

RENDERED: MARCH 9, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-000676-MR

ALEXANDER LONGSHORE

APPELLANT

ON REMAND FROM KENTUCKY SUPREME COURT
ACTION NO. 2016-SC-000692-D
APPEAL FROM CAMPBELL CIRCUIT COURT
v. HONORABLE FRED A. STINE, JUDGE
ACTION NO. 14-CI-01318

KENTUCKY UNEMPLOYMENT
INSURANCE COMMISSION AND
M&M SERVICE STATION EQUIPMENT

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON, D. LAMBERT AND MAZE, JUDGES.

LAMBERT, D., JUDGE: This matter comes before this Court on remand from the Kentucky Supreme Court. In our previous opinion, we held that Alexander Longshore, the claimant in this action, substantially complied with the requirement

of a verified complaint as provided in Kentucky Revised Statute (“KRS”) 341.450(1), and that such substantial compliance meant the trial court had erred in dismissing, for want of jurisdiction, his petition for unemployment benefits under *Shamrock Coal Co. v. Taylor*, 697 S.W.2d 952 (Ky. App. 1985). The Kentucky Supreme Court granted discretionary review and remanded the matter back to this Court in light of the ruling in *Kentucky Unemployment Ins. Comm’n v. Wilson*, 528 S.W.3d 336 (Ky. 2017), which explicitly overruled *Shamrock Coal*. Having re-examined the record and considering this new binding authority, we find the trial court committed no error, and we accordingly affirm.

I. FACTUAL AND PROCEDURAL HISTORY

Longshore’s employer, M&M Service Station Equipment (“M&M”), fired him in 2014, alleging misconduct. The Kentucky Unemployment Insurance Commission (“the Commission”) agreed in its initial Notice of Determination, prompting Longshore to appeal to a referee. After conducting an evidentiary hearing, the referee reached the opposite conclusion. M&M then appealed the referee’s decision to the Commission, which reaffirmed its earlier conclusion that Longshore’s termination resulted from misconduct. Longshore then initiated proceedings before the trial court.

The circumstances surrounding the filing of the petition for judicial review gave rise to this appeal. Longshore, rather than his attorney, filed the petition, and in doing so, he unintentionally submitted an early draft of the petition that his attorney did not intend to be filed. This draft did not bear the signature of a

notary public verifying the document, though it did bear the signatures of both counsel and client. The final version, which Longshore's counsel would have filed if Longshore had not beaten him to the courthouse, was verified by a notary public as required by KRS 341.450(1).

In lieu of an answer to the petition, M&M moved to dismiss it, arguing that the failure to file a properly verified petition was a procedural defect sufficient to deprive the trial court of jurisdiction. Longshore moved for leave to amend, seeking to substitute the final draft of the petition for the unverified one. The trial court denied Longshore's motion and granted M&M's, dismissing the petition for lack of jurisdiction. An appeal to this Court followed.

On appeal, we held that Longshore's good faith effort to comply with KRS 341.450(1) amounted to a mere technical defect, and under *Shamrock Coal* such technicalities should not preclude the trial court from exercising jurisdiction. We did not address the issue of the trial court's denial of the motion to amend. M&M moved for discretionary review, which was granted. The Supreme Court remanded the matter to us for reconsideration in light the recent opinion in *Wilson*.

II. ANALYSIS

A. LONGSHORE'S FAILURE TO STRICTLY COMPLY WITH THE TERMS OF KRS 341.450(1) DEPRIVED THE TRIAL COURT OF JURISDICTION

The parties did not dispute the applicability of KRS 341.450(1) to situations such as this, where a claimant seeks judicial review of a decision relating to unemployment benefits. It provides:

Except as provided in KRS 341.460, within twenty (20) days after the date of the decision 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.

The Supreme Court held in *Wilson* that because an appeal from an administrative ruling is not an appeal of right, strict compliance with the terms of the statute permitting the appeal is required. *Wilson* at 339 (quoting *Bd. of Adjustments of City of Richmond v. Flood*, 581 S.W.2d 1, 2 (Ky. 1978)). “Statutory preconditions for vesting courts with the authority to engage in judicial review cannot be satisfied by substantial compliance.” *Id.* (citing *City of Devondale v. Stallings*, 795 S.W.2d 954 (Ky. 1990)). The Supreme Court flatly rejected the proposition from *Shamrock Coal* that “a clear attempt at verification” amounted to a simple technical defect. *Id.* (quoting *Shamrock Coal* at 953). The Supreme Court further concluded that a verification consistent with the statute

requires an oath-bound signatory, and to the extent that *Shamrock Coal* held otherwise, it “was wrongly decided and is hereby overruled.” *Id.* at 340.

Therefore, we cannot conclude that substantial compliance excused Longshore’s failure to file a properly verified petition. Under *Wilson*, the trial court correctly concluded that it lacked jurisdiction to entertain this particular case.

B. THE TRIAL COURT PROPERLY DENIED LONGSHORE’S MOTION TO AMEND

Our analysis now shifts to an issue we declined to address in our prior opinion, whether the trial court properly denied leave to amend the petition. Kentucky Rule of Civil Procedure (“CR”) 15.01 permits a party to amend a complaint as a matter of course at any time before a responsive pleading is filed, and requires leave of the court to do so after the filing of such response. CR 15.03 deems an amended pleading to relate back to the date of the original filing. Longshore argues these two rules operating in conjunction allow him to amend his petition, and vest the trial court discretion to grant his motion.

Were this case an ordinary civil action, and not an administrative appeal, Longshore would be correct. However, “[a] long line of Kentucky cases have held that where appeal from an administrative agency decision is permitted by statute, the requirements of the statute are mandatory, and a circuit court does not obtain jurisdiction to hear the appeal unless the statutory requirements have been met.” *Cab. For Human Res. v. Holbrook*, 672 S.W.2d 672, 675 (Ky. App. 1984) (citing *Bluegrass Mining Co. v. North*, 265 Ky. 250, 96 S.W.2d 757

(1936); *Flood*, 581 S.W.2d 1). This Court further held that “[t]he civil rules which would normally permit amendment do not apply to appeals of administrative decisions until after the appeal has been perfected and jurisdiction has attached.” *Id.* at 675 (citing *Pollitt v. Kentucky Unemployment Ins. Comm’n*, 635 S.W.2d 485 (Ky. App. 1982)). Thus, the very same lack of jurisdiction which mandated the dismissal of Longshore’s petition also operates to deprive the trial court of the discretion to allow him to amend it.

Given this authority, we cannot conclude that the trial erred in denying Longshore’s motion to amend.

III. CONCLUSION

Having re-examined this appeal, we conclude that the trial court committed no error in either dismissing the appeal or in denying Longshore’s motion seeking leave to amend his petition. The ruling of the Campbell Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Ellen M. Longshore
Alexandria, Kentucky

BRIEF FOR APPELLEES:

Patrick B. Shirley
Education and Workforce
Development Cabinet
Office of Legal and Legislative
Services
Frankfort, Kentucky

Brian F. Eviston
Covington, Kentucky

