of Adjustments of City of Richmond v. Flood*, 581 S.W.2d 1, 2 (Ky. 1978) (citations omitted). Statutory preconditions for vesting courts with the authority to engage in judicial review cannot be satisfied by substantial compliance. *See City of Devondale v. Stallings*, 795 S.W.2d 954, 957 (Ky. 1990) ("It is only [when defects are nonjurisdictional in nature] that a discussion of substantial compliance ... is appropriate."). Consequently, at least with respect to the jurisdictional requirements for invoking judicial review of an administrative agency ruling, we have no substantial compliance exception to a statute which grants the right to appeal. *See Kentucky Unemployment Insurance Commission v. Carter*, 689 S.W.2d 360, 361-362 (Ky. 1985).

Kentucky Unemployment Ins. Comm'n v. Wilson, 528 S.W.3d 336, 339 (Ky. 2017)
(footnote omitted).

In short, when an aggrieved party is permitted by statute to appeal an administrative agency decision, the requirements of the statute are mandatory; and a court does not obtain jurisdiction to hear the appeal unless the statutory requirements have been met. *Cabinet for Human Res. v. Holbrook*, 672 S.W.2d 672, 675 (Ky. App. 1984) (citations omitted). Here, in failing to name either the Commission or the Board in his notice of appeal, Brengelman failed to comply with the terms of the statute authorizing his appeal, and effectively deprived this Court of jurisdiction. Accordingly, we DISMISS.

ALL CONCUR.



ENTERED: June 7, 2019

JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

John Marcus Jones
Frankfort, Kentucky

BRIEF FOR APPELLEE:

J. Fox DeMoisey
Louisville, Kentucky