

IN THE COURT OF COMMON PLEAS, HAMILTON COUNTY, OHIO

TINA REDDING,

Appellant,

-vs-

OHIO DEPARTMENT OF AGRICULTURE,

Appellee.



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Case No. A 1206435

Judge Stich

Magistrate Bachman

FINAL ENTRY ADOPTING MAGISTRATE'S DECISION AND DISMISSING APPEAL

This administrative appeal is before the Court pursuant to Ohio Civil Rule 53 on the Magistrate's Decision journalized on June 21, 2013. The Court finds that no objection to the Magistrate's Decision has been filed and that good cause exists to adopt the Magistrate's Decision pursuant to Ohio Civil Rule 53(D)(4)(c).

Accordingly, IT IS HEREBY ORDERED as follows:

1. The Court adopts the Magistrate's Decision of June 21, 2013.
2. Appellee's Motion to Dismiss filed August 31, 2012 is granted and this appeal is dismissed. Appellant's Motion to Reinstate License filed August 27, 2012 is denied as moot.
3. Court costs shall be paid by Appellant.

This is a final and appealable order, there being no just cause for delay.

ENTERED
JUL 18 2013

FOR COURT USE ONLY	
S. C. Line #:	10

Judge Carl J. Stich, Jr.



D102920587

COURT OF COMMON PLEAS	
ENTER	
<i>Carl Stich</i>	
HON. CARL STICH	
THE CLERK SHALL SERVE NOTICE TO PARTIES PURSUANT TO CIVIL RULE 58 WHICH SHALL BE TAXED AS COSTS HEREIN.	

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

TINA REDDING,	:	Case No. A1206435
Appellant,	:	Judge Stich
v.	:	
OHIO DEPARTMENT OF AGRICULTURE,	:	<u>MAGISTRATE'S DECISION</u>
Appellee.	:	

RENDERED THIS ____ DAY OF JUNE, 2013.

This case is an administrative appeal from a July 1, 2012 Director's Order ("Order") of the Ohio State Department of Agriculture ("Department") which suspended the auction firm license of appellant Tina Redding ("Redding") for six months effective July 1, 2012 until January 1, 2013. The appeal was filed pursuant to R.C. § 119.12. Before the court are Redding's Motion to Reinstate License filed August 27, 2012 and the Department's Motion to Dismiss filed August 31, 2012. The parties waived oral arguments and the appeal was submitted on the briefs to the Common Pleas Magistrate on December 10, 2007.

DIRECTOR'S ORDER



The relevant portion of the Order states as follows:

This matter came before the Department of Agriculture upon the motion of the Ohio Department Agriculture, Division of Enforcement, Auctioneer Program moving the Department for an order suspending the auction firm license of Redding's Auction pursuant to Revised Code Chapter 4707. On March 1, 2012, the Department sent Ms. Tina Redding a notice proposing to impose a six-month suspension of her auction firm license for Redding's Auction along with a notice of her right to a hearing pursuant to Chapter 119 of the Revised Code. Ms. Redding timely requested an administrative hearing and one was held on May 2, 2012. On May 30, 2012, Hearing Officer Sheryl D. Erlichman issued her Report and

Recommendation, a copy of which was served on Ms. Redding on June 6, 2012. Ms. Redding failed to submit written objections. By the authority vested in my office by law, it is hereby **ORDERED**: 1. That the notice, attached as Exhibit A, is adopted as my findings or [sic] fact; 2. That Redding's Auction auction firm license, number 2005000103, is suspended for six-months effective July 1, 2012, with the suspension ending on January 1, 2013; 3. That a certified copy of this order be served upon Tina Redding.¹

STANDARD OF REVIEW

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The court shall award compensation for fees in accordance with section 2335.39 of the Revised Code to a prevailing party, other than an agency, in an appeal filed pursuant to this section.²

The common pleas court's review of the administrative record is neither a trial *de novo* nor an appeal on questions of law only, but a hybrid review in which the court must appraise all the evidence as to the credibility of the witnesses, the probative character of the evidence, and the weight thereof. In its review, the common pleas court must give due deference to the administrative agency's resolution of evidentiary conflicts, but the findings of the agency are not conclusive.³

The Ohio Supreme Court has given Ohio jurists guidance regarding definitions of the key evidentiary terms contained in R.C. § 119.12.⁴ Reliable evidence is dependable, confidently trusted, and there is reasonable probability that the evidence is true.⁵

¹ / Dept. Mot. to Dismiss, Ex. A..

² / Ohio Rev. Code § 119.12 (West 2013).

³ / *Althof v. Ohio State Bd. of Psychology* (Mar. 8, 2007), 2007-Ohio-1010 at ¶¶ 7, 8 (App. 10 Dist.) (citations and quotation punctuation omitted).

⁴ / *Our Place, Inc. v. Ohio Liquor Control Comm'n.* (1992), 63 Ohio St.3d 570, 571.

⁵ / *Id.*

Probative evidence is relevant and tends to prove the issue in question.⁶ Substantial evidence is evidence with some weight; it must have importance and value.⁷

DISCUSSION

In its Motion to Dismiss, the Department argues this court lacks subject matter jurisdiction to hear this appeal due to the fact it was filed outside of the mandatory time limit proscribed by R.C. § 119.12. The Ohio Revised Code states, in relevant part, “notices of appeal shall be filed within fifteen days after the mailing of the agency’s order as provided in this section.”⁸ According to the unchallenged affidavit of David Gorman, a copy of the Order was sent to Redding by certified mail on July 3, 2012.⁹ On July 24, 2012, the certified mail was returned as “unclaimed”.¹⁰ The Order was then sent by ordinary mail on July 24, 2012 and has never been returned as undelivered.¹¹ Redding then filed this appeal on August 10, 2012.

The court finds Redding was properly served with the Order by ordinary mail on July 24, 2012 in accordance with R.C. § 119.07. Pursuant to R.C. § 119.12, Redding’s notice of appeal must have been filed by August 8, 2012. However, Redding’s appeal was filed August 10, 2012. The court finds that since the 15-day deadline for filing a notice of appeal is delineated by statute, Civil Rule 6(E) does not extend the deadline for filing this appeal by three days.¹² Therefore, the court finds the Department’s Motion to Dismiss is well-taken and the appeal must be dismissed due to a lack of subject matter

⁶ / *Id.*

⁷ / *Id.*

⁸ / Ohio Rev. Code § 119.12 (West 2013).

⁹ / Dept. Mot. to Dismiss, Aff. of Gorman ¶ 2.

¹⁰ / *Id.* at ¶ 3.

¹¹ / *Id.* at ¶¶ 4-5.

¹² / *Townsend v. Board of Bldg. Appeals*, 49 Ohio App.2d 402 (App. 9th Dist.).

jurisdiction. Redding's Motion to Reinstate License filed August 27, 2012 is moot and not well-taken.

DECISION

The Department's Motion to Dismiss filed August 31, 2012 is GRANTED and this appeal filed August 10, 2012 is DISMISSED. Redding's Motion to Reinstate License filed August 27, 2012 is DENIED as moot.



**MICHAEL L. BACHMAN
MAGISTRATE
COURT OF COMMON PLEAS**

NOTICE

Objections to the Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

Copies sent by Clerk of Courts to:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION
HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR
ATTORNEYS AS PROVIDED ABOVE.

Date: _____ Deputy Clerk: _____