

DANIEL M. HARRIGAN

2012 JUN 20 PM 2: 54

SUMMIT COUNTY  
CLERK OF COURTS  
JEFF GOULD

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

Plaintiff,	)	CASE NO.: CV2012-03-1366
	)	
vs.	)	JUDGE PAUL J. GALLAGHER
	)	
OHIO DEPT. OF EDUCATION	)	
	)	<b><u>JUDGMENT ENTRY</u></b>
Defendant.	)	<b>(Final and Appealable)</b>

This matter is before the Court upon Defendant’s Motion to Dismiss. Plaintiff has responded in opposition.

FACTUAL & PROCEDURAL HISTORY

On May 14, 2011, the State Superintendent of Public Instruction, on behalf of the State Board of Education, notified Plaintiff Jeff Gould (“Gould”) of its intent to limit, suspend or revoke his five-year professional special all grades teaching license pursuant to R.C. §3319.31(B)(1). The notice was based on Gould’s February 2010 Consent Agreement with the State Board of Education for making inappropriate comments to students during class time and his subsequent violation of the Consent Agreement in November 2010 by failing to follow all the terms set forth in his last chance agreement with his employing school district when he screamed at a student and pounded on the door of a classroom.

At Gould’s request, an administrative hearing was held on October 12, 2011. Gould was represented by counsel. The Hearing Officer recommended that Gould’s license be revoked and that he be ineligible to reapply for three years. Additionally, the Hearing Officer recommended that prior to reapplication Gould pass a fitness to teach evaluation and complete individual counseling to address anger management issues.

The State Board of Education considered the Hearing Officer’s Report and Recommendation and rejected portions that prohibited Gould from reapplying for three years and requiring the fitness to teach evaluation and individual counseling. Instead, the State Board

of Education, pursuant to Administrative Code Rule 3301-73-22(A)(3)(b), ordered Gould permanently ineligible to reapply for any license with the State Board of Education.

Gould received notice of the Board's resolution and filed a "Notice of Appeal of Administrative Ruling, Complaint, and Jury Demand" in this Court. The resolution being appealed is attached to his Complaint.

Defendant Department of Education moved to dismiss the "Notice of Appeal and Complaint." Defendant asserts only the Court of Claims has jurisdiction over Gould's claims for money damages against a department of the State of Ohio. Defendant also asserts the "Notice of Appeal" does not comport with the statutory notice requirements of R.C. §119.12 to perfect an administrative appeal because it does not state the grounds for the appeal (e.g., that the order being appealed is "not supported by reliable, probative, and substantial evidence and is not in accordance with the law").

#### LAW & ANALYSIS

R.C. §119.12 provides, in pertinent part:

Any party adversely affected by any order of an agency issued pursuant to an adjudication...revoking or suspending a license...may appeal from the order of the agency to the court of common pleas of the county in which...the licensee is a resident...

\* \* \*

Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and stating that the order is not supported by reliable, probative, and substantial evidence and is not in accordance with the 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 the law.* The notice of appeal shall also be filed by the appellant with the court. \* \*

\*. The amendments made to this paragraph by Sub. H.B. 215 of the 128th general assembly are procedural, and this paragraph as amended by those amendments shall be applied retrospectively to all appeals pursuant to this paragraph filed before the effective date of those amendments but not earlier than May 7, 2009, which was the date the supreme court of Ohio released its opinion and judgment in *Medcorp, Inc. v. Ohio Dept. of Job & Family Servs.*, 121 Ohio St.3d 622,[2009-Ohio-2058, 906 N.E.2d 1125 (2009)]. (emphasis added).

The statute was amended to overrule the *Medcorp, Inc.* syllabus: "To satisfy the 'grounds of the party's appeal' requirement in R.C. 119.12, parties appealing under that statute



must identify specific legal or factual errors in their notices of appeal.”<sup>1</sup> “The amended statute provides that the very language rejected in *Medcorp*, based on the statutory standard of review,<sup>2</sup> is now the baseline for a notice of appeal’s compliance with R.C. §119.12.” *Foreman v. Lucas County Court of Common Pleas*, 189 Ohio App.3d 678, 2010-Ohio-4731, ¶15, 939 N.E.2d 1302. “Thus, an appellant need no longer state specific grounds for appeal, but may simply state that the agency order is not supported by reliable, probative, and substantial evidence and is not in accordance with law.” *Id.*

Here, as in the *Foreman* case, Gould’s “Notice of Appeal” does not even meet the relaxed requirements of the amended statute. “The amended statutes requires an appellant’s notice of appeal to, at least, state ‘that the agency’s order is not supported by reliable, probative, and substantial evidence and is not in accordance with the law,’ even while eliminating the requirement of any specificity ‘beyond [that] statement.’” *Id.* Gould’s Notice of Appeal makes no reference to the statute or the standard of review. “The recent amendments to R.C. §119.12 do not alter the necessity for strict adherence to statutory requirements to invoke the trial court’s jurisdiction over an administrative appeal.” *Id.* Thus, Gould’s “Notice of Appeal” is insufficient under R.C. §119.12 and this Court lacks subject-matter jurisdiction to hear the appeal.

Gould responded in opposition to the Motion to Dismiss and on April 25, 2012 filed an “Amended Notice of Appeal of Administrative Ruling and Complaint with Jury Demand.” The Amended Notice of Appeal and Complaint does specifically state “the order is not supported by reliable, probative, and substantial evidence and is not in accordance with the law.”

Defendant asserts the “Amended Notice of Appeal” cannot cure the jurisdictional defect because it was filed outside the statutory 15-day period to perfect an administrative appeal and that the amendment does not relate back because the fifteen-day statutory period cannot be tolled.

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<sup>1</sup> The language at issue in former R.C. §119.12 provided only: “Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of the party’s appeal.”

<sup>2</sup> That the order or decision being appealed is “not supported by reliable, probative, and substantial evidence and is not in accordance with the law.”

This Court agrees. R.C. Chapter 119 contains no provision for the amendment of a notice of appeal. Since Gould did not properly invoke this Court's jurisdiction within the 15-day period to perfect his administrative appeal, he cannot cure the failure after the 15-day period expires. See *CHS-Windsor, Inc. v. Ohio Dept. of Job & Family Services*, 10th Dist. App. No. 05AP-909, 2006-Ohio-2446, ¶11. This is because "compliance with the requirements as to the filing of the notice of appeal – the time of filing, the place of filing, and the content of the notice as specified in the statute – are all conditions precedent to jurisdiction." *Williams v. Drabik*, 115 Ohio App.3d 295, 296, 685 N.E.2d 293 (10th Dist. 1996), quoting *Zier v. Bur. of Unemp. Comp.*, 151 Ohio St. 123, 127, 84 N.E.2d 746 (1949). Because the amended notice of appeal and additional stated grounds for the appeal was not filed within the 15-day period, the amended notice of appeal is a nullity. *CHS-Windsor, Inc. v. Ohio Dept. of Job & Family Services*, 2006-Ohio-2446, ¶11. This Court lacks subject-matter jurisdiction over Gould's attempted administrative appeal.

Additionally, Gould's "Complaint and Jury Demand" seeking specific performance, monetary damages, costs and attorney fees is subject to dismissal pursuant to Civ.R. 12(B)(1) for lack of jurisdiction over the subject matter. Only the Court of Claims has jurisdiction over claims for money damages against the State of Ohio (or any department / agency thereof). R.C. §2743.03. Also, the Court of Claims has exclusive subject matter jurisdiction where equitable relief is sought in conjunction with a claim for damages. R.C. §2743.03(A)(2).

Plaintiff's "Complaint and Jury Demand" against the Ohio Department of Education sets forth a prayer for specific performance (e.g., injunctive or other equitable relief) and money damages, including costs and attorney fees. The Court of Claims is vested with exclusive jurisdiction over such claims and this Court lacks subject matter jurisdiction over the causes of action asserted. Accordingly, Gould's Complaint is not cognizable in this forum and the Complaint and Jury Demand are DISMISSED pursuant to Civ.R. 12(B)(1).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Notice of Appeal of Administrative Ruling and Complaint and Jury Demand are dismissed because this Court lacks jurisdiction over the subject-matter of the entire action. This matter is dismissed in its entirety, with prejudice. This is a final and appealable Order; there is no just cause for delay. Costs to Plaintiff.

It is so Ordered.



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JUDGE PAUL J. GALLAGHER

cc: Attorney Holly E. LeClair Welch  
Attorney Shannon E. Sorenson