

FILED
COMMON PLEAS COURT
MUSKINGUM CO., OHIO
2015 JAN 8 PM 2 37
TODD A. BICKLE
CLERK

**IN THE COURT OF COMMON PLEAS OF MUSKINGUM COUNTY,
ZANESVILLE, OHIO**

KINSEY HARPER,

Appellant,

v.

OHIO BUREAU OF MOTOR VEHICLES,

and

EMC INSURANCE COMPANY

Appellees.

Case No. CF2014-0384

Judge FLEEGLE

439/1096

ORDER GRANTING
DEFENDANT OHIO BUREAU
OF MOTOR VEHICLE'S
MOTION TO DISMISS

JUDGMENT ENTRY

This administrative appeal came before the Court on October 30, 2014, when Appellant Kinsey Harper appealed an order of Appellee Ohio Bureau of Motor Vehicles. After the Certified Administrative Record had been filed, Appellee Ohio BMV filed a motion to dismiss for lack of subject matter jurisdiction for failure to file the notice of appeal with the agency appealed from, as required by R.C. 119.12. Upon the Appellee Ohio Bureau of Motor Vehicle's motion, and for good cause shown, the motion to dismiss for lack of subject matter jurisdiction is **GRANTED**. Costs to Appellant.

So **ORDERED**


JUDGE MARK C. FLEEGLE

Copies sent by the Clerk of Courts to:

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Zanesville, OH 43701

Zachary C Schaengold
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30 E. Broad St., 26th Floor
Columbus, OH 43215

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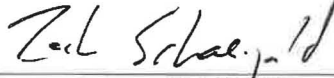
Appellees.

**APPELLEE'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER
JURISDICTION**

Appellee Ohio Bureau of Motor Vehicles respectfully moves this Court to dismiss this administrative appeal for lack of subject matter jurisdiction because Appellant failed to comply with the requirements of R.C. 119.12 when Appellant did not file the notice of appeal with the agency.

Respectfully submitted,

MIKE DeWINE (0009181)
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Kinsey Harper (Appellant) appeals a Notice of Suspension sent out by the Ohio Bureau of Motor Vehicles (BMV). Although Appellant filed the notice of appeal with the Court, Appellant failed to file the notice of appeal with the BMV.

Appellant has failed to perfect the administrative appeal under R.C. 119.12. This Court should therefore dismiss this administrative appeal for lack of subject matter jurisdiction.

II. STATEMENT OF THE FACTS

In August 2014, the Muskingum County Court of Common Pleas entered a default judgment against Appellant relating to Appellant's vehicle being involved in an accident that caused substantial damage. *See* Certified Record 3, 4, 5. The judgment creditor forwarded this information to the BMV, and as required by law, the BMV issued a Notice of Suspension to Appellant on September 17, 2014. *See* Certified Records 6, 7. The Notice of Suspension stated

that Appellant could appeal the suspension under R.C. 119.12, and included the requirement that Appellant file the notice of appeal with the BMV and with the Court within 15 days of October 15, 2014. *See* Certified Record 7.

Appellant filed the notice of appeal with this Court on October 30, 2014. *See* Certified Record 9. Appellant did not file a notice of appeal with the BMV. *See* Certified Record Table of Contents.

III. LAW AND ARGUMENT

This Court lacks subject matter jurisdiction over this appeal because Appellant failed to comply with the statutory requirements of R.C. 119.12 by not filing a notice of appeal with the BMV.

Appellant is required to file the notice of appeal with both the Court and the agency. R.C. 119.12 (“notices of appeal [to the agency and to the Court of Common Pleas] shall be filed within fifteen days after the mailing of the notice of the agency's order as provided in this section.”). *See also Nibert v. Ohio Dept. of Rehab & Corr.*, 84 Ohio St.3d 100, 102-03, 1998-Ohio-506, 702 N.E.2d 70. (finding R.C. 119.12 requires the notice of appeal be filed with the court and the agency to confer subject matter jurisdiction). Failure to properly perfect the appeal is fatal, as it divests the Court of subject-matter jurisdiction. *Id.* at 102; *see also Brass Pole v. Ohio Depart. of Health*, 10th Dist. Franklin No. 08AP-1110, 2009-Ohio-5021, ¶ 13 (“Ohio courts, including this one, have held that the failure to file a notice of appeal with the appropriate agency within the 15-day limit provided for in R.C. 119.12 is a jurisdictional defect”).

Appellant never filed notice of appeal with the BMV. *See* Certified Record Table of Contents. Appellant’s failure to file a notice of appeal with the BMV divests this Court of subject matter jurisdiction.

When the right to appeal is conferred by statute, "the appeal can be perfected only in the mode prescribed by statute." *Ramsdell v. Ohio Civ. Rights Com'n*, 56 Ohio St.3d 24, 27, 563 N.E.2d 285 (1990). Because Appellant failed to file the notice of appeal with the BMV, as set forth in R.C. 119.12, this Court lacks subject matter jurisdiction to hear the appeal, and this administrative appeal should be dismissed.

IV. CONCLUSION

Because Appellant did not file the notice of appeal with the agency, the BMV respectfully requests that this Court dismiss the above captioned case for lack of subject matter jurisdiction.

Respectfully submitted,

MIKE DeWINE (0009181)
ATTORNEY GENERAL OF OHIO



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Counsel for Appellee Ohio Bureau of Motor Vehicles

CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2014, a copy of the foregoing was served via regular U.S. mail, postage prepaid upon Appellant's counsel, Brian W. Benbow at 605 Market St., Zanesville, OH, 43701.



ZACHARY C SCHAENGOLD (0090953)