[Cite as *Spencer v. FHI, L.L.C.*, 2010-Ohio-5288.]

IN THE COURT OF APPEALS OF MIAMI COUNTY, OHIO

JAMES SPENCER	**:**	
Plaintiff-Appellant	**:**	**C.A. CASE NO. 09-CA-44**
vs.	**:**	**T.C. CASE NO. 09-988**
	:	**(Civil Appeal from**
FHI, LLC, et al.		**Common Pleas Court)**
Defendants-Appellees	**:**	

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O P I N I O N

Rendered on the 29th day of October, 2010.

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GRADY, J.:

{¶ 1} Plaintiff, James Spencer, appeals from an order dismissing his R.C. 4123.512 appeal from a decision of the

Industrial Commission and overruling his motion for leave to amend his petition.

{¶ 2} Spencer filed a workers' compensation claim against Freight Handlers, Inc. ("FHI") for a left shoulder injury he allegedly suffered on October 23, 2008, while lifting at his employment with FHI in Miami County. Spencer's claim ultimately was denied by the Industrial Commission on June 6, 2009.

{¶ 3} On August 7, 2009, Spencer filed a notice of appeal pursuant to R.C. 4123.512 in the Court of Common Pleas of Darke County. Spencer's notice of appeal did not name the Administrator of the Bureau of Workers' Compensation ("Administrator") as a party to the appeal, and Spencer failed to serve a copy of the notice of appeal on the Administrator "at the central office of the bureau of workers' compensation in Columbus" as required by R.C. 4123.512(B). On September 3, 2009, Spencer filed the petition required by R.C. 4123.512(D), but he neither served a copy on the Administrator nor named the Administrator as a party in the petition.

{¶ 4} On September 11, 2009, FHI filed a motion to dismiss for lack of subject matter jurisdiction and/or for failure to join a necessary party based on Spencer's failures to name the Administrator as a party and serve the Administrator with a copy of the notice of appeal. Alternatively, FHI's motion sought to

transfer the case to the Common Pleas Court of Miami County for decision on its motion to dismiss, because Spencer's injury occurred in Miami County, not in Darke County. R.C. 4123.512(A) requires the notice of appeal to be filed in "the court of common pleas of the county in which the injury was inflicted ***."

{¶ 5} In response to FHI's motion, Spencer filed a motion for leave to amend his petition and to transfer the case to the Miami County Court. Spencer attached an amended petition to his motion for leave to amend and served a copy of the amended petition on the Administrator at the central office of the bureau of workers' compensation in Columbus. On October 8, 2009, the Court of Common Pleas of Darke County transferred the case to the Court of Common Pleas of Miami County pursuant to R.C. 4123.512(A).

{¶ 6} On October 27, 2009, the Administrator filed an Answer to Spencer's amended petition. Two days later, the Court of Common Pleas of Miami County granted FHI's motion to dismiss for lack of subject matter jurisdiction and overruled Spencer's motion to amend his petition. Spencer filed a timely notice of appeal.

ASSIGNMENT OF ERROR

{¶ 7} "THE TRIAL COURT ERRED WHEN IT HELD IT LACKED SUBJECT MATTER JURISDICTION TO HEAR APPELLANT JAMES SPENCER'S NOTICE OF APPEAL."

{¶ 8} The trial court found that it lacked subject matter

jurisdiction to decide Spencer's appeal "because the Plaintiff did not name the Administrator as a party in the notice of appeal and did not serve the notice as required by O.R.C. 4123.512(B)." The trial court concluded:

{¶ 9} "Since neither Court had jurisdiction, the defect cannot be corrected by the amendment of the pleadings or otherwise. The safe harbor provision of O.R.C. 4123.512(A) which allows the transfer of the case to a court with proper venue and jurisdiction does not apply because neither the Darke County Common Pleas Court or this Court ever had subject matter jurisdiction.

{¶ 10} "Accordingly, the Court lacks subject matter jurisdiction. The motion for leave to amend the complaint is moot and therefore overruled." (Dkt. 3.)

{¶ 11} R.C. 4123.512(A) confers a right on a claimant to appeal from an order of the Industrial Commission to the court of common pleas of the county in which the alleged injury occurred. R.C. 4123.512(A) further provides:

{¶ 12} "The appellant shall file the notice of appeal with a court of common pleas within sixty days after the date of the receipt of the order appealed from or the date of receipt of the order of the commission refusing to hear an appeal of a staff hearing officer's decision under division (D) of section 4123.511 of the Revised Code. The filing of the notice of the appeal with the

court is the only act required to perfect the appeal.

{¶ 13} "If an action has been commenced in a court of a county other than a court of a county having jurisdiction over the action, the court, upon notice by any party or upon its own motion, shall transfer the action to a court of a county having jurisdiction."

{¶ 14} Spencer filed a notice of appeal in the Court of Common Pleas of Darke County. The notice should have been filed in the Court of Common Pleas of Miami County, where the injury occurred. Although at one point in time this would have resulted in a dismissal for lack of subject matter jurisdiction, *Heskett v. Kenworth Truck Co.* (1985), 26 Ohio App.3d 97, R.C. 4123.512(A) now contains a safe harbor provision that required the transfer of Spencer's appeal from Darke County to Miami County. Further, R.C. 4123.512(A) provides that "[t]he filing of the notice of appeal with the court is the only act required to perfect the appeal." Therefore, if Spencer's notice of appeal complied with the jurisdictional requirements of R.C. 4123.512(B), he could rely on his filing date in Darke County and his notice of appeal would be timely filed pursuant to R.C. 4123.512(A).

{¶ 15} R.C. 4123.512(B) provides for the contents of the notice of appeal and identifies the parties to the appeal:

{¶ 16} "The notice of appeal shall state the names of the claimant and the employer, the number of the claim, the date of

the order appealed from, and the fact that the appellant appeals therefrom.

{¶ 17} "The administrator of workers' compensation, the claimant, and the employer shall be parties to the appeal and the court, upon the application of the commission, shall make the commission a party. The party filing the appeal shall serve a copy of the notice of appeal on the administrator at the central office of the bureau of workers' compensation in Columbus. The administrator shall notify the employer that if the employer fails to become an active party to the appeal, then the administrator may act on behalf of the employer and the results of the appeal could have an adverse effect upon the employer's premium rates."

{¶ 18} It is undisputed that the contents of Spencer's notice of appeal satisfied the five requirements that the first paragraph of R.C. 4123.512(B) imposes. However, neither the notice of appeal nor the subsequent petition that Spencer filed pursuant to R.C. 4123.512(D) named the Administrator as a party. Neither was the Administrator served with a copy of the notice of appeal in the manner that R.C. 4123.512(B) requires. Instead, copies were mailed to an attorney in Cincinnati who apparently represented the Bureau of Workers' Compensation in the proceedings before the Industrial Commission.

{¶ 19} In *Jarmon v. Ford Motor Company* (April 30, 1996), Franklin App. No. 95APE10-1377, the Tenth District held that the failure to name the Administrator as a party did not deprive the court of common pleas of subject matter jurisdiction:

{¶ 20} "In oral argument, Ford relied upon the R.C. 4123.512(B) language that 'the administrator [of the bureau of worker's compensation], the claimant, and the employer shall be parties *to the appeal* *,' asserting plaintiff's letter did not comply with R.C. 4123.512(B) because the letter did not name the administrator as a party. Despite Ford's construction, R.C. 4123.512(B) provides separate requirements for a valid *notice of appeal* and for naming parties to *the appeal* itself. *Milenkovich v. Drummond* (1961), 88 Ohio Law Abs. 103, 104, 181 N.E.2d 814; *Goricki v. General Motors Corp.* (Dec. 31, 1985), Trumbull App. No. 3527, unreported, citing *Milenkovich*, supra. According to the plain language of the statute, the notice of appeal must state only the five factors set forth above; it need not state the administrator's name. *Goricki*, supra. The court's jurisdiction depends on timely filing the notice of appeal, not on naming within the notice the administrator or the necessary parties to the appeal itself. *Goricki*, supra, citing *Singer Sewing Machine*, supra.[] Accordingly, plaintiff's failure to name the administrator in her letter does not warrant dismissal for lack of jurisdiction." (Emphasis in original.)**

{¶ 21} As noted in *Jarmon*, the Ninth and Eleventh Districts have also held that the naming of the Administrator as a party is not a

jurisdictional requirement when filing a notice of appeal. *Karnofel v. Cafaro Management Co.* (June 26, 1998), Trumbull App. No. 97-T-0072 (citations omitted); *Goricki v. General Motors Corp.* (Dec. 31, 1985), Trumbull App. No. 3527; *Milenkovich v. Drummond* (1961), 88 Ohio Law Abs. 103, 181 N.E.2d 814.

{¶ 22} We agree with these other appellate districts that a failure to name the Administrator in the notice of appeal or to serve the Administrator with the notice of appeal does not deprive a court of common pleas of subject matter jurisdiction to hear an R.C. 4123.512 appeal. R.C. 4123.512(A) provides that the filing of a notice of appeal perfects an appeal authorized by that section. The first paragraph of R.C. 5123.512(B) identifies the matters the notice must contain in order to be valid: the names of the claimant and the employer, the number of the claim, the date of the order appealed from, and the fact that the appellant appeals therefrom. Failure to include these matters in a notice of appeal which is filed may be fatal to the court's jurisdiction because the notice is then not valid. The content requirement is analogous to App.R. 3(D), which specifies the contents of a notice of appeal to this court.

{¶ 23} The second paragraph of R.C. 4123.512(B), wherein the requirements concerning naming and serving the Administrator are established, were set apart from the "contents" requirements of the first paragraph by the General Assembly when it adopted R.C.

4123.512(B). That separation suggests a different purpose. That purpose is addressed by that section: to allow the Administrator to advise the employer of possibly adverse consequences if the employer fails to actively participate in the appeal, instead relying on the Administrator. That purpose may yet be served by allowing the appellant to amend the notice of appeal and the subsequent petition required by R.C. 4123.512(D) and subsequently to serve the Administrator.

{¶ 24} Alternatively, an appearance by the Administrator, as in the present case, demonstrates that the Administrator was put on notice to the extent that R.C. 4123.512(B) requires. In ***Wells v. Chrysler Corporation*** **(1984), 15 Ohio St.3d 21, the claimant filed a timely notice of appeal but failed to include the name of the employer in the text of the notice of appeal. The trial court granted the employer's motion to dismiss on jurisdictional grounds. The Supreme Court reversed, holding:**

{¶ 25} **"[T]he purpose of a notice of appeal is to set forth the names of the parties and to advise those parties that an appeal of a particular claim is forthcoming. This notice of appeal clearly satisfied this purpose. Indeed, Chrysler Corporation answered this notice with a motion to dismiss. There was no demonstrated surprise or prejudice." Id. at 24.**[1]

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[1] **Accord: *Wethington v. University of Cincinnati Hospital* (April 9, 1999), Hamilton App. No. C-980656 (noting that the University of Cincinnati, like Chrysler, answered the notice of appeal with a motion for summary**

{¶ 26} Although the requirements in the second paragraph of R.C. 4123.512(B) regarding the Administrator are not jurisdictional, they nevertheless establish the Administrator as a necessary party for purposes of Civ.R. 19(A). That rule provides that if a necessary party is not joined "the court shall order that he be made a party upon timely assertion of the defense of failure to join a party as provided in Rule 12(B)(7)." That result is the preferred alternative to a dismissal for failure to join a necessary party. *Congress Lake Club v. Witte,* Stark App. No. 05CA0037, 2006-Ohio-59.

{¶ 27} The trial court cited the following cases in support of its decision to dismiss the appeal on jurisdictional grounds: *Olaru v. Fed Ex Custom Critical*, Lucas App. No. L-03-1143, 2003-Ohio-6376; *Brown v. Liebert Corp.*, Franklin App. No. 03AP-437, 2004-Ohio-841; *Day v. Noah's Ark Learning Center*, Delaware App. No. 01-CVE-12-068, 2002-Ohio-4245; and *Gdovichin v. Geauga Cty. Hwy. Department* (1993), 90 Ohio App.3d 805. We believe these cases are inapposite and unpersuasive.

{¶ 28} In *Brown*, *Day*, and *Gdovichin*, the plaintiffs failed to file a notice of appeal at all. Rather, the plaintiffs instead filed petitions or complaints contemplated by R.C. 4123.512(D). The R.C. 4123.512 appeals were dismissed on jurisdictional grounds because the petitions or complaints were insufficient

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judgment, demonstrating that it had actual notice of the appeal).

to constitute a notice of appeal. There is no question, however, that Spencer filed a notice of appeal. Therefore, we believe that the trial court's reliance on *Brown*, *Day*, and *Gdovichin* is misplaced. Further, in *Olaru*, the Sixth District adopted the judgment of the trial court as its own. The trial court in turn relied on the decision in *Day*, which we believe is inapposite to the facts before us.

{¶ 29} The assignment of error is sustained. The judgment of the trial court will be reversed and the cause is remanded for further proceedings consistent with this Opinion.

DONOVAN, P.J. and BROGAN, J. concur.

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