

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

EARL LEGLEITER,	□	CASE NUMBER 11CV-15695
]]	
APPELLANT,	□	JUDGE LYNCH
]]	
vs.	□	MAGISTRATE MCCARTHY
]]	
STATE OF OHIO,	□	
OHIO DEPARTMENT OF]]	
EDUCATION,	□	
]]	
APPELLEE	□	

DECISION AND ORDER OF DISMISSAL

LYNCH, J.

Now before this court in this administrative appeal action is appellee's motion to dismiss. The motion is opposed. By way of background, on November 17, 2011 appellee issued and mailed to appellant its final administrative order revoking appellant's teaching license. The parties agree that in order to perfect his appeal, appellant had to make the required filings by December 17, 2011.

On December 15, 2011, appellant's counsel issued a fax and a letter via ordinary mail directed to appellee identifying himself as counsel for appellant and decrying "[w]e hereby appeal the November 17, 2011 Resolution as the order is not supported by reliable, probative and substantial evidence and is not in accordance with the law." The missive went on to request a copy of appellee's complete file concerning this matter.

The next day, December 16, 2011, appellant's counsel filed with this court his Notice of Appeal. That document appears as a notice of appeal commonly

used and similar to that suggested in FORM 1 found in the APPENDIX OF FORMS contained in the Ohio Rules of Appellate Procedure.

Importantly, the two notices of appeal are substantially dissimilar; viz. one is not a xerographic copy or replica of the other and that each is not a mirror image of the other. They clearly are different writings whose contents are not the same.

In its motion to dismiss, appellee maintains this action must be dismissed due to this court lacking jurisdiction over the matter presented because of appellant's failure to follow the dictates of the statute that must be followed in order for this court to acquire jurisdiction over this controversy. The court agrees.

In relevant part, R.C. 119.12 provides:

Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and stating that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal may, but need not, set forth the specific grounds of the party's appeal beyond the statement that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal shall also be filed by the appellant with the court. In filing a notice of appeal with the agency or court, the notice that is filed may be either the original notice or a copy of the original notice.

Clearly, the statute requires appellant to file with this court a "copy" of the notice of appeal he filed with appellee. In this case, that was not done.

Instructive is the case of *Berus v. Ohio Dep't of Admin. Services*, 2005 Ohio 3384, 2005 Ohio App. LEXIS 3113 (Ohio Ct. App., Franklin County, June 30, 2005). In that case, the Franklin County Court of Appeals noted:

When the right to appeal is conferred by statute, the appeal can be perfected only in the mode prescribed by statute. *Ramsdell v. Ohio*

Civil Rights Comm. (1990), 56 Ohio St. 3d 24, 27, 563 N.E.2d 285. The Supreme Court of Ohio construed R.C. 119.12 in *Nibert v. Ohio Dep't of Rehabilitation & Correction* (1998), 84 Ohio St.3d 100, 1998 Ohio 506, 702 N.E.2d 70. In that case, the court held that "the failure to file a copy of the notice of appeal within the fifteen-day period as set forth in R.C. 119.12 deprives the common pleas court of jurisdiction over the appeal." *Id.* at 101. It noted that when construing a statute, R.C. 1.42 "requires that 'words and phrases shall be read in context and construed according to the rules of grammar and common usage.'" *Id.* at 102. Applying that rule of construction to R.C. 119.12, the court construed the word "notices" and explained that "taken in its most logical context, the plural 'notices of appeal' obviously encompasses both the notice of appeal and the copy of the notice of appeal referred to in the preceding sentences." *Id.*

Similarly, that same court had theretofore required strict compliance with the filing requirements of R.C. 119.12. See, *Stultz v. Ohio Dep't of Admin. Services*, 2005 Ohio 200, 2005 Ohio App. LEXIS 166 (Ohio Ct. App., Franklin County, Jan. 20, 2005). See also, *Smith v. Ohio Dept. of Correction*, 2001 Ohio App. LEXIS 3660 (Ohio Ct. App., Franklin County, Aug. 21, 2001).

Here, the law is clear that strict compliance with the terms of the statute is mandatory. However, appellant argues that "multiple types of notices can be filed as long as all substantive requirements are met." While this is a true statement as far as it goes, it wholly ignores the statute's directive that one notice of appeal be a copy of the other. While dissimilar types or appearances of notices of appeal are acceptable, when one particular type is used, the second must be a copy of the first.

Here, appellant filed dissimilar documents with the court and with appellee. The strictly interpreted mandatory dictates of R.C. 119.12 require that appellant had to timely file the original notice of appeal with appellee and a copy

of it with this court.¹ This he did not do. Because of appellant's failure to follow the requirements of R.C. 119.12, this court does not have jurisdiction over this matter.

Consequently, appellee's motion to dismiss is **granted**. It is the order of this court that the within case be and hereby is **dismissed** due to lack of jurisdiction. Costs to appellant.

Copies to:

Brian M. Garvine, Esq.
Counsel for Appellant

Peggy W. Corn, Esq,
Counsel for Appellee

¹ At the behest of appellant, the actual copy of the notice of appeal was sent by the clerk of this court and received by appellee on December 21, 2011, this being four days following the December 17, 2011 deadline.

Franklin County Court of Common Pleas

Date: 02-28-2012
Case Title: EARL LEGLEITER -VS- OHIO STATE DEPARTMENT
EDUCATION
Case Number: 11CV015695
Type: JUDGMENT AGAINST PLAINTIFF

It Is So Ordered.


The image shows a handwritten signature in black ink that reads "Julie M. Lynch". The signature is written in a cursive style. To the right of the signature is a circular blue ink stamp. The stamp contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" in the middle, and "ALL THINGS ARE" at the bottom. There is also a small emblem in the center of the stamp.

/s/ Judge Julie M. Lynch

Court Disposition

Case Number: 11CV015695

Case Style: EARL LEGLEITER -VS- OHIO STATE DEPARTMENT EDUCATION

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 11CV0156952012-01-2799970000

Document Title: 01-27-2012-MOTION TO DISMISS

Disposition: MOTION GRANTED