

FILED  
LUCAS COUNTY

2015 NOV -5 P 12:16

COMMON PLEAS COURT  
BERNIE QUILTER  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS, LUCAS COUNTY, OHIO

TIFFANY SALYERS,  
Appellant

vs.

OHIO DEPARTMENT OF PUBLIC  
SAFETY, BUREAU OF MOTOR  
VEHICLES,  
Appellee.

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Case No. G-4801-CI-201503828-000

**OPINION AND JUDGMENT ENTRY**

JUDGE STACY L COOK

This matter is before the Court upon the Motion to Dismiss of Appellee the Ohio Department of Public Safety, Bureau of Motor Vehicles ("BMV"), filed September 16, 2015. On October 5, 2015, Appellant Tiffany Salyers ("Salyers") filed her Memorandum in Opposition. On October 14, 2015, the BMV filed its Reply. The motion is decisional.

**I. Background**

This matter is an administrative appeal, pursuant to R.C. 119.12, of the Final Adjudication Order of the BMV, approving and confirming the Report and Recommendation of the Hearing Examiner, affirming the noncompliance and security suspensions entered against

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Salyer's driver's license.

On October 8, 2014, Salyer's vehicle was involved in an accident, causing \$4,310.46 in damage to a vehicle owned by a third party. At the time, Salyer's uninsured spouse was operating the vehicle. On February 15, 2015, the Registrar of the BMV sent a letter to Salyers, giving notice that her license would be suspended effective March 13, 2015, for lack of proof of financial responsibility on the date of the accident. Salyers provided proof of insurance on the vehicle, but she had taken her husband off of her insurance policy prior to the accident. At the time of the accident, Salyers and her husband were in the process of divorcing.

Salyers requested a hearing, and on May 21, 2015, hearing was held before a Hearing Examiner. On June 22, 2015, the Hearing Examiner issued his Report and Recommendation, finding Salyers failed to demonstrate by clear and convincing evidence that "she was not at fault for the lapse of proof of financial responsibility or for allowing her husband to have easy access to car keys and driving." The Hearing Examiner recommended that the Registrar not terminate the ninety-day suspension under the Financial Responsibility Act and not terminate the three-year security suspension imposed.

Salyers appealed these findings. On August 10, 2015, the BMV issued its Final Adjudication Order, affirming the Hearing Officer's recommended suspensions. The Final Adjudication Order directed Salyers to file any appeal within 15 days with both the common pleas court and with the Ohio Department of Public Safety, Office of Legal Services, 1970 West Broad Street, Suite 531, Columbus, Ohio.

On August 25, 2015, Salyers filed the present appeal, naming the BMV as Appellee. On September 2, 2015, return of service was received by the clerk of court, showing service by Certified Mail upon the BMV, evidenced by signed receipt. Certified mail was sent to the BMV at 1970 W. Broad Street, Suite 531, in Columbus, Ohio.

On September 4, 2015, counsel entered an appearance on behalf of the BMV. On September 15, 2015, the BMV filed certified copies of the Administrative Record with the Court.

On September 16, 2015, the BMV filed a Motion to Dismiss, based on lack of subject matter jurisdiction, for failing to timely perfect the appeal pursuant to statute.

## **II. Administrative Appeal**

An appeal of a suspension by the Bureau of Motor Vehicles is governed under R.C. 119.12, which provides:

\* \* \* [A]ny party adversely affected by any order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance or renewal of a license or registration of a licensee, *or revoking or suspending a license*, or allowing the payment of a forfeiture under section 4301.252 of the Revised Code may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident.

\* \* \*

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 the law. The notice of appeal may, but need not, set forth the specific grounds of the party's appeal beyond the statement of that 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. \* \* \* R.C. 119.12(A)(1) and (D) (emphasis added.)

The BMV argues that Salyers failed to file her appeal with the agency within 15 days, as required by R.C. 119.12(A)(1), and therefore she failed to invoke this Court's jurisdiction under the statute. In response, Salyers argues she served a copy of her appeal on counsel for the BMV, Assistant Ohio Attorney General Robert Doty, at One Government Center, Suite 1340, Toledo, Ohio.

The clear language of R.C. 119.12(A)(1) requires filing a notice of appeal with the agency and a copy of the notice with the court within 15 days of the final order of the administrative body. See e.g. *Nibert v. Ohio Dept. of Rehab. & Corr.*, 84 Ohio St.3d 100, 102, 702 N.E.2d 70 (1998), citing *Lake Hosp. Sys., Inc. v. Ohio Ins. Guar. Assn.*, 69 Ohio St.3d 521, 525, 634 N.E.2d 611 (1994) ("the language 'such notices of appeal shall be filed within fifteen days' necessarily requires that both the notice of appeal filed with the agency and the copy of the notice of appeal filed with the court must be filed within fifteen days.")

The right to appeal, in this case, is a right conferred by statute as provided under R.C. 119.12. Therefore, the Court must strictly apply the statutory requirements for filing a notice of appeal. *Capparell v. Love*, 99 Ohio App.3d 624, 629, 651 N.E.2d 484 (10<sup>th</sup> Dist. 1994) (citations omitted.); see also *Morris v. Ohio Real Estate*, 10<sup>th</sup> Dist. Franklin No. 06AP-669, 2006-Ohio-2006-Ohio-6743, ¶12, quoting *Smith v. State Dept. of Commerce*, 10<sup>th</sup> Dist. Franklin No. 00AP-

00AP-1342, 2001 Ohio App. LEXIS 3360 (Aug. 21, 2001) (Kennedy J., dissenting), citing *Ramsdell v. Ohio Civil Rights Comm.*, 56 Ohio St.3d 24, 27, 563 N.E.2d 285 (1990) (additional citation omitted) (“When the right to appeal is conferred by statute, the appeal can be perfected only in the mode prescribed by statute.”)

The statute requires filing the appeal with the agency *and* with the court within 15 days. *Capparell*, at 629. “[T]he failure to file a notice of appeal with the appropriate agency within the fifteen-day limit provided for in R.C. 119.12 is a jurisdictional defect.” *Harrison v. Ohio State Medical Bd.*, 103 Ohio App.3d 317, 321, 659 N.E.2d 368 (10<sup>th</sup> Dist. 1995), citing *Arndt v. Scott*, 72 Ohio L.Abs. 189 134 N.E.2d 82 (2d Dist. 1955), paragraph two of the syllabus; *Hayes v. Montgomery Cty. Bd. of Commrs*, 94 Ohio App. 3d 597, 600, 641 N.E.2d 277 (2d Dist. 1994).

Looking to the requirements of R.C. 119.12, Salyers must file a notice of appeal in “two separate and distinct locations” and the notice must be filed “within fifteen days after the mailing of the agency’s order.” *Lucas Cty. Bd. of Mental Retardation & Develop Disabilities v. Stills*, 6<sup>th</sup> Dist. Lucas No. L-84-227, 1984 Ohio App. LEXIS 11741 (Dec. 7, 1984). The agency’s order was mailed on August 10, 2015, requiring Salyers to perfect her appeal on or before August 25, 2015. It follows, therefore, that even if Salyers timely filed her appeal with the Court, if she failed to also file a timely appeal with the agency the “condition precedent to invoking the jurisdiction” of this Court has not been met, and dismissal is required. *Id.*, citing *Boomershine v. Bur. of Motor Vehicles*, 39 Ohio Misc. 103, 104, 315 N.E.2d 842 (Montgomery C.P. 1973); see also *Capparell*, at 629, citing *Ahrns v. Bd. of Tax Appeals*, 22 Ohio App.2d 179, 259 N.E.2d 518 (3d Dist. 1970)

(additional citation omitted.)

In arguing compliance with R.C. 119.12 and opposing dismissal, Salyers argues she served a timely copy of her appeal upon the Assistant Attorney General assigned to the matter, on August 25, 2015, and therefore complied with both the letter and the spirit of the law. Service on counsel for the agency, however, does not satisfy the requirement that Salyers file her notice of appeal with the agency. See e.g. *Blasko v. Ohio Bd. of Pharm.*, 143 Ohio App.3d 191, 194, 757 N.E.2d 846 (7<sup>th</sup> Dist. 2001) (“service on the attorney representing the agency within the fifteen-fifteen-day time fram for filing the notices of appeal does not constitute timely filing with the agency under R.C. 119.12.”)<sup>1</sup> Service by the Court as evidenced by signed receipt on September 2, 2015, moreover, was beyond the 15-day requirement of R.C. 119.12.

Upon due consideration of the requirements of R.C. 119.12, therefore, and the record in this case, the Court finds that Salyers failed to properly and timely perfect her appeal by failing to

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<sup>1</sup> *Blasko* cites the following cases in support:

*Chorpenning v. Ohio Div. Of Real Estate*, 1989 Ohio App. LEXIS 2202 (May 9, 1989), Washington App. No. 88CA7, unreported, 2; *Holley v. Gallipolis Dev. Ctr.*, 1984 Ohio App. LEXIS 12718 (Aug. 20, 1984), Gallia App. No. 83CA7, unreported (both Fourth District cases holding that neither service by mail on opposing counsel nor delayed filing with the Board is an adequate substitute for timely filing notice of appeal with the Board); *Anda-Brenner v. Ohio State Dental Bd.*, 2000 Ohio App. LEXIS 3700 (Aug. 11, 2000), Portage App. No. 99P00641, unreported, 2 (stating that the trial court lacked jurisdiction to hear an appeal where notice of appeal was filed in the court and a copy was served on the assistant attorney general, but notice of appeal was not timely served on the Board itself). See, also, *Patrick Media Corp v. Cleveland Bd. Of Zoning App.* (1998), 55 Ohio App. 3d 124, 125, 562 N.E.2d 921 (holding that mailing a copy of a notice of appeal that was filed in the trial court to the city law director does not constitute filing the notice of appeal with the city board of zoning appeals); *Guy v. City of Steubenville*, 1998 Ohio App. LEXIS 127 (Jan. 15, 1998), Jefferson App. No. 97JE22, unreported, 3 (where we held that notice to the city law director is not adequate to perfect appeal where the statute says to file notice with the Civil Service Commission); *McMaster v. City of Akron Hsg. App. Bd.*, 1992 Ohio App. LEXIS 4143 (Aug. 12, 1992), Summit App. No. 15462, unreported, 1. *Blasko*, at 194-195.

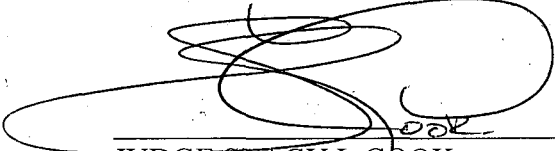
file her notice of appeal with the agency within the 15-day period as mandated by statute.

Accordingly, this Court lacks jurisdiction to hear Salyers' appeal, and the Court must dismiss the matter for want of subject matter jurisdiction.

JUDGMENT ENTRY

It is therefore ORDERED that the Motion to Dismiss of Appellee Ohio Department of Public Safety, Bureau of Motor Vehicles, filed September 16, 2015, is found well-taken and GRANTED.

The Court hereby DISMISSES the appeal for want of subject matter jurisdiction. IT IS SO ORDERED.

  
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JUDGE STACY L COOK