

RENDERED: JULY 10, 2020; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2018-CA-001000-MR

KEMBLE SMITH

APPELLANT

v. APPEAL FROM MARSHALL CIRCUIT COURT  
HONORABLE JAMES T. JAMESON, JUDGE  
ACTION NO. 18-CI-00109

KENTUCKY UNEMPLOYMENT  
INSURANCE COMMISSION AND  
WESTLAKE CHEMICAL

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, GOODWINE, AND KRAMER, JUDGES.

ACREE, JUDGE: Kemble Smith appeals the Marshall Circuit Court's June 6, 2018 order dismissing on jurisdictional grounds his complaint seeking review of a Kentucky Unemployment Insurance Commission (KUIC) decision. We affirm.

## **FACTS AND PROCEDURE**

Smith sought judicial review of the KUIC's denial of his claim for unemployment benefits. KUIC filed a motion to dismiss Smith's complaint for failing to verify his complaint in accordance with Kentucky Revised Statutes (KRS) 341.450(1). Smith responded by stating the oversight was a "clerical error in Appellant's counsel's office in electronically filing the complaint."

The circuit court granted the motion to dismiss. Smith now appeals.

## **STANDARD OF REVIEW**

Review of a circuit court's dismissal on jurisdictional grounds of a complaint seeking review of the KUIC's final order is a question of law. *Kentucky Unemployment Ins. Comm'n v. Wilson*, 528 S.W.3d 336, 339 (Ky. 2017). We "review questions of law *de novo*." *Manning v. Lewis*, 400 S.W.3d 737, 740 (Ky. 2013) (citing *Kentucky Pub. Serv. Comm'n v. Commonwealth ex rel. Conway*, 324 S.W.3d 373, 376 (Ky. 2010) (citation omitted)).

## **ANALYSIS**

Although the circuit court's analysis, citation to authority, and reason for dismissing Smith's complaint are worthy of adoption as our own, our Supreme Court has addressed this very issue in a single case which we quote and apply here.

In *Kentucky Unemployment Insurance Commission v. Wilson*, *supra*, this "Court of Appeals . . . concluded that Appellee Norman Wilson had

substantially complied with the verification requirement of KRS 341.450(1) . . . citing the substantial compliance doctrine implicit in *Shamrock Coal Co. v. Taylor*, 697 S.W.2d 952 (Ky. App. 1985).” *Wilson*, 528 S.W.3d at 338. Our opinion was roundly reversed. As for the case we relied upon, the Supreme Court said, “*Shamrock* was wrongly decided and is hereby overruled.” *Id.* at 340.

Explaining its rejection of a substantial compliance standard for initiating judicial review pursuant to KRS 341.450(1), the Supreme Court said:

In *Taylor* [*v. Kentucky Unemployment Ins. Comm’n*, 382 S.W.3d 826 (Ky. 2012)], we reaffirmed 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.” 382 S.W.3d at 831. 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).

We also noted in *Taylor* a significant line of cases holding that the verification requirement of KRS 341.450(1)

requires strict compliance, and that the attorney's signature alone on the petition could not be regarded as satisfying the statutory requirement for verification.

We believe [*Monyhan*,<sup>[1]</sup> *Pickhart*,<sup>[2]</sup> *Fisher*,<sup>[3]</sup> and *Carter*,<sup>[4]</sup> relied upon by *Fisher*] accurately state the rule in the case before us, and thus we hold that a properly verified complaint is required to invoke circuit court jurisdiction under KRS 341.450(1), and, further, that a CR 11 signature by the claimant's attorney is insufficient to comply with the verification requirements of the statute.

382 S.W.3d at 830.

The Court of Appeals' decision in *Shamrock* is plainly at odds with the principle of strict compliance.

*Id.* at 339 (original footnotes omitted; emphasis added).

Although the circumstances of the unemployment claimant's failure to strictly comply with KRS 341.450(1) in *Wilson* are slightly different, we have no doubt that the opinion in that case requires the same outcome in this case. An opinion in Smith's favor would justly invite a repeat of the rebuke that our opinion is "plainly at odds with the principle of strict compliance." *Id.*

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<sup>1</sup> *Monyhan v. Kentucky Unemployment Insurance Commission*, 709 S.W.2d 837 (Ky. App. 1986).

<sup>2</sup> *Pickhart v. U.S. Post Office*, 664 S.W.2d 939 (Ky. App. 1983).

<sup>3</sup> *Fisher v. Kentucky Unemployment Insurance Commission*, 880 S.W.2d 891 (Ky. App. 1994).

<sup>4</sup> *Kentucky Unemployment Insurance Commission v. Carter*, 689 S.W.2d 360 (Ky. 1985).

**CONCLUSION**

The June 6, 2018 order of the Marshall Circuit Court dismissing Smith's appeal of the KUIC's final order is affirmed.

ALL CONCUR.

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