

IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.

Supreme Court of Kentucky **FINAL**

2004-SC-0308-MR

DATE 11-11-04 E. J. A. Green, Jr. DC.

MARTHA VARNEY

APPELLANT

V.

APPEAL FROM COURT OF APPEALS
2004-CA-0176-OA
PIKE CIRCUIT COURT NO. 2003-CI-0169

EDDY COLEMAN, JUDGE, PIKE CIRCUIT COURT,
AND KENTUCKY UNEMPLOYMENT INSURANCE
COMMISSION

APPELLEES

AND

BURNS INTERNATIONAL SECURITY
SERVICES CORPORATION

REAL PARTY IN INTEREST

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant, Martha Varney, appealed a decision of the Kentucky Unemployment Insurance Commission ("the Commission") to the Pike Circuit Court. The complaint was not sworn to under oath. The statute enabling the appeal requires that the complaint be verified. The Court of Appeals concluded that this was a failure to verify the complaint as required by KRS 341.450. Thus, it held that the circuit court did not have jurisdiction over the case. We agree that verification is a prerequisite to jurisdiction and, therefore, affirm the Court of Appeals.

Varney worked for Burns International Security Services Corporation for almost two years before she was discharged from her job. She then filed for unemployment insurance benefits. She received benefits until the Commission held a hearing on her application. The Commission denied her request.

Varney sought judicial review of the decision by filing a complaint in the Pike Circuit Court. After the complaint was served on Burns, Burns moved to dismiss the complaint on grounds that the complaint did not comply with the requirements of KRS 341.450. Varney responded by filing an amended complaint, which the circuit court allowed. Burns then petitioned the Court of Appeals for a writ to prohibit the trial court from proceeding further in the case and to order it to strike the amended complaint and dismiss the action with prejudice. The Court of Appeals granted the writ. Varney appeals that decision as a matter of right.

Varney persuasively argues that a verified complaint is not a jurisdictional requirement under the Civil Rules. But when reviewing a decision from an administrative agency, the civil rules do not apply until the reviewing court's jurisdiction has been properly invoked. Board of Adjustments of City of Richmond v. Flood, Ky., 581 S.W.2d 1, 2 (1978). Strict compliance with the statutory requirement for appealing an administrative agency's decision is necessary to invoke the reviewing court's jurisdiction. A long line of cases hold that a verified complaint is one of these requirements when seeking review of a ruling by the Commission under KRS 341.450. See, e.g., Fisher v. Kentucky Unemployment Insurance Commission, Ky. App., 880 S.W.2d 891 (1994); Pickhart v. United States Post Office, Ky. App., 664 S.W.2d 939 (1983). A verified complaint must be sworn to under oath. 3 Am. Jur. 2d Affidavits § 8 (online ed. May 2004 update). The complaint in this case was not sworn to; it was not

verified. Consequently, the requirements for invoking the trial court's jurisdiction were not met. We therefore affirm the Court of Appeals.

All concur.

COUNSEL FOR APPELLANT:

Lawrence R. Webster
Billy J. Moseley
P. O. Drawer 712
Pikeville, KY 41502

COUNSEL FOR APPELLEE,
HON. EDDY COLEMAN, JUDGE:

Eddy Coleman
435 Hall of Justice
172 Division Street
Pikeville, KY 41501

COUNSEL FOR APPELLEE,
KENTUCKY UNEMPLOYMENT INSURANCE
COMMISSION:

Randall K. Justice
Workforce Development Cabinet
Office of General Counsel
500 Mero Street
207 Capital Plaza Tower
Frankfort, KY 40621

COUNSEL FOR REAL PARTY IN
INTEREST, BURNS INTERNATIONAL
SECURITY SERVICES CORPORATION:

Susan C. Sears
Catherine Salmen Wright
Dinsmore & Shohl, LLP
Lexington Financial Center, Suite 1400
250 West Main Street
Lexington, KY 40507