

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

Nasia Wallace, :
Appellant, : Case No. 17CV-3185
-v- : JUDGE SERROTT
Ohio Bureau of Motor Vehicles, :
Appellee. :

**DECISION AND ENTRY GRANTING APPELLEE’S MOTION TO DISMISS FOR
LACK OF SUBJECT MATTER
AND
ORDER TO REFUND FILING FEE
AND
NOTICE OF FINAL APPEALABLE ORDER**

Rendered this 17th day of May, 2017

SERROTT, J.

This administrative appeal stems from Appellee’s Order imposing an indefinite suspension of Appellant’s driver’s license. Appellee moves the Court to dismiss the appeal for lack of subject matter jurisdiction. The Court issued a Notice expressly advising Appellant of the pending Motion to Dismiss and that a response was due on or before May 15, 2017. Appellant has not filed any response, and therefore, the Motion is unopposed.

I. FACTS

On February 15, 2017, Appellee sent Appellant a Notice of Suspension stating: “You are hereby notified that, unless you present valid proof of automobile insurance or other financial responsibility coverage for the above-referenced vehicle and violation date to the Ohio Bureau of Motor Vehicles within twenty-one days as outlined in this notice, your driver license and driving privileges to operate a motor vehicle will be suspended for the mandatory suspension period [.]”

(Record of Proceeding, Tab 3). The Notice referenced a traffic violation date of January 19, 2017 and informed Appellant that her license would not be suspended if she timely proved that she did have insurance coverage in effect on that date. Appellant was also notified of both her right to and the manner in which she could request an administrative hearing.

Thereafter, on March 22, 2017, Appellee issued a “Final Order of Suspension” as Appellant did not provide proof of insurance or request an administrative hearing. The Order notified Appellant of her right to file an appeal under R.C. 119.12 as well as the manner in which the appeal could be perfected. Appellant was specifically advised that “[t]he notice of appeal must be filed with both the Bureau of Motor Vehicles and the Court of Common Pleas within fifteen (15) days of the date of the final order.” (Record of Proceeding, Tab 4). Additionally, Appellant was instructed that “the notice of appeal shall set forth * * * that the agency’s order is not supported by reliable, probative, and substantial evidence and is not in accordance with the law.” (Id.).

Appellant initiated this administrative appeal on April 4, 2017. In her Notice of Appeal, Appellant states she went to court to contest a traffic ticket on January 19, 2017. The court found her guilty and required her to provide proof of insurance. Appellant asserts she was insured, but did not have proof of coverage with her on the Court date. She further failed to send proof of coverage to Appellee, explaining that Appellee’s notices were misplaced and she did not locate them until after the license suspension went into effect. At the time of filing her appeal, Appellant instructed the Clerk of Courts to serve the Notice of Appeal upon Appellee by certified mail. Appellee received said service on April 7, 2017. (Record of Proceedings, Tab 2).

Appellee now moves the Court to dismiss this administrative appeal for lack of subject matter jurisdiction on two grounds: 1) Appellant failed to timely file her appeal with the agency;

and 2) the Notice of Appeal failed to state that the agency’s order “is not supported by reliable, probative, and substantial evidence and is not in accordance with the law.”

II. STANDARD OF REVIEW AND APPLICABLE LAW

Under R.C. 119.12:

[a]ny 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 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. 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.

When the right to appeal is conferred by statute, the appeal can be perfected only in the mode prescribed by statute. *Ramsdell v. Ohio Civil Rights Comm.*, 56 Ohio St.3d 24, 27 (1990). The exercise of the right conferred is conditioned upon compliance with the accompanying mandatory requirements. *Zier v. Bureau of Unemployment Comp.*, 151 Ohio St. 123 (1949), paragraph one of syllabus. One mandatory requirement is that filing of the notices must be done within the deadline established by statute with both the court of common pleas and with the particular agency involved. *Nivert v. Ohio Dep’t of Rehab. & Corr.*, 84 Ohio St.3d 100, 102 (1998). After the prescribed time has passed, the trial court lacks jurisdiction to hear the appeal. *Ramsdell* at 28; See also *Austin v. Ohio Fair Plan Underwriting Ass'n*, 10th Dist. No. 10AP-895, 2011-Ohio-2050, at ¶6 (failure to meet the filing deadline will result in dismissal of the untimely appeal, as it precludes jurisdiction in the trial court).

III. LEGAL ANALYSIS

Pursuant to R.C. 119.12, Appellant was required to file a notice of appeal with both this Court and Appellee within fifteen days of the mailing of the Notice of Suspension, which occurred on March 22, 2017. Thus, the filing deadline was April 6, 2017. Appellant timely initiated her appeal with the Court. Unfortunately, Appellee did not receive a copy of the Notice of Appeal until April 7, 2017, one day outside of the deadline. “Depositing the notice of appeal in the mail does not constitute a filing under R.C. 119.12. To be timely filed, a notice of appeal must be received within the time period set forth in R.C. 119.12.” *Brass Pole v. Ohio Dep't of Health*, 10th Dist. No. 08AP-1110, 2009-Ohio-5021, ¶14. When an appellant does not file the notice of appeal with the agency within the fifteen-day period provided under R.C. 119.12, the trial court lacks subject matter jurisdiction over the appeal. See *Amoako v. Ohio Motor Vehicle Dealers Bd.*, 10th Dist. No. 13AP-749, 2014-Ohio-801, ¶10. The Court is bound by the law and is compelled to find that it lacks subject matter jurisdiction to consider the appeal due to the untimely filing with the BMV.

As to Appellee’s second argument, R.C. 119.12 mandates that the notice of appeal must include a statement that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. Appellee expressly notified Appellant of this requirement in the Final Order of Suspension, yet Appellant failed to include the statement in her Notice of Appeal. This Court’s practice is not to parse through legal filings in search of magic words and talismanic language. If Appellant had set forth any basis or grounds for her appeal, the Court would find compliance with the statute. However, Appellant admits she did not provide proof of insurance at the time of her traffic court date and that she did not timely respond to the Notice of Suspension, explaining it was misplaced and not located until after the effective

date of the suspension. Absent from the Notice of Appeal is any assertion that Appellee's Final Order of Suspension was not in accordance with the law. Therefore, the Notice of Appeal is insufficient for the Court to acquire subject matter jurisdiction. See *Foreman v. Lucas Cty. Court of Common Pleas*, 189 Ohio App.3d 678, 2010-Ohio-4731, ¶ 15 (10th Dist.)(notice stating appeal was based "on issues of fact of law" was insufficient under R.C. 119.12 to invoke the trial court's jurisdiction).

Based on the foregoing, Appellee's Motion to Dismiss is GRANTED, and this administrative appeal is hereby ORDERED DISMISSED. The Court shall not assess any costs, and the Clerk of Courts is ordered to fully refund the filing fee of \$100.00 to Appellant. Pursuant to Civ. 58(B), the Clerk of Courts is hereby directed to serve upon all parties notice and the date of this judgment.

IT IS SO ORDERED.

Electronically Signed By:
JUDGE MARK A. SERROTT

Franklin County Court of Common Pleas

Date: 05-17-2017
Case Title: NASIA WALLACE -VS- OHIO STATE BUREAU MOTOR VEHICLES
Case Number: 17CV003185
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in cursive script, "Mark Serrott", is written over a circular official seal. The seal is partially obscured by the signature and contains some illegible text around its perimeter.

/s/ Judge Mark Serrott

Court Disposition

Case Number: 17CV003185

Case Style: NASIA WALLACE -VS- OHIO STATE BUREAU MOTOR
VEHICLES

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes