

FILED
PREBLE COUNTY, OHIO
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CHRISTOPHER B. WASHINGTON
CLERK OF COURTS

IN THE COMMON PLEAS COURT, PREBLE COUNTY, OHIO

CHARLES D. STAPLETON,

APPELLANT,

CASE NO. 17-CV-31102

V.

OHIO MOTOR VEHICLE
DEALERS BOARD,

APPELLEE.

DECISION AND ENTRY

Before the Court is the Ohio Motor Vehicle Dealers Board's (Board) motion to dismiss Appellant Charles D. Stapleton's appeal of the Board's order on May 18, 2017 to revoke Appellant's salesperson license. Appellant has filed a memorandum in opposition.

I. FACTS

On May 18, 2017, the Board issued an order revoking Appellant's salespersons license effective June 5, 2017. The order advised Appellant that to appeal the order he needed to file a notice of appeal with the Board and the Common Pleas Court within 15 days after the mailing of the order.

The order was mailed to Appellant and his attorney on May 18, 2017. The copy sent to Appellant was delivered on May 20, 2017.

Appellant mailed a copy of his Notice of Appeal to the Board on May 31, 2017. The Notice of Appeal was received by the Board on June 5, 2017.

Appellant's Notice of Appeal was received by the Clerk of the Common Pleas Court on June 2, 2017 (within the 15 day deadline), but same was not filed because a \$215 filing fee was required. The fee was sent and the Notice of Appeal was thereafter filed on June 5, 2017.

Appellant also states that the Order was sent certified mail on May 18, 2017 to Appellant's former address, that same was signed for by his estranged wife at his former marital address, and that he was not made aware of the Order until "several days after May 20, 2017."

Thereafter Appellant immediately hired counsel who mailed the Notices of Appeal on May 31, 2017 to the Court and the Board. The Notice was received by the Board on June 5, 2017, as noted above.

II. DISCUSSION

The Board argues that the Court lacks subject matter jurisdiction because Appellant did not timely file his Notice of Appeal with the Court and the Board.

This appeal is governed by R.C. §119.12, which requires that notice of appeal to the agency and the court must be filed within fifteen days after the mailing of the agency's order.

In Nibert v Ohio Dept. of Corr. And Rehab., 84 Ohio St. 3d 100 (1998), the Supreme Court certified the following question:

When a party files a notice of appeal with an administrative agency within the fifteen-day period set forth in R.C. 119.12, but fails to file a copy of the notice of appeal with the appropriate court of common pleas within the fifteen-day period, does the court of common pleas have subject matter jurisdiction over the appeal?

and then answered the question in the negative.

In Nibert, the Appellant asked the Court to construe R.C. §119.12 so that only the filing of the notice to the agency is necessary to confer subject matter jurisdiction. However, the Supreme Court held that the language of the statute requires that both notices must be filed within fifteen days.

Where a statute confers the right of an appeal, an appeal may be perfected only in the manner prescribed by statute. Depositing the notice of appeal in the mail does not constitute a filing under R.C. §119.12. Brass Pole v Ohio Dept. of Health, 2009-Ohio-5021.

Failure to meet the deadline will result in dismissal of the untimely appeal. Swartz v Ohio Department of Job and Family Services, 2014-Ohio-3552 (12th Appellate District).

Appellant argues that the Notices of Appeal were timely mailed to this Court and the Board. The problem, as noted above, is that timely filing, not mailing, is required. There may be an issue as to whether the Clerk's receipt of the Notice on June 2, 2017, should be construed as a timely "filing" (even though the Notice was not filed until the fee was received), but there is no such issue with respect to the filing (receipt by) with the Board.

Appellant argues that he did not receive reasonable notice because the Order was never actually mailed to the Appellant. Rather same was ". . . instead sent to and signed by his estranged wife at his former address . . ." There is, however, no indication that Appellant ever notified the Board of a change of address, due to being estranged from his wife or otherwise.

Finally, even if the notice was mailed to an improper address and even if one assumes that the Board knew or should have known that the address was not correct, the Appellant did receive it in time to file timely notices.

Appellee's motion to dismiss is, albeit reluctantly, granted because the Court lacks subject matter jurisdiction.



JUDGE DAVID N. ABRUZZO

CC: TODD D. SEVERT
DANIEL J. MURRY