

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

Ralph Rinner, :
Plaintiff-Appellant, : **Case No. 17CV-7476**
-v- : **JUDGE SERROTT**
Ohio State BMV Registrar, :
Defendant-Appellee. :

**DECISION AND ENTRY GRANTING APPELLEE’S MOTION TO DISMISS
ADMINISTRATIVE APPEAL**

Rendered this 21st day of November, 2017

SERROTT, J.

This matter is before the Court on Appellee Ohio Bureau of Motor Vehicle’s (“the BMV”) Motion to Dismiss for Lack of Subject Matter Jurisdiction. The Motion is unopposed.

I. RELEVANT FACTS AND PROCEDURAL HISTORY

On March 26, 2017, Plaintiff-Appellant Ralph Rinner (“Rinner”) and Christina Hall (“Hall”) were involved in a motor vehicle accident. On June 13, 2017, Hall’s insurer, Grange Insurance, notified the BMV that Rinner was the “Responsible Party” for the accident, but did not have insurance coverage and had not paid Hall’s property damage loss of \$9,693.34. Grange Insurance submitted several documents in support, including correspondence from GEICO Secure Insurance Company (“GEICO”) identifying Rinner as a policy holder, but indicating it would not be providing coverage as the policy was not in effect on the date of the loss.

Grange Insurance's letter prompted the BMV to issue a Notice of Suspension on July 19, 2017 informing Rinner his driver's license was subject to a mandatory and indefinite suspension for the following reasons:

Under Ohio Revised Code 4509 you are being suspended for the following reasons:

1. Noncompliance Suspension – failure to prove you were insured at the time of the accident.
2. Security Suspension – a claim made by another motorist against you for monetary damages caused in an accident.

On July 25, 2017, Rinner, through counsel, indicated he was appealing both suspensions and further requested a hearing, which the BMV then scheduled for August 16, 2017. However, neither Rinner nor his counsel appeared on that hearing date. On August 18, 2017, the Hearing Examiner issued a Report recommending that a security suspension in the amount of \$9,001.91 and noncompliance suspension be imposed against Rinner's driver's license.

That same day, Rinner filed a "Complaint for Declaratory Judgment and Appeal/Stay of Suspension." Within the lawsuit, Rinner provides several explanations or reasons as to why the license suspension should be vacated. Rinner alleges the accident was actually caused by Hall's negligence, but Grange Insurance made its own liability determination without litigation or receiving any court judgment. Grange Insurance further engaged the collection firm of Douglas, Knight and Associates, who demanded payment without any determination of liability or verification of the debt.

Rinner further explains that he is 18 years old and his mother took responsibility for maintaining insurance coverage on the vehicle with GEICO. However, his mother

neglected to send payment, which resulted in coverage lapsing just shortly before the accident date. Rinner states that neither he nor his mother were aware that coverage had lapsed until he called GEICO immediately after the accident and that they then immediately took steps to reinstate their coverage. Thus, he contends the suspension should be terminated pursuant to R.C. 4509.101(L).

Finally Rinner states that he did not appear for the suspension hearing because he settled the property damage claim and wired the sum of \$6,300.00 to Douglas, Knight and Associates prior to the hearing date. In consideration for that payment, Rinner alleges that the collection firm represented that it would send the BMV a “release” of the requested license suspension, but it neglected to do so.

Based on these allegations, Rinner’s Complaint seeks a declaratory judgment that the BMV’s procedures set forth in R.C. 4511.09 through R.C. 4511.22 are unconstitutional as a violation of due process. Rinner further requests that the Court vacate his license suspension pursuant to R.C. 4509.101(L), or, alternatively, remand this matter to the BMV for an administrative hearing that he waived solely due to the representations of a third party.

Following the filing of the Complaint, the BMV issued a Final Adjudication Order on September 18, 2017. The Order noted that Rinner had submitted untimely written objections to the Hearing Examiner’s Report, which would nonetheless be considered out of an abundance of caution. The BMV rejected Rinner’s objections, which mirrored the allegations of the Complaint, and further adopted the Hearing Examiner’s Report and entered the noncompliance and security suspensions. Thereafter, on October 16, 2017, Rinner filed an Amended Complaint setting forth identical allegations and claims contained in his original pleading.

The BMV states that Rinner's lawsuit is actually an administrative appeal in the form of an Amended Complaint. It moves the Court to dismiss the appeal for lack of subject matter jurisdiction. The BMV contends that Rinner prematurely filed his first appeal before the BMV even issued a final appealable order. The BMV contends his amended appeal was then filed untimely. Finally, the BMV argues that Rinner's pleadings do not include the statutorily required language stating that the agency's order "is not supported by reliable, probative, and substantial evidence and is not in accordance with the law." Rinner has not opposed the BMV's request for a dismissal.

II. LAW AND ANALYSIS

The Court will begin by noting that the form and substance of Rinner's lawsuit reads primarily as a declaratory judgment action. However, the captions of his pleadings state that he is pursuing a "Declaratory Judgment/Appeal." As shall be further set forth below, the Court will construe his filing as setting forth both an administrative appeal and an action for declaratory judgment. Upon review, the Court agrees with the BMV that subject matter jurisdiction is lacking over the administrative appeal.

R.C. 119.12(A)(1) provides that "any 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." The affected party "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." R.C. 119.12(D). "[N]otices of appeal shall be filed within fifteen days after the mailing of the notice of the agency's order."

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).

Rinner's Complaint of August 18, 2017 challenging the Hearing Examiner's Report did not perfect an administrative appeal as no final adjudication order had yet been issued. "[T]o constitute an 'adjudication' for purposes of R.C. 119.12, a determination must be (1) that of the highest or ultimate authority of an agency which (2) determines the rights, privileges, benefits, or other legal relationships of a person. Both elements are required." *Camper Care, Inc. v. Forest River, Inc.*, 10th Dist. Nos. 08AP-146, 08AP-157, 2008-Ohio-3300, ¶7, quoting *Russell v. Harrison Twp.*, 75 Ohio App.3d 643, 648 (2nd Dist. 1991).

The Hearing Examiner's Report was not issued by the "highest or ultimate authority" of the BMV nor did it determine Rinner's rights or privileges, being only a *recommendation* that the license suspension be imposed. The Registrar's Final Adjudication Order issued September 18, 2017 imposing the license suspension and

informing Rinner of his appeal rights clearly constituted the order contemplated by R.C. 119.12 and triggered the fifteen day deadline to appeal. Rinner did not file an appeal from that order until October 16, 2017, outside the fifteen day window. Pursuant to the above case authority, this Court lacks subject matter jurisdiction to consider an administrative appeal from the Registrar's Order. Thus, Rinner's administrative appeal is DISMISSED.

As noted above, Rinner's Amended Complaint also sets forth claims for declaratory judgment. "[A] administrative appeal and a complaint are procedurally incompatible. *Garrett v. City of Columbus*, 10th Dist. No. 10AP-77, 2010-Ohio-3895, ¶24. However, the Tenth District Court of Appeals has allowed a party to pursue both remedies in one action. See *W.C. Cupe Community Sch. v. Zelman*, 10th Dist. No. 07AP-882, 2008-Ohio-2800. Additionally, in *Clifton v. Vill. of Blanchester*, 131 Ohio St.3d 287 (2010), the appellant filed a combined administrative appeal and complaint for declaratory judgment challenging a zoning decision, and the only procedural issue raised was lack of standing. Furthermore, in *Hughes v. Registrar, Ohio BMV*, 79 Ohio St.3d 305 (1997), the Supreme Court noted that the appellee's administrative appeal and complaint for declaratory judgment had been consolidated, and did not express any concern with this procedure.

The Court makes no commentary as to the merits of Rinner's declaratory judgment claims or whether there may be procedural grounds precluding him from challenging the BMV's actions through a lawsuit outside of the administrative appeal framework. However, the BMV's request for a dismissal does not address these issues. Therefore, at this time, Rinner's administrative appeal is DISMISSED, but his declaratory judgment claims remain pending.

IT IS SO ORDERED.

Electronically Signed By:
JUDGE MARK A. SERROTT

Copies to:

Darren L. Meade
Counsel for Plaintiff-Appellant

Tyler J. Herrmann
Counsel for Defendant-Appellee Bureau of Motor Vehicles

Franklin County Court of Common Pleas

Date: 11-22-2017
Case Title: RALPH RINNER -VS- OHIO STATE BMV REGISTRAR
Case Number: 17CV007476
Type: ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Mark Serrott". The signature is written over a circular blue seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" in the middle, and "ALL THINGS ARE POSSIBLE" at the bottom. The seal also features a central emblem with a sunburst design.

/s/ Judge Mark Serrott

Court Disposition

Case Number: 17CV007476

Case Style: RALPH RINNER -VS- OHIO STATE BMV REGISTRAR

Motion Tie Off Information:

1. Motion CMS Document Id: 17CV0074762017-10-2799970000

Document Title: 10-27-2017-MOTION TO DISMISS -
DEFENDANT: OHIO STATE BMV REGISTRAR

Disposition: MOTION GRANTED