

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

WILFORD REESE, III,	:	
	:	
Appellant,	:	Case No. 17CVF-009130
	:	
v.	:	JUDGE SCHNEIDER
	:	
OHIO DEPARTMENT OF PUBLIC	:	
SAFETY BUREAU OF MOTOR	:	
VEHICLES,	:	
	:	
Appellee.	:	

**DECISION AND JUDGMENT ENTRY GRANTING APPELLEE’S MOTION TO
DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION FILED ON
NOVEMBER 22, 2017
AND
NOTICE OF FINAL APPEALABLE ORDER**

SCHNEIDER, JUDGE

This is an administrative appeal pursuant to R.C. 119.12 of the Final Order of Suspension of the Ohio Department of Public Safety, Bureau of Motor Vehicles dated October 4, 2017, which suspended Appellant’s license for failure to provide proof of insurance when he was pulled over and cited for driving under the influence. *See Certified Record, Tab 4 & 5.* Appellee Ohio Department of Public Safety, Bureau of Motor Vehicles, however, moves this Court to dismiss Appellant’s appeal for lack of subject-matter jurisdiction. Specifically, the Bureau of Motor Vehicles asserts that although Appellant Wilford Reese, III timely filed his appeal with this Court, Appellant failed to timely file his notice of appeal with the agency in this case, the Ohio Department of Public Safety, Bureau of Motor Vehicles.

Failure to file a notice of appeal within the period provided under R.C. 119.12 deprives the common pleas court of subject-matter jurisdiction over the appeal. *Amoako v. Ohio Motor*

Vehicle Dealers Bd., 10th Dist. 13AP-749, 2014-Ohio-801, ¶ 6; *Coleman v. Ohio Bd. of Nursing*, 10th Dist. No. 12AP-869, 2013-Ohio-2073, ¶ 11. See also *Williams v. Drabik*, 115 Ohio App.3d 295, 296 (10thDist.1996) (holding that compliance with the requirements of R.C. 119.12, including the time of filing, is a condition precedent to jurisdiction). “[A] party adversely affected by an agency decision must . . . strictly comply with R.C. 119.12 in order to perfect an appeal.” *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 2007-Ohio-2877, ¶ 17; *Pole v. Ohio Dept. of Health*, 10th Dist. No. 08AP-1110, 2009-Ohio-5021, ¶ 7 (failure to file a notice of appeal with the appropriate agency within the time limit provided for in R.C. 119.12 results in a divestiture of subject-matter jurisdiction). R.C. 119.12 requires an appellant to file a Notice of Appeal with both the Court and the agency within fifteen days after the mailing of the notice of the agency’s final order. R.C. 119.12(D); *Nibert v. Ohio Dept. of Rehab & Corr.*, 84 Ohio St.3d 100, 102, 1998-Ohio-506 (“ . . . it is clear from [R.C. 119.12]’s own language that the fifteen-day filing requirement applies to both the notice of appeal [filed with the agency] and the copy of the notice filed with the court.”).

Court have recognized that parties seeking to appeal an administrative order must file with both the court of common pleas and the agency. “Filing a notice of appeal only with the court of common pleas is insufficient to confer jurisdiction on that court.” *Klorer v. Lucas Cty. Health Dept.*, 6th Dist. Lucas No. L-99-1073, 1999 Ohio App. LEXIS 3584, *4 (Aug. 6, 1999). “Similarly, the mere forwarding of a copy of a notice of appeal by a court, pursuant to its routine administrative practice, is insufficient to confer jurisdiction on that court.” *Id.* The appealing party himself must file the notice of appeal with the agency. *Mahmoud v. State Med. Bd. of Ohio*, Franklin C.P. No. 13CVF02-01907, 2103 Ohio Misc. LEXIS 16766, *3 (May 2, 2013).

In this appeal, the October 4, 2017 Order instructed Mr. Reese in two separate provisions that, pursuant to R.C. 119.12, if he filed a Notice of Appeal “[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 this final order.” *Certified Record, Tab 5*; Exhibit A to Notice of Appeal. Based upon the certified record on appeal, the Court finds that Appellant Reese’s notice of appeal was required to be filed with the Court as well as filed with the Bureau of Motor Vehicles no later than October 19, 2017. Mr. Reese filed his Notice of Appeal with this Court on October 13, 2017. *Certified Record, Tab 3*. The certified record is devoid of any evidence that Mr. Reese filed a Notice of Appeal with the Bureau of Motor Vehicles. Instead, the certified record shows that the Bureau received a copy of the notice of appeal from the Court via certified mail on October 18, 2017 and this is the only copy that has ever been received by the Bureau. *Certified Record, Tab 3*; Proof of service Docket Entry dated October 24, 2017.

Appellant Reese has not responded to or contested the merits of Appellee’s motion to dismiss for lack of subject-matter jurisdiction. Appellant Reese has not disputed Appellee Bureau of Motor Vehicles’ assertion that Appellant never filed a copy of its notice of appeal with the Bureau. Appellant Reese has not disputed Appellee Bureau of Motor Vehicles’ assertion that Appellant failed to comply with the requirements for timely perfecting an appeal.

Consequently, the Court finds that Appellant has not complied with the mandatory requirements of R.C. 119.12 and has failed to comply with the requirements for perfecting an appeal. The Court’s subject-matter jurisdiction has not been invoked to review the October 4, 2017 Final Order of Suspension of the Ohio Department of Public Safety,

Bureau of Motor Vehicles with regard to Appellant. Accordingly, this Court lacks subject-matter jurisdiction to hear this appeal.

The appeal herein is **DISMISSED** based on the fact that the Appellant has not invoked the jurisdiction of this Court.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

(B) Notice of filing. When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY.

THIS IS A FINAL APPEALABLE ORDER. Pursuant to Civil Rule 58, the Clerk of Court shall serve notice upon all parties of this judgment and its date of entry. Costs to Appellant.

IT IS SO ORDERED.

Copies to:

Counsel of Record

Franklin County Court of Common Pleas

Date: 12-11-2017
Case Title: WILFORD REESE III -VS- OHIO STATE DEPARTMENT PUBLIC SAFETY BMV
Case Number: 17CV009130
Type: DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink, which appears to be 'C.A. Schneider'. To the right of the signature is a circular official seal, likely the seal of the Franklin County Court of Common Pleas, though the details are somewhat faded.

/s/ Judge Charles A. Schneider

Court Disposition

Case Number: 17CV009130

Case Style: WILFORD REESE III -VS- OHIO STATE DEPARTMENT
PUBLIC SAFETY BMV

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 17CV0091302017-11-2299970000
Document Title: 11-22-2017-MOTION TO DISMISS -
DEFENDANT: OHIO STATE DEPARTMENT PUBLIC SAFETY BMV
Disposition: MOTION GRANTED