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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-52

No. COA20-75

Filed 2 March 2021

Wake County, No. 19 CVS 9911

FELICIA PFOUTS, Petitioner-Appellant,

v.

NORTH CAROLINA DIVISION OF EMPLOYMENT SECURITY, Respondent-Appellee.

Appeal by Petitioner from an Order entered 23 September 2019 by Judge Winston M. Rozier, Jr., in Wake County Superior Court. Heard in the Court of Appeals 27 January 2021.

*Felicia Pfouts, petitioner-appellant, pro se.*

*Chief Counsel R. Glen Peterson, by Camilla F. McClain, for respondent-appellee.*

HAMPSON, Judge.

**Factual and Procedural Background**

¶ 1

Felicia Pfouts (Petitioner) appeals from an Order granting a Motion to Dismiss her Petition for Judicial Review of a final decision of the North Carolina Department

of Commerce, Division of Employment Security<sup>1</sup> (Division) disqualifying Petitioner from unemployment benefits. The Record before us tends to show the following:

¶ 2

Petitioner filed a claim for employment insurance benefits effective 22 October 2017, after separating from her former employer Toddlers Academy, Inc. (Toddlers Academy). The Division is the state agency responsible for administering the State's Employment Security Law. N.C. Gen. Stat. § 96-1 (2019). An adjudicator with the Division concluded Petitioner was disqualified for benefits and Petitioner appealed. On 8 February 2018, the Division issued an appeals decision upholding the decision disqualifying Petitioner from unemployment benefits. Petitioner appealed to the Board of Review (Board) which granted Petitioner a new hearing because Petitioner had not been afforded the opportunity to cross examine any witnesses from Toddlers Academy. On remand, the appeals referee, again, affirmed the adjudicator's determination Petitioner did not qualify for benefits. Petitioner appealed to the Board a second time. On 19 June 2019, the Board, in a ruling styled Higher Authority Decision No. C1678, affirmed the appeals referee's decision. Toddlers Academy was a party to all of the Division and Board proceedings.

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<sup>1</sup> The caption in this case as styled below refers to the North Carolina Division of Employment Security. We employ the same caption as used in the Record but, however, acknowledge the Division of Employment Security is a division of the North Carolina Department of Commerce.

¶ 3

On 19 July 2019, Petitioner filed a Petition for Judicial Review of the Board's decision in Wake County Superior Court. On 20 July 2019, Petitioner mailed a copy of the Petition to the Division via certified mail, return receipt requested. The Record does not indicate Petitioner served a copy of the Petition on Toddlers Academy or its registered agent. On 13 August 2019, the Division filed a Motion to Dismiss the Petition arguing Petitioner filed the Petition in the wrong venue and failed to serve Toddlers Academy, as a party to the Division proceedings, pursuant to N.C. Gen. Stat. § 96-15(h).

¶ 4

The Superior Court heard the Division's Motion on 23 September 2019. Although Petitioner was provided notice of the hearing, she was not present. Rather, after the hearing, Petitioner submitted a request for a continuance. The same day, the Superior Court entered its Order dismissing the Petition. In its Order, the Superior Court concluded Petitioner failed to comply with the statutory requirements of N.C. Gen. Stat. § 96-15(h) in that: (1) venue was not proper in Wake County; and (2) Petitioner failed to serve all parties in the Division proceeding below by failing to serve a copy of the Petition on Toddlers Academy. Consistent with N.C. Gen. Stat. § 96-15(i), Petitioner filed written Notice of Appeal from the Superior Court's Order to this Court on 23 October 2019.

### Issue

¶ 5 The dispositive issue on appeal is whether the Superior Court erred in dismissing the Petition for failure to comply with the statutory requirements contained in N.C. Gen. Stat. § 96-15(h).

**Analysis**

¶ 6 On appeal, Petitioner raises a series of procedural arguments contending the trial court erred by dismissing the Petition on the basis of the belated but pending request for continuance and in light of the fact the Division had not filed a comprehensive record of the agency proceedings and the Division’s supporting affidavits purportedly contained errors of fact. Crucially, however, Petitioner fails to attack the actual basis of the Superior Court’s dismissal. This is significant because the Superior Court’s dismissal was grounded upon its determination Petitioner failed to comply with two separate statutory requirements found in the N.C. Gen. Stat. § 96-15(h) by: (1) filing the Petition in the wrong county; and (2) failing to timely serve Toddlers Academy, as a party to the underlying Division proceedings, with the Petition.

¶ 7 N.C. Gen. Stat. § 96-15(h) governs judicial review proceedings of final decisions by the Board regarding unemployment benefits. Relevant to these proceedings, N.C. Gen. Stat. § 96-15(h) requires claimants seeking judicial review of Board decisions to file “a petition for review in the superior court of the county in which the petitioner resides or the county in which the petitioner’s principal place of business is located.”

*Id.* (2019). Moreover, “[w]ithin 10 days after the petition is filed with the court, the petitioner must serve copies of the petition by personal service or by certified mail, return receipt requested, upon the Division and upon all parties of record to the Division proceedings.” *Id.*

¶ 8           The North Carolina Supreme Court has previously set out a strict standard for compliance with the requirements for seeking judicial review under N.C. Gen. Stat. § 96-15. “The statutory requirements are mandatory and not directory. They are conditions precedent to obtaining a review by the courts and must be observed. Noncompliance therewith requires dismissal.” *In re State ex rel. Emp. Sec. Comm’n*, 234 N.C. 651, 653, 68 S.E.2d 311, 312 (1951) (internal citations omitted).

¶ 9           More recently, this Court recognized subsequent amendments to the statute have not altered the mandatory nature of the procedures required to seek judicial review. *Isenberg v. N.C. Dep’t of Com., Div. of Emp. Sec.*, 241 N.C. App. 68, 73, 772 S.E.2d 97, 100 (2015). Specifically, in that case, this Court held N.C. Gen. Stat. § 96-15’s “service requirements are jurisdictional and the superior court did not err in dismissing the petition where petitioner’s former employer, a party of record to the Division proceedings, was not properly served.” *Id.* Thus, upon determining Petitioner in this case failed to comply with mandatory provisions of N.C. Gen. Stat. § 96-15(h), the trial court was required to dismiss the Petition, notwithstanding any other potential arguments Petitioner might seek to raise.

¶ 10 Here, the trial court first determined noncompliance with N.C. Gen. Stat. § 96-15(h) in that Petitioner was a Durham County resident required to file the Petition in Durham County and not Wake County. Petitioner advances no argument to the contrary.

¶ 11 In any event, the trial court also adjudicated grounds to dismiss the Petition on the basis of Petitioner's failure to serve her former employer, Toddlers Academy, within the statutorily mandated timeframe. Toddlers Academy was a party to the Division proceedings. Toddlers Academy was listed as a party in the captions for both the July 2018 Appeals Decision and the Board's June 2019 Higher Authority Decision. The Division submitted notarized affidavits from Lonita T. Whitted, President and registered agent for Toddlers Academy, and Marian Whitted Alderman, Director of Toddlers Academy, asserting they had never received a copy of the Petition. Again, Petitioner asserts no argument contradicting the Superior Court's determination she failed to timely serve her former employer with the Petition as required by N.C. Gen. Stat. § 96-15(h). As our Court has previously held the service requirements of Section 96-15(h) upon a former employer that was a party to the Division proceedings is jurisdictional and noncompliance therewith is fatal requiring dismissal, we are, therefore, constrained to conclude the same in this case. *Isenberg*, 241 N.C. App. at 73, 772 S.E.2d at 100. Thus, the Superior Court was required to dismiss the Petition in this case based upon Petitioner's failure to comply

with the mandatory requirements of N.C. Gen. Stat. § 96-15(h). Consequently, the Superior Court did not err in entering its Order dismissing the Petition.

**Conclusion**

¶ 12 Accordingly, for the foregoing reasons, the Superior Court's Order dismissing the Petition for Judicial Review is affirmed.

AFFIRMED.

Judges CARPENTER and JACKSON concur.

Report per Rule 30(e).