

[Cite as *State v. Beetham*, 2017-Ohio-7758.]

STATE OF OHIO, HARRISON COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

STATE OF OHIO/OHIO DEPARTMENT)
OF JOB AND FAMILY SERVICES)

PLAINTIFF-APPELLEE)

VS.)

THOMAS BEETHAM)
BEETHAM LAW OFFICE)

DEFENDANT-APPELLANT)

CASE NO. 16 HA 0006

OPINION

CHARACTER OF PROCEEDINGS:

Civil Appeal from the Court of Common
Pleas of Harrison County, Ohio
Case No. 2015 CV 0053

JUDGMENT:

Affirmed.

APPEARANCES:

For Plaintiff-Appellee

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Attorney Robert Mann
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For Defendant-Appellant

Attorney Mark Beetham
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JUDGES:

Hon. Mary DeGenaro
Hon. Gene Donofrio
Hon. Cheryl L. Waite

Dated: September 21, 2017

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DeGENARO, J.

{¶1} Defendant-Appellant, Thomas Mark Beetham, dba Beetham Law Office, appeals the trial court's summary judgment in favor of Plaintiff-Appellee, Ohio Department of Job and Family Services. Because the trial court lacked jurisdiction to consider Beetham's challenge to the amount due to ODJFS, the judgment of the trial court is affirmed.

{¶2} ODJFS filed a complaint against Beetham seeking unpaid unemployment compensation contributions, interest, and other costs. A certified copy of the agency's 'Findings and Determination of Taxable Periods and Amounts of Payments in Lieu of Contributions Due With Interest and Final Notice of Amounts Due' was attached to the complaint.

{¶3} Beetham filed an answer denying the allegations as well as a counterclaim alleging that ODJFS erroneously set his unemployment experience rate. He asserted that he filed his quarterly unemployment compensation reports and returns and paid premiums based upon the correct experience rate.

{¶4} ODJFS filed a motion to dismiss Beetham's counterclaim based on lack of subject matter jurisdiction which Beetham opposed. The trial court granted ODJFS's motion holding that the exclusive jurisdiction to challenge rate determinations lies with the Franklin County Common Pleas Court pursuant to R.C. 4141.26.

{¶5} Shortly thereafter, ODJFS filed a motion for summary judgment. Instead of filing a response, Beetham filed his own motion for summary judgment contesting the amount ODJFS sought to recover and contending the agency's calculation was incorrect. ODJFS moved to strike Beetham's summary judgment motion arguing it raised issues already dismissed by the trial court for lack of jurisdiction. Although the record does not show that ODJFS's motion to strike was ever ruled upon, the trial court granted ODJFS's motion for summary judgment. Beetham posted a supersedeas bond, and the trial court granted a stay pending appeal.

{¶6} In his two interrelated assignments of error, which we will address together for clarity of analysis, Beetham asserts:

The trial court erred in determining that there is no genuine issue as to any material fact on the claim of DJFS against Beetham and that reasonable minds can come to but one conclusion and that DJFS is entitled to summary judgment against Beetham as a matter of law.

The trial court erred in denying the motion of Beetham seeking summary judgment against DJFS. Instead of responding in opposition, Beetham filed his own motion for summary judgment on January 25, 2016.

{¶7} An appellate court reviews a trial court's summary judgment decision de novo, applying the same standard used by the trial court. *Ohio Govt. Risk Mgt. Plan v. Harrison*, 115 Ohio St.3d 241, 2007-Ohio-4948, 874 N.E.2d 1155, ¶ 5. A motion for summary judgment is properly granted if the court, viewing the evidence in a light most favorable to the party against whom the motion is made, determines that: (1) there are no genuine issues as to any material facts; (2) the movant is entitled to judgment as a matter of law; and (3) the evidence is such that reasonable minds can come to but one conclusion and that conclusion is adverse to the opposing party. Civ.R. 56(C); *Byrd v. Smith*, 110 Ohio St.3d 24, 2006-Ohio-3455, 850 N.E.2d 47, ¶ 10.

{¶8} "[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." *Dresher v. Burt*, 75 Ohio St.3d 280, 296, 1996-Ohio-107, 662 N.E.2d 264. The nonmoving party has the reciprocal burden of specificity and cannot rest on the mere allegations or denials in the pleadings. *Id.* at 293. In deciding a motion for summary judgment, Civ.R. 56(C) allows the trial court to consider "pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact."

{¶9} Beetham contends that documents before the trial court are legally

insufficient to support the granting of summary judgment against him. ODJFS counters with several arguments, including that Beetham has mischaracterized the record relied upon by the trial court in granting summary judgment.

{¶10} R.C. 4141.27 provides in pertinent part:

If the director of job and family services finds that any person, firm, corporation, or association is, or has been, an employer subject to this chapter, *which determination of liability has become final pursuant to the provisions of section 4141.26 of the Revised Code*, and has failed to comply with such sections, the director shall determine the period during which the person, firm, corporation or association was such an employer, *which finding and determination is for all purposes of such sections prima-facie evidence thereof.* * * * the director shall certify that finding relative to such employer to the attorney general, who shall forthwith institute a civil action against such employer in the name of the state *for the collection of such contribution and interest.* In such action it is sufficient for the plaintiff to set forth a copy of such finding as certified by the director to the attorney general and to state that there is due to plaintiff on account of such finding a specified sum which plaintiff claims with interest. *A certified copy of such finding of the amount of contribution due shall be attached to the petition and is prima-facie evidence of the truth of the facts therein contained.* (Emphasis added).

{¶11} The certified copy of the finding attached to ODJFS's complaint and the affidavit attached to its summary judgment motion comport with R.C. 4141.27 and are prima facie evidence of the premiums owed by Beetham, which ODJFS seeks to reduce to judgment in order to collect. Thus, there is no genuine issue of material fact and summary judgment was proper. *Ohio Dept. of Job & Family Servs. v. Amatore*, 7th Dist. No. 09 MA 0159, 2010-Ohio-2848.

{¶12} Beetham continues to argue on appeal as he did in his dismissed

counterclaim—which he does not challenge on appeal—that ODJFS did not set the correct experience rate and that he does not owe the asserted amount of delinquent premiums. However, these arguments are properly raised through the administrative process delineated in R.C. 4141.26. The statute outlines a detailed process to be followed by ODJFS and an employer when rates and premium deficiencies are at issue. Pertinent to this appeal, R.C. 4141.26 vests the Franklin County Common Pleas Court with exclusive jurisdiction:

The validity of any general order or rule of the director adopted pursuant to this chapter or of any final order or action of the unemployment compensation review commission respecting any such general order or rule may be determined by the court of common pleas of Franklin county, and such general order, rule, or action may be sustained or set aside by the court on an appeal to it which may be taken by any person affected by the order, rule, or action in the manner provided by law. Such appeal to the court of common pleas of Franklin county shall be filed within thirty days after the date such general order, rule, or action was publicly released by the director or the commission. Either party to such action may appeal from the court of common pleas of Franklin county as in ordinary civil cases.

R.C. 4141.26(F)

{¶13} Where a right to appeal is conferred by statute, it can only be perfected by its mandatory requirements. *Zier v. Bureau of Unemployment Compensation*, 151 Ohio St. 123, 84 N.E.2d 746 (1949), paragraph one of syllabus.

{¶14} Beetham should have raised the arguments asserted in this case in the R.C. 4141.26 administrative process, which culminated in an appeal to the Franklin County common pleas court. More importantly, it was to have occurred prior to these proceedings. The trial court dismissed Beetham's counterclaim because it lacked the jurisdiction to address this argument, correctly recognizing that R.C. 4141.26(F) vests

exclusive jurisdiction over the issues raised by Beetham in this appeal with the Franklin County court of common pleas. Thus, the trial court properly granted ODJFS summary judgement.

{¶15} Accordingly, Beetham's assignments of error are meritless, and the judgment of the trial court is affirmed.

Donofrio, J., concurs.

Waite, J., concurs.