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

LISA ROWE,	:	
Appellant,	:	CASE NO. 13CVF07-7554
-vs-	:	JUDGE DAVID W. FAIS
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES,	:	
Appellee.	:	

DECISION AND ENTRY ON MERITS OF APPEAL
AND
DECISION AND ENTRY GRANTING OHIO DEPARTMENT OF JOB AND FAMILY SERVICES' MOTION FOR JUDGMENT ON THE RECORD, FILED OCTOBER 2, 2013

I. INTRODUCTION

This matter comes before the Court upon an appeal and pursuant to R.C. 5101.35 and 119.12 from a decision of the Ohio Department of Job and Family Services (hereinafter "Department"). The Administrative Appeal Decision issued by the Department affirmed the state hearing decision which overruled a previous order requiring the parties to continue to negotiate the amount of retroactive adoption assistance to be paid to Appellant, Lisa Rowe (hereinafter "Appellant"), who is the adoptive parent of Zane and Zachary Rowe.

On July 26, 2013, the Department filed the Certification of the Record, and on October 2, 2013, after Appellant failed to timely file her Brief, the Department filed the Motion for Judgment on the Record, which is now before the Court. However, on October 9, 2013, the parties filed a Notice of Extension, which granted Appellant an additional thirty days to respond to the Department's Motion. As a result, on November 8, 2013, *pro se* Appellant filed an "Answer to Brief Submitted to the Court by the Office of the Ohio Attorney General." On December 11, 2013, the Department, with leave of Court, filed its Reply to Appellant's Opposition to Motion for

Judgment on the Record. Based on this history, the Court finds the instant appeal is fully briefed, the record of administrative proceedings has been submitted and the matter is ripe for consideration. For the reasons identified below, the decision of the Department must be affirmed.

II. FACTUAL AND PROCEDURAL BACKGROUND

Appellant adopted Zane and Zachary Rowe in 1999 and entered into an agreement with the Delaware County Public Children Services Agency ("DCPCSA") to receive adoption assistance of $250 per month. See, State Hearing Record ("SHR"), at 186. At some point in 2006, Appellant learned an increase in adoption assistance could be requested due to the increasing expenses associated with the children's special needs. *Id*. DCPCSA denied Appellant's initial request for an increase in adoption assistance based on the family's income and Appellant requested a state hearing regarding that decision. *Id*. On December 29, 2006, the Department issued a decision in the state hearing which required DCPCSA to "review the Appellant's request for an increase in adoption assistance, negotiate with the Appellant and determine by mutual agreement the adoption assistance amount." *Id*. at 188.

Following the initial decision, DCPCSA and Appellant began negotiations to determine the adoption assistance amount. In February of 2010, the parties came to an agreement of $900 per child. *Id*. at 12. However, Appellant argued that this amount should be retroactive and DCPCSA disagreed. *Id*. Both parties agreed that the effective date of the retroactive payment should begin March 1, 2006 and go through January of 2010. *Id*. However, the disagreement comes from the amount of retroactive assistance, if any, is to be paid. *Id.*

On June 8, 2012, after negotiations, three state hearings, and one administrative appeal, DCPCSA offered Appellant $300 per child per month in retroactive adoption assistance for March

1, 2006 through January 2010, for a total of $14,100.00 per child, or $28,200.00 total for both children. *Id*. at 11. Appellant declined this offer and requested a state hearing on the decision to make the offer. *Id*. at 8-10. Appellant contends that she should receive $650 per child, per month, for the entire time period, in retroactive adoption assistance. The state hearing was held on June 20, 2012 and the Decision was rendered on March 8, 2013. *Id*. at 1.

During the June 20, 2012 state hearing, Appellant testified that she did not incur, or cannot verify, more than $28,200.00 in expenses for the care of Zane and Zachary Rowe during the time period from March 1, 2006 through January 2010. *Id*. at 2. Appellant did however argue that she would have been able to pay for additional services for her children had the adoption assistance been increased earlier. *Id*. Appellant also admitted that she chose not to avail herself of other services offered, at low or no cost, through the Post Adoption Special Services Subsidy Program, offered through the Marion County Public Children Services Agency. *Id.*

On March 22, 2013, Appellant requested an administrative appeal of the March 8, 2013 state hearing decision. However, on June 12, 2013, the Department issued a decision affirming the March 8, 2013 state hearing decision and concluded that the $28,200.00 offer made by DCPCSA was "reasonable and justified." *Id.* at 3.

On July 11, 2013, Appellant filed her administrative appeal in this Court of the Department's June 12, 2013 Decision affirming the March 8, 2013 state hearing decision. Appellant contends that the June 12, 2013 Decision is not supported by reliable, probative, and substantial evidence, and that the Decision is not in accordance with law. Presently, the record has been certified and opposing briefs have been submitted by the parties.

III. STANDARD OF REVIEW

R.C. 5101.35 governs judicial review of administrative appeal decisions issued by ODJFS and authorizes appellants who disagree with an administrative appeal decision of the director of ODJFS to appeal to the court of common pleas of the county in which they reside pursuant to R.C. 119.12. See R.C. 5101.35(E); *Wolff v. Ohio Dep't of Job & Family Servs*., 165 Ohio App. 3d 118 (Ohio Ct. App., Franklin County 2006); *Howell v. Ohio Dep't of Job & Family Servs*., 2009-Ohio-1510, ¶22 (Ohio Ct. App., Belmont County Mar. 27, 2009).

Pursuant to R.C. 119.12, a reviewing trial court must affirm the order of the Department if it is supported by reliable, probative and substantial evidence and is in accordance with law. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 108, 111; *Henry's Cafe, Inc. v. Board of Liquor Control* (1959), 170 Ohio St. 233; *Insight Enterprises, Inc. v. Liquor Control Comm*. (1993), 87 Ohio App.3d 692.

The quality of the required evidence was defined by the Ohio Supreme Court in *Our Place v. Liquor Control Comm*. (1992), 63 Ohio St. 3d 570 as follows:

> (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value. *Id*. at 571.

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 consists of "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." *Marciano v. Liquor Control Comm.* (Apr. 22, 2003), Franklin

App. No. 02AP-943, unreported, citing *Lies v. Veterinary Med. Bd.* (1981), 2 Ohio App.3d 204, 207. In undertaking such a review, the court must give due deference to the administrative agency's resolution of evidentiary conflicts, but the findings of the agency are not conclusive. *Id*.

Accordingly, the Court must yield to the expertise of the Department unless its decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by a preponderance of substantial, reliable, and probative evidence. *Henley v. City of Youngstown* (2000), 90 Ohio St. 3d 142; *Kisil v. Sandusky* (1984), 12 Ohio St. 3d 30. In the case of *Dudukovich v. Housing Authority* (1979), 58 Ohio St. 2d 202, 207, the Court considered this language and stated:

> "…If a preponderance of reliable, probative and substantial evidence exists, the Court of Common Pleas must affirm the agency decision; if it does not exist, the court may reverse, vacate, modify or remand."

See also *Town Center Development Co. v. Cleveland* (1982), 69 Ohio St. 2d 640; *Schira v. Stow* (1990), 69 Ohio App.3d 841.

IV. ANALYSIS AND FINDINGS OF THE COURT

The facts in the present appeal are essentially undisputed and the records reviewed that form the basis of the Department's decision are uncontroverted. The fundamental disagreement between the parties surrounds the conclusion reached by the DCPCSA and the Department that Appellant is only entitled to $300 per child per month in retroactive adoption assistance for March 1, 2006 through January 2010, for a total of $14,100.00 per child, or $28,200.00 total for both children. Appellant believes she is entitled to $650 per child, per month, for the entire time period, in retroactive adoption assistance.

However, the Court finds that the $300 offer made by DCPCSA to Appellant was sufficient to reimburse Appellant for all the expenses she incurred in caring for the special needs of Zane and

Zachary Rowe. As such, the Court finds that DCPCSA's offer and decision was in accordance with Ohio Admin. Code 5101:2-49-15(F). This section of the Administrative Code states that when determining eligibility for retroactive adoption assistance, DCPCSA must consider a description of the special needs that continued or manifested themselves after the final decree of adoption, the severity of those needs, the treatment services required to meet the special needs and the financial burden on the family in attempting to meet the child's care or special needs without adoption assistance. See, Ohio Admin. Code 5101:2-49-15(F). In determining the amount of retroactive adoption assistance, DCPCSA "shall treat the retroactive adoption assistance payment separately from any current or future adoption assistance payments negotiated between the adoptive parent(s) and the agency." Ohio Admin. Code §5101:2-49-15(B). The total amount of retroactive adoption assistance payment "shall be based on the total eligible adoption assistance payments the child would have received had the child's eligibility been determined on the date that . . . the adoptive parent submitted the application to PCSA." Ohio Admin. Code §5101:2-49-15(C)(1).

Here, Appellant testified at the state hearing that she did not incur expenses in excess of the $28,200.00 offered by DCPCSA for retroactive adoptive assistance. SHR at 2. Therefore, the Court finds that the financial burden placed on Appellant's family in meeting her children's care or special needs was not greater than the retroactive adoption assistance offer made by DCPCSA. Although Appellant argues that this amount is not sufficient because her children's conditions were worsened by her inability to provide additional services to her children that she could have provided had she received additional adoption assistance, the Court finds that the statutes and rules do not provide additional adoption assistance for suffering and do not allow for the type of damages Appellant has alleged. In addition, the Court finds that Appellant did not provide DCPCSA with

documentation establishing that the additional services were required to meet the special needs of her children, as is required by Ohio Admin. Code 5101:2-49-15(F)(9). Instead, the Court finds that Appellant admitted that she failed to avail herself of other free or low cost services that were available through the county in which she resided. SHR at 2. As such, the Court agrees that Appellant failed to establish not only that these services were necessary as required by Ohio Admin. Code 5101:2-49-15(F)(9), but she also failed to establish that the children would have received the additional services had the additional adoption assistance been provided. Furthermore, the Department found that DCPCSA submitted "numerous documents and testimony that considerable thought and review went into this offer." SHR at 3. Therefore, based on the foregoing, the Court finds the Department's Decision was based upon a review of the needs of the children and the circumstances of the adoptive family, as required by Ohio Admin. Code 5101:2-49-05.

In addition, the Court finds that Appellant appears to take issue with an alleged violation of the February 8, 2013 Administrative Appeal Decision, which Appellant asserts is cause for this Court to overturn the June 12, 2013 Administrative Appeal Decision. More specifically, Appellant alleges that DCPCSA violated the law by failing to comply with the Department's previous administrative appeal decision within the time frame set forth in Ohio Admin. Code 5101:6-7-03(B)(1)(a). Appellant contends that DCPCSA did not promptly re-open negotiations regarding the retroactive adoptive assistance as instructed by the Department. However, the Court finds that this allegation does not refer to the June 12, 2013 Administrative Appeal Decision, which is the only Decision that is before this Court. As such, the Court finds that these arguments are not applicable to establish that the June 12, 2013 Decision was not in accordance with the law.

Based on the foregoing, this Court finds that the Department's Decision is supported by

reliable, probative and substantial evidence. The Decision is in accordance with law and is hereby **AFFIRMED**. In addition, the Department's Motion for Judgment on the Record is hereby **GRANTED**.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

> **(B) Notice of filing.** When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY. THIS IS A FINAL APPEALABLE ORDER. The Clerk is instructed to serve the parties in accordance with Civ. R. 58(B) as set forth above.

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Franklin County Court of Common Pleas

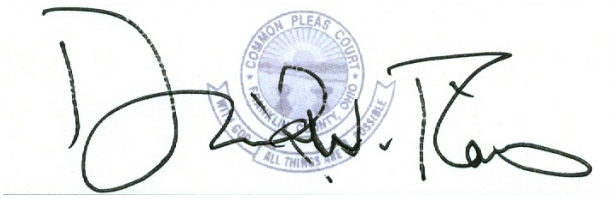
Date: 02-06-2015

Case Title: LISA D ROWE INDV ET AL -VS- OHIO STATE DEPARTMENT JOB & FAMILY SERVI

Case Number: 13CV007554

Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge David W. Fais

Court Disposition

Case Number: 13CV007554

Case Style: LISA D ROWE INDV ET AL -VS- OHIO STATE DEPARTMENT JOB & FAMILY SERVI

Motion Tie Off Information:

1. Motion CMS Document Id: 13CV0075542013-10-0299980000
   Document Title: 10-02-2013-MOTION
   Disposition: MOTION GRANTED