COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

LORI LANA	:	
Appellant	:	**CASE NO. 2014 CVF 01304**
vs.	:	**Judge McBride**
OHIO BUREAU OF MOTOR VEHICLES	:	**DECISION/ENTRY**
Appellee	:	

Milton S. Goff, III, counsel for the appellant Lori Lana, 130 Dudley Road, Suite 195, Edgewood, Kentucky 41017.

Attorney General of Ohio, Zachary C. Schaengold, Assistant Attorney General, Executive Agencies Section, counsel for the appellee Ohio Bureau of Motor Vehicles, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215.

This cause is before the court for consideration of (1) a motion to dismiss filed by the appellee Ohio Bureau of Motor Vehicles, (2) a motion to supplement the certified record filed by the appellee Ohio Bureau of Motor Vehicles, and (3) the merits of the appellant Lori Lana's appeal. The court held a hearing on these issues on December 11, 2015.

Upon consideration of the motions, the record of the proceeding, the written and oral arguments of counsel, and the applicable law, the court renders this written decision.

FACTS OF THE CASE AND PROCEDURAL BACKGROUND

On July 1, 2012, the appellant Lori Lana agreed in a cognovit note to pay Personal Service Insurance Company the sum of $2,900.75 plus interest in monthly installments.[1] The cognovit note did not state the underlying circumstances of this debt, including whether the debt arose from a vehicular accident.[2]

In July 2014, Personal Service Insurance Company filed a complaint in the Clermont County Municipal Court for a money judgment, in which it alleged the appellant defaulted on her cognovit note.[3] Like the cognovit note, the complaint did not state the underlying circumstances of the debt.[4]

The municipal court entered a judgment for the insurance company in the amount of $1,800.75, plus interest and court costs, on July 16, 2014.[5] Like the complaint and cognovit note, the judgment was silent on the underlying circumstances of the debt.[6]

The insurance company sent the judgment to the appellee Ohio Bureau of Motor Vehicles (hereinafter referred to as "the Bureau") on August 25, 2014, stating in its letter that the judgment arose from a "vehicular accident." [7] The letter sets forth the appellant's name, address, date of birth, social security number (which is redacted), and

---

[1] Appellant's Ex. C. On November 3, 2015 this court admitted Appellant's Exhibit C as additional evidence.
[2] Appellant's Ex. C.
[3] Certified R. 7.
[4] Certified R. 7.
[5] Certified R. 4.
[6] Certified R. 4.
[7] Certified R. 3.

the place and date of the vehicular accident.[8] The letter was sent by a legal assistant at Roberts, Matejczyk & Ita Co., L.P.A, which is the law firm representing the insurance company,[9]

The appellant's driving record lists the appellant's name, address, date of birth, and social security number (which was redacted).[10] These categories correspond to the identifying information set forth in the letter the Bureau received.[11] In addition, the appellant's driving record lists that she was guilty of the offense of failing to yield the right of way, committed on February 8, 2011.[12] The driving record also shows that she was involved in an accident on February 8, 2011, the same date listed in the letter, which resulted in property damage.[13]

The Bureau sent the appellant a "Notice of License Suspension" pursuant to Sections R.C. 4509.37 and 4509.101 of the Revised Code on September 17, 2014.[14] On September 23rd, the appellant sent a letter to the Bureau requesting an appeal. The appellant then filed an Appeal of License Suspension with this court on September 29th. The appellant appeals on the basis that the Bureau lacks statutory authority to suspend her license.[15] On October 24, 2014 the Ohio Department of Public Safety filed a copy of the certified records with this court.

---

[8] Certified R. 3.
[9] Certified R. 3.
[10] Certified R. 2.
[11] Certified R. 2, 3.
[12] Certified R. 2.
[13] Certified R. 2, 3.
[14] Certified R. 6.
[15] Certified R. 7.

LEGAL ANALYSIS

(A) MOTION TO DISMISS

During the December 11, 2015 hearing, the Bureau renewed its motion to dismiss for lack of subject matter jurisdiction. This court has previously rendered a decision finding that this court has subject matter jurisdiction over this case.[16]

"When the right to appeal is conferred by statute, an appeal can be perfected only in the manner prescribed by statute."[17] Ohio's Administrative Procedure Act governs appeals of administrative agency orders. For a party to perfect an appeal from an agency decision, the party must "strictly comply with R.C. 119.12."[18] Moreover, the failure to file a notice of appeal within the 15-day filing deadline set forth in R.C. 119.12 results in dismissal of the appeal, "as it precludes jurisdiction in the trial court."[19] Jurisdiction is "the courts' statutory or constitutional power to adjudicate the case."[20]

R.C. 119.12 provides, in relevant part, as follows:

> "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,

---

[16] March 27, 2015 Decision.
[17] *Courtyard Lounge v. Bur. of Environmental Health*, 190 Ohio App.3d 25, 940 N.E.2d 626, 2010-Ohio-4442, ¶ 6, citing *Ramsdell v. Ohio Civ. Rights Comm.*, 56 Ohio St.3d 24, 27, 563 N.E.2d 285 (1990).
[18] *Swartz v. Ohio Dept. of Job & Family Servs.*, 12th Dist. Butler No. CA2014-01-004, 2014-Ohio-3552, ¶ 8, quoting *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 868 N.E.2d 246, 2007-Ohio-2877, ¶ 17.
[19] Id., citing *Austin v. Ohio FAIR Plain Underwriting Assn.*, 10th Dist. Franklin No. 10AP-895, 2011-Ohio-2050, ¶ 6.
[20] (Emphasis omitted.) *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 89, 118 S.Ct. 1003 (1998).

> 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."

In the instant case, the appellant timely filed a notice of appeal with this court. It stated that she "hereby gives notice to the Bureau and the Court of Common Pleas of this appeal." The clerk of courts issued a summons upon the Bureau, to which a copy of the notice of appeal was attached. It was timely served via certified mail.[21] The appellant did not directly send a photocopy of the notice to the Bureau.

The Bureau argues that two additional cases, which it did not previously bring to the court's attention, demonstrate that this court does not have subject matter jurisdiction over this matter. The Bureau highlights that in the March 27, 2015 decision of this court, the court relied upon the language in R.C. 119.12 permitting an appellant to file "either the original notice or a copy of the original notice" with the administrative agency. The court noted that nothing in R.C. 119.12 states exactly what is required to "file a notice of appeal with an agency." This court held that "[s]ince a copy of the document filed with the court is sufficient to satisfy this requirement, the court cannot say that causing a service of the summons and notice of appeal to be sent via the clerk of courts does not meet the technical requirements of filing a copy of the notice of appeal with the agency."[22]

---

[21] Certified R. 7.
[22] March 27, 2015 Decision.

The Bureau argues that R.C. 119.12 requires the appellant to affirmatively and directly take two actions: (1) file an original or copy of the original notice of appeal with the court of common pleas, and (2) send an original or copy of the original notice of appeal to the Bureau. Because the clerk of courts, not the appellant, served the notice upon the Bureau, the Bureau contends that the appellant falls short of satisfying this jurisdictional requirement in R.C. 119.12. Specifically, the Bureau argues that the court misconstrued the language directing the appellant to send "either the original notice or a copy of the original notice" to the administrative agency.

The Bureau points to the legislative history behind R.C. 119.12 to illustrate the purpose for the language allowing the appellant to send the agency an original notice or a copy. On September 13, 2010, H.B. 215 was enacted, stating that "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."[23]

Previously, the statute mandated that the appellant "shall file a notice of appeal with the agency setting forth the order appealed from and the grounds for the party's appeal" and that a "copy of the notice of appeal shall also be filed by the appellant with the court."[24] The shift in language "amends the judicial interpretation of R.C. 119.12 requiring the original notice of appeal be filed with the agency in order for an administrative appeal to be perfected and the court to have jurisdiction."[25] Under the prior version of R.C. 119.12, the Ohio Supreme Court strictly construed the language and held that the appellant "must file the original notice of appeal with the agency and a

[23] R.C. 119.12, *Ostrander v. Grossman*, 6th Dist. Lucas No. L-10-1083, 2010-Ohio-4379, ¶ 14.
[24] Former R.C. 119.12, effective Mar. 30, 2007.
[25] *Ostrander*, 2010-Ohio-4379 at ¶ 14.

copy with the court of common pleas."[26] Thus, if an appellant filed the original notice of appeal with the court of common pleas and the copy with the agency, the court of common pleas was divested of subject matter jurisdiction over the case.[27] The distinction between the original notice and a copy of the original notice "serve[d] no function other than to trap the unwary" and was therefore amended to include the present language.[28]

The Bureau urges the court to read R.C. 119.12 to mean that the appellant must affirmatively and directly be the person to file either an original or copy of the notice of appeal with both the court of common pleas and the Bureau. In support, the Bureau filed two supplemental cases. The first, *Cos, Inc. v. Liquor Control Commission*, 11th Dist. Lake No. 92-L-206, 1993 WL 317468 (Aug. 13, 1993), involved similar facts to the instant case. In *Cos, Inc.* the appellant filed a notice of appeal with the court of common pleas.[29] The court then forwarded a copy of the notice to the agency.[30] The court held that "R.C. 119.12 requires that appellant file a notice of appeal with the agency."[31] The court went on to explain:

> "Filing a notice of appeal only with the court of common pleas is insufficient to confer jurisdiction on that court. *See Bolt v. Bureau of Motor Vehicles* (1974), 41 Ohio Misc. 139. Similarly, the mere forwarding of a copy of a notice of appeal by a court, pursuant to its routine administrative practice, is insufficient to confer jurisdiction on that court."[32]

---

[26] (Emphasis added.) *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 2007-Ohio-2877, 868 N.E.2d 246, paragraph two syllabus.
[27] *See Hughes*, 2007-Ohio-2877, ¶¶ 18-19.
[28] *Tsiperson v. Ohio Dept. of Commerce*, 8th Dist. Cuyahoga no. 96917, 2012-Ohio-1048, ¶ 9 citing *Hughes*, 2007-Ohio-2877 at ¶¶ 22-23 (Pfeifer, J., concurring and dissenting.)
[29] *Cos, Inc. v. Liquor Control Com'n*, 11th Dist. Lake No. 92-L-206, 1993 WL 317468, *1 (Aug. 13, 1993).
[30] Id.
[31] Id. at *2.
[32] Id.

A similar situation arose in *Klorer v. Lucas County Health Department.*, 6th Dist. Lucas No. L-99-1073, 1999 WL 575972 (Aug. 6, 1999), in which the appellant filed his notice of appeal with the court of common pleas and the court served the notice on the agency.[33] The *Klorer* Court relied on the above language from *Cos, Inc.* The court ultimately concluded: "It is undisputed that the appellant did not file his notice of appeal with the Board. Consequently, the pleading filed by appellant with the common pleas court was not filed 'in the place designated' by R.C. 119.12 and it cannot be considered as a notice of appeal sufficient to satisfy the jurisdictional prerequisite of the statute."[34]

The *Cos, Inc.* and *Klorer* cases do not change the court's previous finding that it has subject matter jurisdiction over the case at bar. At first blush, the language from those two cases seemingly prohibits perfection of an appeal when an agency receives its notice from the common pleas court.

However, both cases were decided well before the 2010 amendment to the statutory language. As discussed, before 2010 all appellants were required to file the original notice with the agency and the copy of the notice with the court. In both cases the appellant incorrectly filed the original notice with the court. Thus, the fact that the court sent a copy of the original to the agency would not have been sufficient to satisfy R.C. 119.12.

Stated differently, in *Cos, Inc.* and *Klorer* the appellant made the mistake of filing the original notice of appeal with the court of common pleas when it should have sent the original notice to the agency instead. Hence, the problem plaguing the *Cos, Inc.*

---

[33] *Klorer v. Lucas County Health Dept.*, 6th Dist. Lucas No. L-99-1073, 1999 WL 575972, *1 (Aug. 6, 1999).
[34] (Emphasis added.) Id. at *2.

and *Klorer* appellants was not the fact that the notice came directly from the court instead of directly from the appellant. Instead, the problem related to where the original notice was filed. *Klorer* states as much when it concludes that "* * * the pleading was not filed 'in the place designated' by R.C. 119.12 * * *." Hence, the problem in *Cos, Inc.* and Klorer was not that the court served the notice of appeal instead of the appellant; the problem was that the original was not filed in the correct place. For these reasons, the court finds that its previous ruling that it has subject matter jurisdiction over this case is unchanged by the Bureau's additional authority cited to the court.

(B) SUPPLEMENTING THE CERTIFIED RECORD

As mentioned, Ohio's Administrative Procedure Act controls appeals from agency decisions. R.C. 119.12 sets forth, in pertinent part:

> "Within thirty days after receipt of a notice of appeal * * * the agency shall prepare and certify to the court a complete record of the proceedings in the case. Failure of the agency to comply within the time allowed, upon motion, shall cause the court to enter a finding in favor of the party adversely affected. Additional time, however, may be granted by the court, not to exceed thirty days, when it is shown that the agency has made substantial effort to comply."

Thus, an administrative agency is required to file complete, certified administrative records within 30 days of the notice of appeal.[35] "A 'complete record of

[35] R. C. 119.12.

proceedings' in a case is a precise history of the proceedings from their commencement to their termination."[36]

Ohio law distinguishes between "an agency's failure to certify the record and an omission from the record which is certified. Failure requires reversal, omission requires correction."[37] Therefore, Ohio Supreme Court precedent establishes "two rules for cases where an agency improperly certifies the record."[38] The first rule "is absolute: an administrative agency's failure to certify the common pleas court a complete record of appealed administrative proceedings within the R.C. 119.12 time limit requires the common pleas court, upon motion, to enter a finding in favor of and a judgment for the appellant."[39] This type of failure is not at issue in the instant case because the Bureau did timely file a certified record.

By contrast, when the certified record contains an unintentional error or omission that does not prejudice the appellant, the court should not automatically find for the appellant. [40] Stated differently, when "an agency attempted to file a complete record,

---

[36] *Citizens for Akron v. Ohio Elections Comm.*, 10th Dist. Franklin Nos. 11AP-152, 11AP-153, 2011-Ohio-6387, quoting *Checker Reality Co. v. Ohio Real Estate comm.*, 41 Ohio App.2d 37, 322 N.E. 139 (1974), paragraph two of the syllabus.

[37] *Jordan v. State Bd. of Nursing Educ.*, 4th Dist. Jackson No. 532, 1987 WL 9338, *2 (Apr. 3, 1987).

[38] *Citizens for Akron*, 2011-Ohio-6387 at ¶ 19.

[39] *Citizens for Akron*, 2011-Ohio-6387 at ¶ 19, quoting *Gwinn v. Ohio Elections Comm.*, 187 Ohio App.3d 742, 2010-Ohio-1587, 933 N.E.2d 112 (10th Dist.). *See Geroc v. Veterinary Medical Bd.*, 37 Ohio App.3d 192, 196, 525 N.E. 2d 501 (8th Dist. 1987) (observing that it "has been repeatedly held that the total failure by an agency to timely certify its record in compliance with R.C. 119.12 places a mandatory duty upon the court of common pleas, upon motion, to take the action specified in R.C. 119.12 and enter a finding in favor of the party adversely affected.").

[40] *Arlow v. Ohio Rehabilitation Services Com'm*, 24 Ohio St.3d 153, 155, 493 N.E.2d 1337, 24 O.B.R. 371 (1986), citing *Lorms v. State*, 48 Ohio St.2d 153, 357 N.E.2d 1067, 2 O.O.3d 366 (1976), at the syllabus. *See Citizens for Akron*, 2011-Ohio-6387 at ¶ 19 (holding same).

but through inadvertence fails to do so, the common pleas court must grant a motion for judgment only when the movant demonstrates prejudice."[41]

To succeed in receiving a judgment in the appellant's favor, the appellant must demonstrate that there is "actual prejudice" to the appeal.[42] The actual prejudice may be "either hampering that party's presentation of his case or by inducing some error of the trial court."[43]

For instance, prejudice has been found when an agency's omission rendered the court unable to determine the validity of the appeal.[44] In that vein, the Fourth District Court of Appeals has questioned, "What could be more prejudicial than the trial court's inability to determine the validity of [the appellant's] appeal because the agency did not certify the complete record?"[45] In contradistinction, courts have rejected an interpretation of "the term 'prejudicial' to mean if it [the appellant] loses on the merits it has been prejudiced as a matter of law by the [agency's] failure to certify the record within the designated time."[46] Furthermore, demonstrating actual prejudice is a "difficult

---

[41] *Ohio Div. of Real Estate & Professional Licensing v. Knight*, 8th Dist. Cuyahoga No. 98160, 2013-Ohio-2896, ¶ 14. *See Black v. State Bd. of Psychology*, 160 Ohio App.3d 91, 2005-Ohio-1449, 825 N.E.2d 1192, ¶ 20 (10th Dist.) (stating that prejudice must be demonstrated due to an omission from the certified record before a finding under 119.12 is warranted); *Alban v. Ohio Real Estate Com'n*, 2 Ohio App.3d 430, 433, 442 N.E.2d 771, 2 O.B.R. 524 (10th Dist. 1981) ("* * * the mere omission of an item from the certified record of the proceedings of an administrative agency upon the appeal of one of its decisions does not require a reversal of the order pursuant to R.C. 119.12, where that which has been omitted in no way prejudices the appellant in the presentation of his appeal.").

[42] *Collett v. Department of Highway Safety*, 11th Dist. Trumbull No. 93-T-4897, 1994 WL 117103, *2 (Mar. 18, 1994), citing *Arlow*, 24 Ohio St.3d 153.

[43] *R.L. Strain Family Home v. Ohio Dept. of Mental Retardation and Developmental Disability*, 5th Dist. Stark No. 7424, 1988 WL 82165, *1, citing *Genoa Banking Co. v. Mills*, 9 Ohio App.3d 237, 459 N.E.2d 584, 9 O.B.R. 410 (10th Dist. 1983).

[44] *Citizens for Akron*, 2011-Ohio-6387 at ¶ 21.

[45] *Jordan*, 1987 WL 9338 at *2 (holding there was actual prejudice when the agency omitted a hearing memorandum from the certified record, which disabled the trial court from making a determination on one of the issues appealed).

[46] *Genoa Banking Co.*, 9 Ohio App.3d at 240.

burden."[47] The instant case does fall into this latter category of certified record defects, in which the certified record was filed but contains an omission or error. The appellant has not moved for judgment in her favor due to the omission.

However, an agency can prevent the conditions that give rise to such a motion and automatic adverse ruling by curing the omission or error in the certified record.[48] "R.C. 119.12 is remedial in nature and should, therefore, be given a liberal construction designed to 'assist the parties in obtaining justice' under R.C 1.11."[49] R.C. 119.12 provides the trial court the "discretion to grant agencies additional time within which to file complete agency records with the court."[50]

For instance, in *Ohio Division of Real Estate & Professional Licensing v. Knight*, 8th Dist. Cuyahoga No. 98160, 2013-Ohio-2896, the Eighth District Court of Appeals affirmed the trial court's decision to include a supplement to the certified record. In *Knight*, the appellant moved for adverse judgment because the agency had filed an incomplete transcript of the agency proceedings.[51] Without leave of court, the agency then supplemented the certified record with a complete transcript as well a few letters of correspondence the appellant sent the agency.[52] The trial court affirmed the agency's decision, from which the appellant appealed, claiming that the trial court erred when it

---

[47] *R.L. Strain Family Home*, 1988 WL 82165 at *2.
[48] *Adamson v. Ohio State Medical Bd.*, 10th Dist. Franklin No. 03AP-926, 2004-Ohio-5261, ¶ 26. *See Bergdalh v. Ohio State Bd. of Psychology*, 70 Ohio App.3d 488, (4th Dist. 1990) (affirming the trial court's decision to provide the agency an opportunity to cure its defect by having it submit additional meeting minutes that were essential for the court to determine the merits of the appeal).
[49] *Lorms*, 48 Ohio St.2d 153 at 155, citing *McKenzie v. Racing Comm.*, 5 Ohio St.2d 229, 231, 214 M/E/2d 397, 399 (1966).
[50] *Vogelsongv v. Ohio State Bd. of Pharmacy*, 4th Dist. Scioto No. 96 CA 2448, 1996 WL 752325, *4 (Dec. 27, 1996).
[51] *Ohio Div. of Real Estate & Professional Licensing v. Knight*, 8th Dist. Cuyahoga No. 98160, 2013-Ohio-2896, ¶ 7.
[52] Id.

did not grant her motion for an adverse judgment because the agency had failed to timely file the correct administrative record.[53]

The appellate court found that "it is within the common pleas court's discretion to allow additional time for an agency to correct errors or omissions in the certified record on appeal."[54] The court noted that the agency's omission resulted from "technical difficulties," and once it became aware of the omission, it "quickly remedied the situation and filed a supplement."[55] Ultimately, the court concluded that it was within the "court's discretion to allow [the agency] more time given the nature of the error and efforts made by [the agency] to comply with its statutory mandate."[56] As such, the agency's correction to the certified record prevented the court from finding that the appellant was prejudiced and that she was entitled to have the decision reversed.

In its briefing, the Bureau discusses at length the case law outlining circumstances that permit the court to reverse an agency ruling because the certified record was incomplete. Of note, in the case at bar the appellant has not filed a motion asking the court to reverse the Bureau's decision due to the Bureau's omission from the certified record. Rather, the issue before the court is whether the Bureau may supplement the record by submitting the complete copy of Certified Record Number 2, which is the appellant's driving record. The original Certified Record Number 2 submitted to the court and relied on by the appellant omitted two of its three pages.

---

[53] Id. Of note, the court ultimately found that the appellant had been actually prejudiced by the agency's omission of other documentary evidence that it never submitted to the court. Id. at ¶ 22.
[54] Id. at ¶ 16.
[55] Id. at ¶ 17.
[56] Id. at ¶ 18. *See Vogelsongv*, 1996 WL752325 at *4 (affirming a trial court's decision to allow an agency to supplement the certified record).

Nevertheless, the above case law examining how appellants have been prejudiced is instructive in determining whether the appellant will be prejudiced here.

The Bureau argues that the court should permit the supplementation because it substantially complied with the requirement that it timely submit a certified record. The Bureau explains that the omission resulted from an administrative oversight that went unnoticed until the December 11, 2015 hearing. Furthermore, the Bureau contends that the appellant will not be prejudiced because a cured and complete record will enable the court to more fully understand the evidence that the Bureau considered when it suspended the appellant's license.

On the other hand, the appellant counters that she would be prejudiced should the court allow the Bureau to cure Certified Record Number 2. She argues that she is prejudiced because the parties have already filed their final briefs and argued the merits of the case before the court, during which time she relied on the incomplete Certified Record Number 2. She additionally posits that the Bureau cannot meet the standard for admitting new evidence.[57]

The main issue on appeal turns on whether the Bureau's decision to suspend the appellant's license is supported by reliable, probative, and substantial evidence.[58] Certainly, the appellant's driving record is probative of this inquiry. As discussed above, courts have found that an appellant is prejudiced when an agency's omission disables the court from determining the validity of the appeal, begging the question "What could be more prejudicial than the trial court's inability to determine the validity of appeal

[57] Curing an omission from a record does not fall into the category for admitting additional evidence and does not have the same standard. Therefore the court will not conduct an analysis to determine if the omission is "newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the agency." R.C. 119.12.
[58] R.C. 119.12.

because the agency did not certify the complete record?"[59] The case law illustrates that, in analyzing the merits of this case, the court is best served by reviewing the same, complete record that the Bureau reviewed in rendering its decision.

Unlike the appellants in the cases discussed above, the appellant in this case argues that she would be prejudiced if the court has access to the complete record at this stage in the proceedings. The other appellants took issue with the fact that the courts did not review the complete record the agency relied on. The court agrees that the Bureau's late discovery of this omission, at the end of oral arguments and after briefing, was ill timed. Even so, this is not a case where the appellant is being prejudiced because the agency deprived the court of documents that should have been in the certified record. Instead, by permitting the Bureau to re-submit the complete Certified Record Number 2, the court prevents such a quandary by ensuring it has the full record.

This court has discretion to permit an agency to cure an error or omission in the certified record[60] and is mindful that R.C. 119.12 is remedial in nature and should be liberally construed.[61] As other courts have observed, a failure to submit a certified record requires reversal of an agency decision, but an "omission requires correction."[62]

The case at bar is not unlike *Knight*, in which the Eighth District Court of Appeals approved a trial court's decision to allow an agency to re-submit an incomplete

---

[59] *Citizens for Akron*, 2011-Ohio-6387 at ¶ 21. *Jordan*, 1987 WL 9338 at *2 (holding there was actual prejudice when the agency omitted a hearing memorandum from the certified record, which disabled the trial court from making a determination on one of the issues appealed).
[60] *Vogelsongv*, 1996 WL 752325 at *4. In fact, this court has been unable to identify case law in which an appellate court found that the trial court abused its discretion by allowing an agency to correct a minor omission to the certified record.
[61] *Lorms*, 48 Ohio St.2d 153 at 155 citing *McKenzie*, 5 Ohio St.2d at 231.
[62] *Jordan*, 1987 WL 9338 at *2.

transcript when the error stemmed from a technical difficulty and the agency quickly resubmitted the correct transcript upon learning of its error. In this case, the Bureau substantially complied with the mandate in R.C. 119.12 to submit a certified record within 30-days of the notice of appeal. Due to an administrative error the Bureau did not submit the complete Certified Record Number 2, but once it learned of the omission it promptly re-submitted a complete version less than a week later.

Permitting the Bureau to re-submit the complete Certified Record Number 2 enables the court to review the complete record and adjudge the merits of the appellant's appeal. In light of the above considerations, the court grants the Bureau's motion to supplement the certified record by re-submitting Certified Record Number 2.

(C) MERITS OF THE APPEAL

The right to appeal from an administrative agency decision is statutory and falls within the ambit of Ohio's Administrative Procedure Act, codified in R.C. Chapter 119.[63] R.C. 119.12 provides, in relevant part, that "[a]ny party adversely affected by any order of an agency issued pursuant to an adjudication denying * * * revoking or suspending a license * * * may appeal from the order of the agency to the court of common pleas * * *."[64] For the agency decision to survive appeal, the court of common pleas must be able to conclude that the "agency's order is supported by reliable, probative, and

[63] *Ohio Historical Soc. v. State Emp. Relations Bd.*, 66 Ohio St.3d, 466, 470, 1993-Ohio-182 613 N.E.2d 591.
[64] R.C. 119.12.

substantial evidence and is in accordance with the law."[65] This two-pronged inquiry is a hybrid of fact and law.[66]

The first prong analyzes whether there is the "absence or presence of the requisite quantum of evidence."[67] It "is in essence a legal question, but inevitably involves a consideration of the evidence."[68] The Ohio Supreme Court has construed the meaning of reliable, probative, and substantial evidence 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."[69]

R.C. 119.12 does "not contemplate a trial de novo."[70] Rather, the court's scope of review is "limited to a review of the record, or, at the judge's discretion * * * the acceptance of briefs, oral argument and/or newly discovered evidence."[71] The court reviews "the entire record" for "reliable, probative, and substantial evidence."[72] In doing

---

[65] Id.
[66] *Ohio Historical Soc.*, 66 Ohio St.3d, at 470.
[67] *University of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 111, 407 N.E.2d 1265, 17 O.O.3d 65 (1980)
[68] Id..
[69] *Our Place, Inc. v. Ohio Liquor Control Comm.* 63 Ohio St.3d 570, 571, 589 N.E.2d 1303, 73 Ed. Law Rep. 765 (1992).
[70] *University of Cincinnati*, 63 Ohio St.2d at 110.
[71] *Ohio Motor Vehicle Dealers Bd. v. Central Cadillac Co.*, 14 Ohio St.3d 64, 67, 471 N.E.2d 488, 14 O.B.R. 456 (1984). *See Williams v. Dollison*, 62 Ohio St.2d 297, 405 N.E.2d 714, 16 O.O. 3d 350 (1980) ("Unless otherwise provided by law, in the hearing of such an appeal, that court is confined to the record as certified by the bureau."); *University of Cincinnati*, 63 Ohio St.2d at 110 (holding same).
[72] *Andrews v. Board of Liquor Control*, 164 Ohio St. 275, 280, 131 N.E.2d 390, 58 O.O. 51 (1955). *See Lies v. Ohio Veterinary Medical Bd.*, 2 Ohio App.3d 204, 207, 441 N.E.2d 584, 2 O.B.R. 223 (1st Dist. 1981) (holding same).

so, the court "must appraise all the evidence as to the credibility of the witness, the probative character of the evidence, and the weight thereof.'"[73]

When evidence conflicts, the trial court gives "due deference" to the administrative agency's resolution of the conflict.[74] However, the agency's findings "are by no means conclusive."[75] As such, the agency's findings of fact are presumed correct unless the "court determines that the agency's findings are internally inconsistent, impeached by evidence of a prior inconsistent statement, rest upon improper references, or are otherwise unsupportable."[76] The court may reverse, vacate, or modify the agency order when there are "legally sufficient reasons for discrediting certain evidence" the agency relied on.[77]

The second prong of R.C. 119.12 obligates the court to "determine whether the agency's decision is 'in accordance with law.'"[78] Phrased differently, the court decides whether the agency action is "in accordance with the statutes and law applicable."[79] While the court shows deference to the agency's factual findings, the trial court "must construe the law on its own."[80]

The substantive law underlying the present case is found in the Ohio Motor Vehicle Financial Responsibility Act, which is purposed to "provide sanctions which

---

[73] *Andrews*, 164 Ohio St. at 280.
[74] *University of Cincinnati*, 63 Ohio St.2d at 111.
[75] *Bartchy v. State Bd. of Edn.*, 120 Ohio St.3d 205, 2008-Ohio-4826, 897 N.E.2d 1096, 239 Ed. Law Rep. 272, ¶ 37, quoting *Ohio Historical Soc. v. State Emp. Relations Bd.*, 66 Ohio St.3d 466, 470-71, 613 N.E.2d 591 (1993).
[76] *Bartchy*, 2008-Ohio-4826 at ¶ 37, quoting *Ohio Historical Soc.*, 66 Ohio St.3d at 471. *See University of Cincinnati*, 63 Ohio St.2d at 111-12 (observing that "where it appears that the administrative determination rests upon inferences improperly drawn from the evidence adduced, the court may reverse the administrative order.").
[77] *Bartchy*, 2008-Ohio-4826 at ¶ 37 quoting *Ohio Historical Soc.*, 66 Ohio St.3d at 470.
[78] *Ohio Historical Soc.*, 66 Ohio St.3d at 471.
[79] Id. citing *Andrews*, 164 Ohio St. at 280.
[80] *Bartchy*, 2008-Ohio-4826 at ¶ 37, quoting *Ohio Historical Soc.*, 66 Ohio St.3d, at 471.

would encourage owners and operators of motor vehicles on Ohio highways to obtain liability insurance sufficient to protect others who might be injured through the negligent operation of a motor vehicle."[81] Simply stated, the act is intended "to get uninsured motorists off the road."[82]

To that end, R.C. 4509.37(A) provides: "The registrar of motor vehicles upon receipt of a certified copy of a judgment, shall impose a class F suspension * * * of the license and registration * * * of any person against whom such judgment was rendered * * *." As used in R.C. 4509.37, a "judgment" is "any judgment * * * upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle for damages * * *."[83] Read together:

> "When a person adjudged liable for damages upon a cause of action arising out of the ownership, maintenance, or use of a motor vehicle, fails within thirty days to satisfy a judgment rendered within this state, and a certified copy of the judgment is forwarded to the registrar of motor vehicles, R.C. 4509.37 requires that the registrar suspend his operator's license."[84]

When a person's license is suspended pursuant to R.C. 4509.37(A), under division (B) the Bureau "shall also impose the civil penalties specified in" R.C. 4509(A)(2), unless the person satisfies one of two conditions. To avoid those additional penalties, a person can either:

> "(1) present[] proof of financial responsibility to the registrar proving that the judgment debtor was covered, at the time of

---

[81] *Isczukiewicz v. Universal Underwriters Ins. Co.*, 182 F.Supp. 733, 735, 86 Ohio Law Abs. 216, 13 O.O.2d 132 (N.D. Ohio 1960); *See Kerns v. Ohio Dept. of Highway Safety*, 68 Ohio App.3d 1970, 587 N.E.2d 930 (4th Dist. 1990) (quoting same).
[82] *Kerns*, 68 Ohio App.3d at 173.
[83] R.C.4509.02.
[84] *Ridley v. Bureau of Motor Vehicles*, 50 Ohio App.2d 175, 361 N.E.2d 1350, 4 O.O.3d 141 (10th Dist. 1976), at paragraph one of the syllabus.

> the motor vehicle accident out of which the cause of action arose * * *," or
>
> "(2) * * * prove[] to the registrar that the judgment debtor's registration and license have been previously suspended under section 4509.101 of the Revised Code by reason of the judgment debtor's failure to prove that the judgment debtor was covered, at the time of the motor vehicle accident out of which the cause of action arose, by proof of financial responsibility."

In sum, the Bureau is required to impose the additional penalties found in R.C. 4509.101 on a person whose license is suspended pursuant to R.C. 4509.37, unless (1) the person provides proof of insurance at the time of the accident that led to the judgment, or (2) the person proves that he or she was already suspended under R.C. 4509.101 due to a failure to provide proof of insurance for the time of the accident that led to the judgment.

If the person with the suspended license under R.C. 4509.37 cannot meet either of the two requirements, the additional penalty under R.C. 4509.101(A)(2) provides: "Whoever violates division (A)(1) of this section shall be subject to the following civil penalties: (a) * * * a class (F) suspension of the person's driver's license * * * and impoundment of the person's license."

In the instant case the appellant appeals on the basis that the Bureau did not have reliable, probative, and substantial evidence to prove (1) that the appellant's unpaid debt arose out of the ownership, maintenance, or use of a motor vehicle, and (2) that the appellant lacked insurance at the time of the alleged accident.

Specifically, the appellant contends that the record is devoid of evidence connecting the unpaid debt to an auto accident or lack of auto insurance. The appellant argues that the order from the municipal court enforcing the debt against the appellant

shows, at most, that the appellant breached a contract with an insurance agency. The municipal court order, the municipal court complaint, and the breached cognovit note are all silent as to why the appellant was indebted to the insurance company. The appellant posits that the only evidence before the Bureau suggesting the judgment arose from an auto accident is a letter to the Bureau from a legal assistant, which is not reliable, probative, or substantial enough to sustain the suspension.

The Bureau counters that its decision is supported by reliable, probative, and substantial evidence sufficient to show that the appellant's debt arose from an auto accident. The Bureau urges that a comprehensive review of the certified record, particularly Document Nos. 2, 3, and 4, show that the appellant failed to satisfy a debt she incurred to an insurance agency that arose from a vehicular accident with the insurance agency's policy holder.

The parties agree that the appellant assented in a cognovit note to pay an insurance company a sum of money in monthly installments.[85] They further agree that the insurance company filed a complaint in the Clermont County Municipal Court for a money judgment, in which it alleged the appellant defaulted on her cognovit note.[86] The parties do not dispute that the municipal court entered a judgment for the insurance company.[87] It is also undisputed that the cognovit note, the municipal court complaint, and the municipal court judgment do not mention whether the appellant's debt arose from a vehicular accident.[88]

---

[85] Appellant's Ex. C.
[86] Certified R. 7.
[87] Certified R. 4.
[88] Appellant's Ex. C, Certified R. 4, 7.

The only pieces of evidence demonstrating that the appellant was in a vehicular accident that led to her debt are her driving record and a letter from the insurance company's counsel, Roberts, Matejczyk & Ita Co., L.P.A.[89] The letter is the only piece of evidence that expressly states the appellant's debt to the insurance company is related to a vehicular accident on February 8, 2011.[90]

The court has two issues before it: (1) whether the Bureau's decision to suspend the appellant's license is supported by reliable, probative, and substantial evidence, and (2) whether such decision is in accordance with the law.[91]

With regard to the first issue, the parties' dispute concerns whether the decision is supported by reliable, probative, and substantial evidence showing the judgment against the appellant arose out of her ownership, maintenance, or use of a motor vehicle for damages. The validity and relevance of most of the certified record has not been challenged or disputed. From the certified record, the parties agree this much is clear: an insurance company has a certified judgment against the appellant for an unpaid debt.

The dispute concerns the letter, Certified Record Number 3, and the appellant's driving record, Certified Record Number 2. The parties disagree as to whether these pieces of evidence are sufficient to establish that the debt arose from a vehicular accident. The appellant contends that the letter, which stated that the judgment arose from the appellant's vehicular accident on February 8, 2011, from the insurance company's counsel is insufficient. If the appellant is correct that the Bureau relied on

---

[89] Certified R. 2, 3.
[90] Certified R. 3.
[91] R.C. 119.12, *Ohio Historical Soc.*, 66 Ohio St.3d at 470-71.

improper inferences from the letter and driving record, then this court can reverse the suspension.[92]

Reliable evidence means "there must be a reasonable probability that the evidence is true."[93] The appellant acknowledged during oral arguments that, if the law firm fabricated the letter it sent the Bureau, the firm's attorneys could face disciplinary action for ethical violations.[94] The attorneys' ethical duties suggest the legal assistant had good reason to be honest and forthright.

Moreover, most of the letter's substance is corroborated by the other documents in the certified record. Specifically, the driving record contains the appellant's same identifying information and the same date for the accident. The driving record additionally states that the appellant was guilty of failing to yield the right of way on February 8, 2011, and a traffic accident on the same date resulted in property damage.[95] Moreover, the letter alleges that the insurance company has a judgment against the appellant, which is corroborated by the copy of the certified judgment.[96] The honesty and accuracy throughout the letter, in tandem with the firm's ethical obligations, suggest that there is a reasonable probability that the letter is true. Thus, the letter is sufficiently reliable for the Bureau to conclude that the judgment against appellant stemmed from a vehicular accident.

Probative evidence "tends to prove the issue in question; it must be relevant in determining the issue." [97] There can be no doubt that the letter and driving record are

---

[92] *University of Cincinnati*, 63 Ohio St.2d at 111-12.
[93] *Our Place, Inc.*, 63 Ohio St.3d at 571.
[94] The appellant argued that this fact lends only marginal reliability to the letter and its contents.
[95] Certified R. 2, 3.
[96] Certified R. 4.
[97] *Our Place, Inc.*, 63 Ohio St.3d at 571.

probative. The letter directly speaks to the contested issue of whether a vehicular accident led to the unpaid debt the appellant owes the insurance company. The driving record is relevant because it corroborates the letter and independently shows that the appellant was in an accident on February 8, 2011, she committed a traffic offense that day, and there was property damage from the accident.

Finally, "'[s]ubstantial' evidence is evidence with some weight; it must have importance and value."[98] For the same reasons as above, the letter and driving record are valuable and important. As to the driving record specifically, it bears additional weight as it is an official state record. Accordingly, the court finds that there is reliable, probative, and substantial evidence to support the Bureau's finding that it received a certified copy of a judgment against the appellant for damages arising from the appellant's use of a vehicle.[99]

The second inquiry the court must undertake is resolving whether the Bureau's decision to suspend her license was "in accordance with the law."[100] As explained, once the Bureau receives a certified copy of a judgment against a person for damages arising from that person's use of a vehicle, R.C. 4509.37 mandates that the Bureau "shall impose a class F suspension." The Bureau did this, as stated in the "Notice of Suspension" the appellant received.[101]

As also communicated in the "Notice of Suspension," once the Bureau made the above finding to suspend the appellant's license, R.C. 4509.37 prescribed that the Bureau "shall also impose the civil penalties" in R.C. 4509.101(A)(2) unless the

---

[98] *Our Place, Inc.*, 63 Ohio St.3d at 571.
[99] *See* R.C. 119.12, R.C. 4509.37.
[100] R.C. 119.12.
[101] Certified. R. 6.

her license was already suspended due to her lack of insurance for this same accident.[102]

The appellant argues that the Bureau has insufficient evidence to show the appellant did not have insurance on February 8, 2011 to suspend her license under R.C. 4509.101. However, under the terms of the statute, the Bureau does not have to prove the appellant lacked insurance before imposing penalties in 4509.101(A)(2). Rather, the statute mandates that those penalties "shall" be imposed "unless" the appellant submits proof of insurance or is already being penalized for the same. There is no evidence in the certified record that the appellant submitted proof of insurance for February 8, 2011. There is proof of insurance from 2014-2015, but the accident predated that coverage.[103] Thus, the court finds that the Bureau's decision to suspend the appellant's license pursuant to R.C. 4509.37 and 4509.101 is "in accordance with the law."[104] Accordingly, the court affirms the Bureau's decision to suspend the appellant's license.

[102] Certified R. 6.
[103] Certified R. 7.
[104] R.C. 119.12.

CONCLUSION

For the foregoing reasons, the court holds that (1) the Bureau's motion to dismiss for lack of subject matter jurisdiction is not well-taken and hereby denied, (2) the Bureau's motion to supplement the certified record by submitting a corrected Certified Record Number 2 is well-taken and hereby granted, and (3) the appellant's assignments of error are overruled and the Bureau's "Notice of Suspension," dated September 14, 2014 is hereby affirmed.

IT IS SO ORDERED.

DATED: 1-25-16

Judge Jerry R. McBride

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Decision/Entry were e-mailed on this 25th day of January 2016 to Milton S. Goff, III, Attorney for the Plaintiff-Appellant at Gofflaw1@gmail.com; and to Zachary C. Schaengold, Attorney for Defendants-Appellees at zachary.schaengold@ohioattorneygeneral.gov.

J. Mey
Adm. Assistant to Judge McBride