

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

ePro Services LLC,		Case No. 15CV-10060
Appellant,		Judge McIntosh
vs.		
Ohio Department of Commerce,		
Division of State Fire Marshal,		
Appellee.		

Decision and Judgment Entry Dismissing Revised Code 119.12 Administrative Appeal for Lack of Subject Matter Jurisdiction

and

Notice of Final Appealable Order

McIntosh, J.

This case is a Revised Code 119.12 administrative appeal by ePro Services LLC (Appellant) from a Final Order issued by the Ohio Department of Commerce, Division of State Fire Marshal (State Fire Marshal) on October 1, 2015. In that Final Order, the State Fire Marshal suspended, for a period of sixty (60) days, Appellant’s certificate to service, test, repair, and install fire protection and fire fighting equipment in Ohio.

The State Fire Marshal has moved the Court to dismiss this appeal for lack of subject matter jurisdiction. Appellant has opposed the motion to dismiss. For the following reasons, the State Fire Marshal’s motion must be granted.

Facts and Procedural Background

The Ohio Department of Commerce, by and through the Division of State Fire Marshal, is charged with the responsibility of enforcing R.C. Chapter 3737 and the Ohio Fire Code, which

is contained in Ohio Adm. Code Chapter 1301:7-7. Pursuant to R.C. Chapter 3737 and the Ohio Fire Code, Appellant applied for, and the State Fire Marshal issued to Appellant, a certificate to service, test, repair, and install fire protection and fire fighting equipment in Ohio.

In November 2013, the State Fire Marshal conducted an investigation of Appellant, specifically, of Appellant's installation of fire protection equipment at a Comfort Inn located in Marion, Ohio. As a result of the inspection, the State Fire Marshal determined that Appellant had violated multiple provisions of the Ohio Fire Code.

On January 2, 2014, the State Fire Marshal mailed a Notice of Opportunity for Hearing to Appellant. In the Notice, the State Fire Marshal advised Appellant that, as a result of Appellant's violations, the State Fire Marshal proposed to suspend or revoke Appellant's certificate to service, test, repair, and install fire protection and fire fighting equipment in Ohio, and that Appellant was entitled to a hearing on the State Fire Marshal's proposed action. The Notice was addressed to:

Kelly Yates, Statutory Agent	Epro Services LLC
For Epro Services LLC	1215 Polaris Parkway #217
225 Green Meadows Drive South	Columbus, Ohio 43240.
Lewis Center, Ohio 43035	

State's Ex. 1.

On January 3, 2014, the Notice of Opportunity for Hearing was served on Appellant, by certified mail service, at the Polaris Parkway address. *State's Ex. 1.* It is undisputed that the Polaris Parkway address is located in Delaware County, Ohio.

By letter dated January 14, 2014, Appellant's statutory agent, Kelly Yates (now known as Kelly Yates Bargnesi), requested a hearing on the State Fire Marshal's proposed action against Appellant's certificate. The "ePro Services" stationery used by Ms. Bargnesi displayed the Polaris Parkway address in Delaware County. *State's Ex. 2.*

By letter dated January 27, 2014, the State Fire Marshal notified Appellant that the requested hearing had been scheduled for January 31, 2014, and that, upon the State Fire Marshal's motion, the hearing had been continued to February 21, 2014. The State Fire Marshal's notice was addressed to Appellant at the Polaris Parkway address in Delaware County. *State's Ex. 3.*

By letter dated February 12, 2014, Paul Bargnesi, who identified himself as Appellant's Operating Manager, provided information related to the upcoming hearing to the Assistant Attorney General representing the State Fire Marshal. The "ePro Services" stationery used by Mr. Bargnesi displayed the Polaris Parkway address in Delaware County. *State's Ex. 9.*

Upon Appellant's motion, the Hearing Officer assigned to conduct the hearing continued the hearing to April 24, 2014. On April 24, 2014, the Hearing Officer conducted the hearing. *Transcript, pp. 1-168.* Appellant and the State Fire Marshal were represented by counsel. Three witnesses testified, and numerous exhibits were admitted into evidence.

In a Report and Recommendation issued on June 5, 2014, the Hearing Officer concluded that Appellant had committed the violations of the Ohio Fire Code set forth in the Notice of Opportunity for Hearing, and the Hearing Officer recommended that the State Fire Marshal suspend, for a period of sixty (60) days, Appellant's certificate to service, test, repair, and install fire protection and fire fighting equipment in Ohio.

By letter dated August 14, 2014, the State Fire Marshal mailed the Hearing Officer's Report and Recommendation to Ms. Bargnesi at the Polaris Parkway address in Delaware County. On August 18, 2014, the State Fire Marshal received a return receipt from the U.S. Postal Service, confirming that certified mail service of the Hearing Officer's Report and

Recommendation had been made on Ms. Bargnesi at the Polaris Parkway address in Delaware County. *Record 14.*

In a Final Order issued on October 1, 2015, the State Fire Marshal affirmed and adopted the Hearing Officer’s Report and Recommendation. The State Fire Marshal suspended, for a period of sixty (60) days, Appellant’s certificate to service, test, repair, and install fire protection and fire fighting equipment in Ohio. The effective date of the Final Order was October 31, 2015.

In the Final Order, the State Fire Marshal provided Appellant with the following instructions regarding the filing of an appeal:

TIME AND METHOD TO PERFECT AN APPEAL

Any party desiring to appeal shall file a Notice of Appeal with the Ohio Department of Commerce, Division of State Fire Marshal, 8895 E. Main Street, Reynoldsburg, Ohio, 43068, 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 may, but need not, set forth the specific grounds of the party’s appeal beyond the statement 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 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. Such notices of appeal shall be filed within fifteen (15) days after the mailing of the notice of the Division of State Fire Marshal’s Order, as provided in Rev. Code §119.12. (Emphasis in original.)

On November 10, 2015, Appellant appealed the State Fire Marshal’s Final Order to this Court pursuant to R.C. 119.12. Counsel for the State Fire Marshal has advised the Court that the State Fire Marshal has not yet required Appellant to serve the sixty-day suspension.

For the reasons that follow, this appeal must be dismissed for lack of subject matter jurisdiction.

Law

Revised Code 119.12(A)(1), which governs this appeal, provides:

*** [A]ny party adversely affected by any order of an agency issued pursuant to an adjudication *** revoking or suspending a license *** 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. (Emphasis added.)

When the right to appeal is bestowed upon a party by a statute, such as R.C. 119.12, the appeal can be perfected only in the mode prescribed by that statute. *Siegler v. Ohio State Univ.*, 10th Dist. No. 10AP-421, 2011-Ohio-2485, ¶ 4, discretionary appeal not allowed, 129 Ohio St. 3d 1492, 2011-Ohio-5129. Strict adherence to the filing requirements is necessary to invoke the common pleas court’s jurisdiction over an administrative appeal under R.C. 119.12. *Id.* If a party fails to comply with the filing requirements of R.C. 119.12, the common pleas court does not have jurisdiction to hear the appeal. *G & D Inc. v. Ohio State Liquor Control Comm.*, 10th Dist. No. 01AP-1189, 2002-Ohio-2806, ¶ 9. Whether or not raised by the parties, a trial court must dismiss an appeal upon a determination that subject-matter jurisdiction is lacking. *Foreman v. Lucas Cty. Court of Common Pleas*, 189 Ohio App. 3d 678, 2010-Ohio-4731, ¶ 12 (10th Dist.).

Analysis

Pursuant to R.C. 119.12(A)(1), *supra*, Appellant had the right to appeal the State Fire Marshal’s Final Order to the court of common pleas of the county in which Appellant’s place of business is located. The State Fire Marshal contends that Appellant’s place of business is the Polaris Parkway address in Delaware County, that Appellant has appealed the Final Order to the wrong court, and that this Court therefore lacks subject matter jurisdiction over this appeal. Appellant asserts that its place of business is in Franklin County, that Appellant has appealed the

Final Order to the correct court, and that this Court therefore has subject matter jurisdiction over this appeal. However, the certified record demonstrates that Appellant has, in fact, appealed the State Fire Marshal's Final Order to the wrong court.

There are two addresses of record that are associated with Appellant, both of them provided to the State Fire Marshal by Appellant, and both of them in Delaware County.

One address of record is the Polaris Parkway address, which appears throughout the certified record. The Notice of Opportunity for Hearing was served on Appellant at the Polaris Parkway address. When Appellant requested a hearing on the State Fire Marshal's proposed action against Appellant's certificate, it was the Polaris Parkway address that appeared on Appellant's stationery. When the State Fire Marshal notified Appellant that the requested hearing had been scheduled, the State Fire Marshal mailed the notice to the Polaris Parkway address. When Mr. Bargnesi wrote to the Assistant Attorney General, it was the Polaris Parkway address that appeared on Appellant's stationery. When the Hearing Officer's Report and Recommendation was mailed to Appellant, it was mailed to the Polaris Parkway address, where it was served on Appellant by certified mail.

The only other address of record that is associated with Appellant is that of Appellant's statutory agent, Kelly Yates (now known as Kelly Yates Bargnesi), in Lewis Center, Ohio. Pursuant to Evid. R. 201, the Court takes judicial notice of the fact that Lewis Center is in Delaware County. In addition, the parties do not dispute that fact.

Based upon the certified record, the Court concludes that Appellant's "place of business" for purposes of R.C. 119.12(A)(1), is in Delaware County. Pursuant to R.C. 119.12(A)(1), Appellant was obligated to appeal the State Fire Marshal's Final Order to the Court of Common Pleas of Delaware County, Ohio.

Appellant has argued that the Polaris Parkway address is not Appellant's place of business, because the Polaris Parkway address is a UPS store where Appellant rents a mailbox to collect its mail. Appellant argues that it does not have a fixed, "brick and mortar" location, because it conducts its business primarily through electronic means, such as cellular telephones and electronic dispatching. Appellant argues that its place of business is in Franklin County, because the majority of its income is derived from work performed in Franklin County.

Revised Code Chapter 119 does not define "place of business." Neither does R.C. Chapter 3737 or the Ohio Fire Code. However, in the context of secured transactions, R.C. 1309.307(A) defines "place of business" as a place "where a debtor conducts the debtor's affairs." In the context of sales tax, R.C. 5739.01(J) defines "place of business" as "any location at which a person engages in business." Finally, Black's Law Dictionary defines "place of business" as "[a] location at which one carries on a business." *Black's Law Dictionary* 1266 (9th Ed. 2009).

As stated above, there are only two addresses of record for Appellant, the Polaris Parkway address and the Lewis Center address. Both of those addresses are located in Delaware County, and both of those addresses were provided to the State Fire Marshal by Appellant, in order to obtain a certificate to service, test, repair, and install fire protection and fire fighting equipment in Ohio.

The receiving of mail is most certainly a function of engaging in business. Appellant therefore engaged in business, at the UPS store on Polaris Parkway, when Appellant received mail at that location. Appellant's "place of business" for purposes of R.C. 119.12(A)(1) is in Delaware County, Ohio.

Conclusion

Pursuant to R.C. 119.12(A)(1), Appellant was obligated to appeal the State Fire Marshal's Final Order to the Court of Common Pleas of Delaware County, Ohio. Because Appellant failed to comply with the filing requirements of R.C. 119.12, this Court does not have jurisdiction to hear this appeal. The "Motion to Dismiss for Lack of Subject-Matter Jurisdiction," filed by the State Fire Marshal on January 19, 2016, is therefore **GRANTED**, and this case is hereby **DISMISSED** for lack of subject matter jurisdiction.

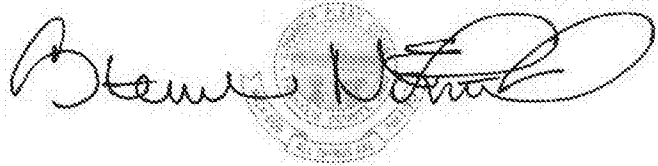
This is a final, appealable Order. Costs to Appellant. Pursuant to Civ. R. 58, the Franklin County Clerk of Courts shall serve notice of this judgment and its date of entry upon all parties.

Copies electronically transmitted to all counsel of record.

Franklin County Court of Common Pleas

Date: 03-07-2016
Case Title: EPRO SERVICES LLC -VS- OHIO STATE DEPARTMENT
COMMERCE DIV FIRE
Case Number: 15CV010060
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "Stephen L. McIntosh", is written over a circular, embossed seal. The seal is partially obscured by the signature and contains some illegible text around its perimeter.

/s/ Judge Stephen L. McIntosh

Court Disposition

Case Number: 15CV010060

Case Style: EPRO SERVICES LLC -VS- OHIO STATE
DEPARTMENT COMMERCE DIV FIRE

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 15CV0100602016-02-1999980000
Document Title: 02-19-2016-MOTION - PLAINTIFF: EPRO
SERVICES LLC - MOTION TO SUSPEND BRIEFING SCHEDULE
Disposition: MOTION IS MOOT
2. Motion CMS Document Id: 15CV0100602016-01-1999980000
Document Title: 01-19-2016-MOTION TO DISMISS -
DEFENDANT: OHIO STATE DEPARTMENT COMMERCE DIV FIRE
Disposition: MOTION GRANTED