

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001674-MR

KENTUCKY UNEMPLOYMENT
INSURANCE COMMISSION

APPELLANT

v. APPEAL FROM WOLFE CIRCUIT COURT
HONORABLE WILLIAM LARRY MILLER, JUDGE
ACTION NO. 01-CI-00198

HELEN R. SPENCER

APPELLEE

OPINION REVERSING AND REMANDING

** ** * * * * *

BEFORE: ABRAMSON AND DIXON, JUDGES; ROSENBLUM,¹ SENIOR JUDGE.

ABRAMSON, JUDGE: The Kentucky Unemployment Insurance Commission (KUIC) appeals from a July 17, 2006 Order of the Wolfe Circuit Court reinstating unemployment insurance benefits for Helen Spencer, a former clerk at the ARH Medical Clinic in Campton, Kentucky. Spencer applied for benefits in June 2001 after ARH discharged her for allegedly disregarding a doctor's order specifying Spencer's lunch hour. A referee awarded benefits, but, deeming Spencer's discharge one for "misconduct" under KRS

¹ Senior Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

341.370, KUIC reversed the award and ruled that Spencer was not eligible for benefits. Pursuant to KRS 341.450, Spencer then filed a complaint in the circuit court seeking review of KUIC's ruling. The court agreed with Spencer that her tardy return from lunch did not amount to "misconduct" under the statute and so reinstated her award. Appealing from that Order, KUIC contends that by failing to name ARH as a party in her complaint Spencer neglected a statutory requirement and thus failed to invoke the circuit court's jurisdiction. We are obliged to agree and so must reverse the Order of the circuit court and remand for dismissal of Spencer's complaint.

KRS 341.450 provides for judicial review of KUIC decisions as follows:

(1) Except as provided in KRS 341.460, within twenty (20) days after the date of the decisions of the commission, any party aggrieved thereby may, after exhausting his remedies before the commission, secure judicial review thereof by filing a complaint against the commission in the Circuit Court of the county in which the claimant was last employed by a subject employer whose reserve account or reimbursing employer account is affected by such claims. *Any other party to the proceeding before the commission shall be made a defendant in such action.* The complaint shall state fully the grounds upon which review is sought, assign all errors relied on, and shall be verified by the plaintiff or his attorney. The plaintiff shall furnish copies thereof for each defendant to the commission, which shall deliver one (1) copy to each defendant.

(Emphasis supplied.) As KUIC correctly notes, in *Kentucky Unemployment Insurance Commission v. Carter*, 689 S.W.2d 360 (Ky. 1985), our Supreme Court held that this statute requires strict compliance and that "when an employer has been a party before the Commission, an aggrieved employee must join said employer as a party to the lawsuit."

Id. At 360. There was no joinder in that case, and the failure to join the employer, the Court explained, meant that “the conditions for the exercise of power by a court [were] not met, the judicial power [was] not lawfully invoked. That is to say, that the court lack[ed] jurisdiction or ha[d] no right to decide the controversy.” *Id.* at 362 (citing *Board of Adjustments of City of Richmond v. Flood*, 581 S.W.2d 1 (Ky. 1978) (internal quotation marks omitted)). Thus, the deficient complaint in that case should have been dismissed, the Court ruled, notwithstanding the claimant’s belated motion to join the employer by amendment.

In this case, too, the employer, ARH, was a party before the Commission, but Spencer failed to join it as a party to her circuit court complaint within the twenty day limitations period. Under *Carter*, therefore, her complaint should have been dismissed as inadequate to invoke the circuit court’s jurisdiction, and the court should not have entertained her amended complaint, which belatedly did include ARH.

Seeking to avoid this result, Spencer contends that *Carter*’s strict compliance standard has been implicitly overruled by subsequent cases in which our Supreme Court has required only substantial compliance with certain provisions of CR 73, the rule governing ordinary appeals of right in civil actions.² On the contrary, however, in *Hutchins v. General Electric Company*, 190 S.W.3d 333 (Ky. 2006), our Supreme Court recently cited *Carter* with approval for the proposition that “[t]he right to

² Before the trial court, Spencer also asserted that KRS 341.450 is unconstitutionally vague or ambiguous. She did not press that contention, however, the trial court did not address it, and Spencer has not raised it on appeal. We deem the issue waived, therefore, and shall not otherwise address it.

appeal the decision of an administrative agency to a court is a matter of legislative grace; therefore, the statutory conditions for invoking the power of the court to hear such an appeal are strictly construed.” *Id.* At 336-37. Thus, *Carter’s* requirement of strict compliance with KRS 341.450 remains the law and, as noted, under *Carter* Spencer’s deficient complaint was fatal to her claim. Accordingly, we must reverse the July 17, 2006 Order of the Wolfe Circuit Court and remand for entry of an order dismissing Spencer’s complaint.

ALL CONCUR.

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