

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

<b>PETER GARG, et al.,</b>	:	
	:	
Appellants,	:	
	:	Case No. 12CVF-06-7204
vs.	:	
	:	
<b>OHIO STATE FIRE MARSHAL,</b>	:	
	:	(JUDGE FRYE)
Appellee.	:	

**DECISION AND FINAL JUDGMENT  
GRANTING APPELLEE'S MOTION TO DISMISS**

(Motion Filed July 12, 2012)

***I. Introduction***

This is an administrative appeal from a decision of the Board of Building Appeals (“the Board”). The Ohio State Fire Marshal (“OSFM”) moved to dismiss this appeal arguing that the court did not acquire subject matter jurisdiction because appellants Peter Garg and Raxon Restaurant, Inc. c/o The Bellefontaine Inn (collectively “Appellants”) failed to file in Logan County where the property at issue is located.

The determination whether a court has subject matter jurisdiction, that is, legal authority to look into the merits of a case, must be made at the outset. Without jurisdiction no ruling has any legal effect. Ohio law treats some procedural missteps in beginning an administrative appeal as jurisdictionally fatal. *E.g. Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 2007-Ohio-2877.

On August 13, 2012, Appellants opposed the motion and argued that jurisdiction is proper pursuant to R.C. § 2506.01, purportedly because their principal office is in Franklin County. OSFM replied that R.C. § 2506.01 is inapplicable here because the order appealed from is from a state agency, not a political subdivision.

***II. Factual and Procedural Background***

On December 20, 2011, a Certified Fire Safety Inspector employed by the Division of the State Fire Marshall inspected the Bellefontaine Inn. It is located at 1134

North Main Street, Bellefontaine. Allegedly, violations of the Ohio Fire Code were observed. (Certified Record, p.6) The Chief Deputy State Fire Marshal sent Appellants a letter on January 9, 2012, explaining that all violations must be remedied within 30 days. (*Id.*) The letter also notified Appellants of their right to request a hearing before the Board. (*Id.*)

Appellants did not timely request a hearing but the Board held a Goldman hearing on May 15, 2012. (*Id.* at pp. 24-25) After hearing testimony and reviewing exhibits, the Board voted unanimously to uphold the finding of violations assessed in the Notice of Proposed Penalty. (*Id.* at p. 34) The Final Order was mailed to Appellants on May 16, 2012, and set forth the Board's decision. (*Id.* at pp. 282-283) Additionally, the Final Order notified Appellants of their right of appeal.

Appellants filed a notice of appeal with this court on June 4, 2012.

### ***III. Motion to Dismiss***

OSFM contends that Appellants filed their Notice of Appeal in the wrong court, and therefore, that this court lacks subject matter jurisdiction. Appellants respond that R.C. § 2506.01(A) applies, and point out that Appellants have their principle office in Franklin County. Hence, they argue, the appeal was properly made here.

Appeals of violations under the Ohio Fire Code are governed by R.C. § 3737.43(B). It states in pertinent part:

If the responsible person is aggrieved by an order of the board, the person may appeal to the court of common pleas ***where the property that is the subject of the citation is located***, within thirty days after the board renders its decision. (emphasis added).

Then, appeals under R.C. § 3737.43 must comply with the general provisions of the administrative procedure act. Nevertheless, the second paragraph of R.C. 119.12 explicitly provides:

Any party adversely affected by any order of an agency issued pursuant to any other adjudication may appeal to the court of common pleas of Franklin county, ***except that appeals from orders of the fire marshal issued under Chapter 3737. of the Revised Code may be to the court of common pleas of the county in which the***

***building of the aggrieved person is located \* \* \****  
(emphasis added.)

Nevertheless, Appellants contend that the legal rule that is actually applicable here is found in R.C. § 2506.01(A). It reads in pertinent part:

[E]very final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located as provided in Chapter 2505. of the Revised Code.

Appellants' argue that the principal office of the Fire Marshall is in Franklin County; that their own "principal office is located within Franklin County at 6121 Zumstein Dr. Columbus Ohio 43229;" and that Civ. R. 3(B)(2) also lays proper venue here. ("Appellant's Reply to Appellee's Motion to Dismiss" filed August 13, 2012, at p. 2) None of these arguments are well taken.

Under Ohio law, absent some constitutional or statutory authority a party has no inherent right to appeal from an administrative order. When appeal is permitted, moreover, procedural requirements must be followed quite strictly. Practically speaking hyper-technical rules sometimes deprive parties of an opportunity to challenge state agencies, but the line of decisions demanding strict compliance with statutory procedural rules is time honored. *See Hughes, supra*. Appellants cannot fall back on the venue provisions in the Civil Rules. Those Rules do not apply to administrative appeals. Civ. R. 1(C). Likewise, R.C. § 2506.01 does not save Appellants' appeal. It only applies to orders from political subdivisions, not state agencies. Factually, moreover, the location of Appellants' business does not equate to the county in which "the property that is the subject of the citation is located" as required by R.C. 3737.43(B).

Regardless of where Appellant's "principal office" is located, R.C. § 3737.43(B) provides the controlling rule for this case. *BP Exploration & Oil, Inc. v Ohio Dept. of Commerce*, 10th Dist. Nos. 04AP-619 and 620, 2005-Ohio-1533, 2005 Ohio App. LEXIS 1489 considered R.C. § 3737.43 in another case involving citations issued by the state fire marshal. That one involved a fueling plant in Beverly, Ohio. After decisions were rendered at the Board, there was an attempt to file an administrative appeal here in Franklin County rather than in southeastern Ohio where the property of the aggrieved

party was located. The Franklin County Court of Appeals thoroughly examined the history of the statutes, and concluded that “although the language in R.C. 119.12 and 3737.43(B) slightly differ, both these provisions direct an aggrieved party to direct an appeal to the common pleas court of the county where the building or property is located.” (*Id.* at ¶ 40.) Thus, there is no alternative forum available for appeal from an order of the fire marshal to the common pleas court in Franklin County when the building or property in question is elsewhere. (*Id.* at ¶ 41).

It is undisputed that the Bellefontaine Inn is located in Bellefontaine, in Logan County. (Certified Record, p. 6) Even accepting that the main location of Appellants’ business is in Franklin County, therefore, pursuant to R.C. 3737.43(B) they should have filed this appeal in Logan County.

No provision of R.C. § 119.12 permits a common pleas court to transfer (rather than dismiss) an administrative appeal filed in the wrong county. *Calo v. Ohio Real Estate Comm’n*, 10th Dist. No. 10AP-595, 2011-Ohio-2413, 2011 Ohio App. LEXIS 2045, at ¶38. Accordingly, the OSFM’s motion to dismiss must be **GRANTED**.

## **FINAL JUDGMENT**

For the reasons stated, this case is **DISMISSED** with prejudice at Appellants’ costs.

**\*\*\*THIS IS A FINAL APPEALABLE ORDER\*\*\***

**IT IS SO ORDERED.**

Franklin County Court of Common Pleas

**Date:** 10-17-2012  
**Case Title:** PETER GARG -VS- OHIO STATE FIRE MARSHAL  
**Case Number:** 12CV007204  
**Type:** DECISION

It Is So Ordered.

The image shows a handwritten signature in cursive that reads "Richard A. Frye". The signature is written over a circular official seal, which is partially obscured by the ink. The seal appears to be the official seal of the Franklin County Court of Common Pleas.

/s/ Judge Richard A. Frye

Court Disposition

Case Number: 12CV007204

Case Style: PETER GARG -VS- OHIO STATE FIRE MARSHAL

Case Terminated: 08 - Dismissal with/without prejudice

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 12CV0072042012-07-1299970000

Document Title: 07-12-2012-MOTION TO DISMISS

Disposition: MOTION GRANTED