

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

| | | |
|-------------------------------------|---|----------------------|
| GERALDINE LASTER, et al., | : | |
| Plaintiff-Appellants, | : | CASE NO. 15CVF-11333 |
| vs. | : | JUDGE K. BROWN |
| OHIO STATE BOARD OF COSMETOLOGY, | : | |
| Defendant-Appellee. | : | |

Decision and Entry

Rendered this 25th day of February, 2016

Plaintiff-Appellants Geraldine Laster and Professional School of Cosmetology (hereinafter “Appellants”) initiated this action on December 16, 2015, filing a Notice of Appeal regarding the Ohio State Board of Cosmetology’s (hereinafter “the Board”) determination that Appellants violated Ohio Adm. Code 4713-5-21(A) and 4713-5-10 and R.C. 4713.64(A)(5).

On January 26, 2016, the Board filed a Motion to Dismiss for Lack of Subject-Matter Jurisdiction. The Board submits that Appellants’ untimely Notice of Appeal divests the Court of subject-matter jurisdiction. R.C. 119.12 provides that “[u]nless 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.” The Order from which Appellants appeal was mailed via certified mail on November 24, 2015. Accordingly, Appellants’ December 16, 2015 Notice of Appeal was filed seven days late.

Appellants counter that their Notice of Appeal was filed timely pursuant to R.C. Chapters 2505 and 2506. However, R.C. Chapters 2505 and 2506 are inapplicable to administrative appeals that are governed by R.C. Chapter 119. See *In re Namey*, 103 App.3d

322, 659 N.E.2d 372 (10th Dist. 1995); *Frasca v. State Bd. of Chiropractic Examiners*, 10th Dist. No. 97AP-1387 (July 30, 1998).

The Board further notes that, even if Appellants' Notice of Appeal had been filed timely, it was impermissibly filed by a non-attorney. Civil actions on behalf of a corporation must be commenced by a licensed attorney. R.C. 4705.01. See also *Union Sav. Ass'n v. Home Owners Aid*, 23 Ohio St.2d 60, 262 N.E.2d 558 (1970); *Sheridan Mobile Village, Inc. v. Larsen*, 78 Ohio App.3d 203, 604 N.E.2d 217 (4th Dist. 1992). Appellants counter that any such defect has been cured by the subsequent appearance of counsel. However, counsel's subsequent appearance does not cure the improper commencement of the action.

As the Board notes, Appellants' Notice of Appeal also failed to include the requisite language that "the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law". *Foreman v. Lucas Cty. Court of Common Pleas*, 187 Ohio App.3d 678, 939 N.E.2d 1302, 2010-Ohio-4731, ¶ 15.

Rights of appeal conferred by statute must be perfected in the mode prescribed by the statute. *Foreman* at ¶2, citing *Ramsdell v. Ohio Civ. Rights Comm.*, 56 Ohio St.3d 24, 563 N.E.2d 285 (1990). Each of the deficits in Appellants' Notice of Appeal divest this Court of subject-matter jurisdiction. As such, the Court finds the Board's motion to dismiss well taken.

CONCLUSION

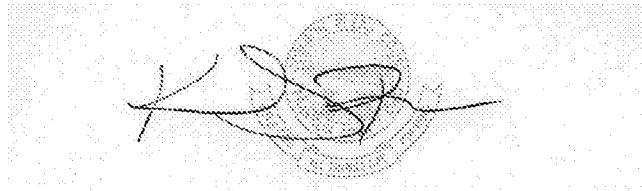
Accordingly, Ohio State Board of Cosmetology's Motion to Dismiss for Lack of Subject-Matter Jurisdiction, filed January 26, 2016, is hereby **GRANTED**. This matter is **DISMISSED**. Costs to Appellant.

IT IS SO ORDERED.

Franklin County Court of Common Pleas

Date: 02-25-2016
Case Title: GERALDINE LASTER ET AL -VS- OHIO STATE SCHOOL
COSMETOLOGY
Case Number: 15CV011333
Type: DISMISSAL ORDER CASE

It Is So Ordered.

A handwritten signature in black ink is written over a circular, textured seal. The signature appears to be 'Kim Brown'. The seal is partially obscured by the signature.

/s/ Judge Kim Brown

Court Disposition

Case Number: 15CV011333

Case Style: GERALDINE LASTER ET AL -VS- OHIO STATE
SCHOOL COSMETOLOGY

Case Terminated: 18 - Other Terminations

Motion Tie Off Information:

1. Motion CMS Document Id: 15CV0113332016-01-2699970000
Document Title: 01-26-2016-MOTION TO DISMISS -
DEFENDANT: OHIO STATE SCHOOL COSMETOLOGY
Disposition: MOTION GRANTED