

IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO

PHILIP RUIZ,

CASE NO: 15CVF-01-782

Appellant,

v.

JUDGE: REECE II

OHIO STATE DEPARTMENT OF  
PUBLIC SAFETY,

Appellee.

**DECISION AND ENTRY**  
**GRANTING THE MOTION OF THE APPELLEE TO DISMISS**  
**AS FILED ON FEBRUARY 25, 2015**

REECE, JUDGE

Before this Court is Appellee's Motion to Dismiss. The Appellant filed to timely file a Memorandum Contra. The Court has reviewed and considered the law and arguments presented. For the reasons that follow, the Court **GRANTS** the Motion to Dismiss.

**Facts Relevant to Motion:**

In this appeal, the Appellant was a licensed driving instructor. Appellant was accused of inappropriate sexual contact/conduct with the minors he instructed. When the Appellant commenced his appeal, he failed to timely follow the requirements of service as found within R.C. §119.12.

On January 16, 2015 the Appellee issued its Order revoking the Appellant's license. Appellant then filed his appeal with this Court on January 28, 2015. That was timely. On February 4, 2015 the Appellee received the summons from the Clerk. The mailing from the Clerk also contained the Appellant's Notice of Appeal. Appellant has never separately and or timely served the Appellee.

Hence, the Appellant timely filed his Notice here with this Court. However, instead of also timely filing the Notice with the Appellee, the Appellant allowed the Clerk of Courts to issue service to the Appellee. The Appellee has asserted that it was the duty of the Appellant to serve the Appellee himself. Noting that there is strict compliance necessary to perfect an appeal, the Appellee has now argued that this Court does not have subject matter jurisdiction.

**Analysis:**

The Appellee claims that because it did not timely receive the notice from the Appellant – but from the Court – the Appellant failed to strictly follow R.C. §119.12. The Appellee’s argument turns on the following language from R.C. §119.12:

**Any party** desiring to appeal **shall** file a notice of appeal **with the agency** setting forth the order appealed from and stating that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. . . . The notice of appeal **shall also** be filed by the appellant with the court. In filing a notice of appeal with the agency or court, the notice that is filed may be either the original notice or a copy of the original notice. Unless otherwise provided by law relating to a particular agency, notices of appeal **shall be filed within fifteen days** after the mailing of the notice of the agency's order as provided in this section. (Emphasis added)

Appellee then relied on a number of cases to show that strict compliance is necessary to perfect jurisdiction with this Court.

Strict compliance with the provisions of Chapter 119 of the Revised Code is the general rule. *See Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 2007-Ohio-2877, ¶17 (stating that "[j]ust as we require an agency to strictly comply with the requirements of R.C. 119.09, a party adversely affected by an agency decision must likewise strictly comply with R.C. 119.12 in order to perfect an appeal"); *Nibert v. Ohio Dept. of Rehab. & Corr.*, 84 Ohio St.3d 100, 102, 1998-Ohio-506, quoting *Lake Hosp. Sys., Inc. v. Ohio Ins. Guar. Assn.* (1994), 69 Ohio St.3d 521, 525 (interpreting the R.C.

119.12 appeal requirements and stating " '[t]here is no need to liberally construe a statute whose meaning is unequivocal and definite' "); *Sinha v. Dept. of Agriculture* (Mar. 5, 1996), 10th Dist. No. 95APE09-1239 (deciding an appellant was entitled to judgment under R.C. 119.12 when the agency certified the record to the court of common pleas 31 days after the notice of appeal was filed).

The Appellee also relied upon the case of *Shaban Mahmound, MD. v. State Medical Board of Ohio*, Case No: 13CVF-02-1907 (Franklin County Court of Common Pleas). Similar facts existed in that case. The doctor did not serve the Medical Board, but instead allowed the Clerk to serve the Board. In that case Judge McIntosh held that:

Revised Code 119.12 is clear: It is **the appealing party** whom must file a notice of appeal with the agency within fifteen days after the mailing of the notice of the agency's order. . . . A copy of a notice of appeal, mailed to an agency by a court's clerk, is not sufficient to satisfy the R.C. 119.12 requirement that the appealing party file a notice of appeal with the agency. (Emphasis added)

It is clear that the Appellant has not strictly complied with the clear language of R.C.

§119.12. Appellee's Motion to Dismiss is **GRANTED**.

**Decision:**

Appellee's Motion to Dismiss as filed on February 25, 2015 is **GRANTED**.

Appellant's appeal is **DISMISSED**.

**THIS IS A FINAL APPEALABLE ORDER**

**JUDGE GUY REECE II**

Copies to:

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Franklin County Court of Common Pleas

**Date:** 03-18-2015

**Case Title:** PHILIP RUIZ -VS- OHIO STATE DEPARTMENT PUBLIC SAFETY  
JOHN

**Case Number:** 15CV000782

**Type:** DECISION/ENTRY

It Is So Ordered.



/s/ Judge Guy L. Reece, II

Court Disposition

Case Number: 15CV000782

Case Style: PHILIP RUIZ -VS- OHIO STATE DEPARTMENT PUBLIC  
SAFETY JOHN

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 15CV0007822015-02-2599980000

Document Title: 02-25-2015-MOTION TO DISMISS

Disposition: MOTION GRANTED