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CIRCUIT COURT ORDER/OPINION
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Appeal Docket No: 183426WH

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Prepared by Stephine Gwin

STATE OF MICHIGAN

FILED

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE 2006 SEP -5 P 12: 15
7TH JUDICIAL CIRCUIT

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HURLEY MEDICAL CENTER,

Appellant

No. 06-84151-AE
Judge Geoffrey Neithercut

vs.

KIMBERLY THAMES and the STATE OF
MICHIGAN DEPARTMENT OF LABOR
& ECONOMIC GROWTH UNEMPLOYMENT
INSURANCE AGENCY,

Appellees.

OPINION AND ORDER DENYING PLAINTIFF'S MOTION FOR
RECONSIDERATION

At a session of said court
held at the Court House in the
City of Flint on the
Friday, September 01, 2006.

Present: The Honorable Geoffrey L. Neithercut, Circuit Judge

Appellant Hurley Medical Center (hereinafter Appellant) in this matter has motioned this Court pursuant to MCR 2.119(F) to reconsider our August 16, 2006 order dismissing its application for leave to appeal.

Background Facts:

Appellee Thames was terminated from employment with Appellant. She sought unemployment benefits and Appellant objected. The Administrative Law judge agreed with Appellant that Thames' repeated absences, failure to provide physician statements to verify her absences, and failure to file a FMLA request with her employer constituted misconduct which disqualified her from receiving unemployment benefits.

Appellee Thames appealed to the Board which reversed the Administrative Law judge's decision. Appellant states that the reversal constitutes a palpable error as it was not based on the evidence presented to the Administrative Law judge.

Procedural Facts:

Appellant filed its application for leave to appeal with this Court on June 20, 2006. Appellee State of Michigan Department (hereinafter Appellee Michigan) filed its answer on July 10, 2006. A hearing was held on July 17, 2006 on Appellant's application for leave to appeal.

Arguments and Opinion:

At the July 17, 2006 hearing Appellee Michigan argued that Appellant's appeal was filed outside the thirty day statutory appeal period mandated by MCL 421.38(1) and that the complaint must be dismissed. Appellee Michigan additionally relied on the case of Gunderson v Rose Hill Realty for the holding that the statute is jurisdictional and that a court could obtain jurisdiction from such an appeal "only" if it was filed within the thirty days.¹

Appellant agrees that the appeal was filed outside the thirty day requirement of MCL 421.38(1), but relies on the Court of Appeals case of Smith v. Hayes Albion for the holding that the statute is a venue statute and is not jurisdictional.²

This court disagrees with the Appellant's interpretation of and reliance on Smith. The facts of Smith involved an appellant who filed its appeal within the thirty days but with the incorrect circuit court. In relation to our present issue the Court of Appeals stated as follows:

The dissent cites Gunderson for the holding that "the language of § 38 was jurisdictional in nature." This is incorrect because the holding in Gunderson relates only to the time limits provided for in § 38. The Court held, unremarkably, that failure to file within the allowed time is jurisdictional. The Gunderson determination does not address the implications of the place of filing. It is that issue this case addresses and, thus, Gunderson is inapposite.

Accordingly, this Court's reading of Smith is that is not factually analogous to our case and that it has no impact on the holding of Gunderson. And furthermore, that the Smith court actually agreed with the holding of Gunderson in relation to situations where appeals are filed outside the thirty days allowed by MCL 421.38(1). When the Smith court determined that the Gunderson ruling was unremarkable, they were essentially saying that it was mundane, routine, not out of the ordinary. Or to put it simply, the Gunderson ruling was so correct as to be obvious.

¹ 136 Mich App 559 (1984).

² 214 Mich.App. 82 (1995).

Order:

After considering Appellant's Motion, it plainly appears to the Court from the face of the material that it is not entitled to relief as it is merely presenting the same issues ruled by this Court, any new issues presented are without merit, and no palpable error was demonstrated.

IT IS FURTHER ORDERED that Appellant Hurley Medical Center's Motion for Reconsideration is DENIED for the reasons stated above.

Dated: September 1, 2006

Geoffrey L. Neitherout
Hon. Geoffrey L. Neitherout