

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-000906-MR

TERESA KIDD

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE REBECCA M. OVERSTREET, JUDGE  
ACTION NO. 04-CI-00413

KENTUCKY UNEMPLOYMENT INSURANCE  
COMMISSION  
AND  
PIMLICO MANOR NURSING AND  
REHABILITATION CENTER

APPELLEES

OPINION  
AFFIRMING

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BEFORE: BARBER, BUCKINGHAM, AND JOHNSON, JUDGES.

BUCKINGHAM, JUDGE: Teresa Kidd appeals from an opinion and order of the Fayette Circuit Court dismissing her complaint against the Kentucky Unemployment Insurance Commission (KUIC) and Pimlico Manor Nursing and Rehabilitation Center and from the court's order denying her motion to file an amended complaint. We affirm.

Kidd was employed by Pimlico from July 11, 2002, to September 20, 2003. Pimlico terminated her employment, and Kidd sought unemployment benefits. Her application for benefits was denied based on a determination that Kidd had been discharged for misconduct and thus was not eligible for benefits. A referee affirmed the denial of benefits, and Kidd appealed to the KUIC.

After the KUIC affirmed the referee's decision, Kidd filed a complaint in the Fayette Circuit Court pursuant to KRS<sup>1</sup> 341.450(1). Although the complaint was signed by her attorney, it was not verified by either her attorney or herself as required by the statute. KUIC and Pimlico filed motions to dismiss for lack of jurisdiction due to the lack of verification of the complaint. Kidd filed a motion seeking to amend her complaint, adding the necessary verification. The court granted the motions of KUIC and Pimlico to dismiss Kidd's complaint and denied Kidd's motion to amend. This appeal followed.

KRS 341.450(1) provides in relevant part that a party aggrieved by a decision of the KUIC concerning unemployment benefits may, after exhausting administrative remedies, secure judicial review by filing a complaint against the KUIC in the circuit court of the county where the claimant was last employed. The statute also requires that the other party to the

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<sup>1</sup> Kentucky Revised Statutes.

proceeding before the KUIC shall be made a defendant. Id. Furthermore, the statute requires that the complaint "shall be verified by the plaintiff or his attorney." Id. The circuit court's order dismissing Kidd's complaint was based on the fact that the complaint was not verified by Kidd or her attorney.

Kidd's first argument on appeal is that the signature and certification of her attorney on the complaint should stand sufficient for verification for three separate reasons. We will separately examine each reason or argument made by Kidd in this regard.

First, Kidd argues that the verification requirement of the statute is directory and not mandatory. In support of her argument, she cites Skaggs v. Fyffe, 266 Ky. 337, 98 S.W.2d 884 (1936), and Knox County v. Hammons, 129 S.W.3d 839 (Ky. 2004). Kidd's argument ignores precedent. In Pickhart v. United States Post Office, 664 S.W.2d 939 (Ky.App. 1983), this court held that the verification requirement in KRS 341.450(1) is mandatory and not merely a ministerial act. Id. at 940. Further, the court held that "the failure to comply is fatal to appellant's appeal." Id. Likewise, this court held in Monyhan v. Kentucky Unemployment Ins. Comm'n, 709 S.W.2d 837 (Ky.App. 1986), that "the verification requirement of KRS 341.450(1) is mandatory and jurisdictional[.]" Based on these cases, we

reject Kidd's argument that the verification requirement of the statute is merely directory rather than mandatory.

Kidd's second argument is that the circuit court erred in dismissing her appeal because her attorney's signature and certification "substantially complies with the verification requirement." In support of her argument, Kidd cites Shamrock Coal Co., Inc. v. Taylor, 697 S.W.2d 952 (Ky.App. 1985). However, both this court and the Kentucky Supreme Court have rejected the application of the substantial compliance doctrine to this type of case. In Kentucky Unemployment Ins. Comm'n v. Carter, 689 S.W.2d 360 (Ky. 1985), the Kentucky Supreme Court rejected the application of the substantial compliance doctrine to a complaint filed under KRS 341.450(1).<sup>2</sup> Id. at 361. Further, this court rejected the application of the substantial compliance doctrine to an unverified complaint under KRS 341.450(1) in the case of Fisher v. Kentucky Unemployment Ins. Comm'n, 880 S.W.2d 891, 892 (Ky.App. 1994). Finally, we also note that the Shamrock Coal case is distinguishable because an attempt at verification was made within the statutory time limit in that case.

Kidd's third argument is that the circuit court should not have dismissed her complaint because to do so contradicts

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<sup>2</sup> In the Carter case, the party appealing from an adverse KUIC decision failed to name the employer as a party to her appeal as required by the statute.

fundamental fairness and justice. In support of her argument, she cites Middleton's Adm'x v. Middleton, 297 Ky. 109, 179 S.W.2d 227 (1944), and Skaggs, supra. Those cases, however, do not involve statutory appeals. As this court noted in the Fisher case, appeals to courts from actions of administrative agencies exist by legislative grace rather than as a matter of right. Id. at 892, citing Board of Adjustments of City of Richmond v. Flood, 581 S.W.2d 1 (Ky. 1978). As such, strict compliance with the terms of the statute is required. Id. As we are bound by the precedent cited above, we must reject what Kidd perceives as principles of fundamental fairness and justice.

Kidd's last argument is that the circuit court erred in denying her motion to amend her complaint "because such leave to amend better serves legislative intent and public policy." In addition to citing City of Dayton v. Hirth, 121 Ky. 42, 87 S.W. 1136 (1905), Kidd also cites CR<sup>3</sup> 11 and CR 15.01. The applicability of the Hirth case in administrative appeals was rejected by this court in the Pickhart case. 664 S.W.2d at 940. Further, neither CR 11 nor CR 15.01 is applicable because the civil rules do not apply to appeals from administrative decisions until after the appeal has been perfected. See Flood,

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<sup>3</sup> Kentucky Rules of Civil Procedure.

581 S.W.2d at 2. See also Cabinet for Human Resources v. Holbrook, 672 S.W.2d 672, 675 (Ky.App. 1984).

The orders of the Fayette Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Glenda Harrison  
Covington, Kentucky

BRIEF FOR APPELLEE, KENTUCKY  
UNEMPLOYMENT INSURANCE  
COMMISSION:

Randall K. Justice  
Assistant General Counsel  
Frankfort, Kentucky

BRIEF FOR APPELLEE, PIMLICO  
MANOR NURSING & REHABILITATION  
CENTER:

Debra H. Dawahare  
Lexington, Kentucky