

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

CRYSTAL NAILS,	:	
	:	
Appellant,	:	CASE NO. 14CV-2176
	:	
vs.	:	JUDGE HOLBROOK
	:	
OHIO STATE BOARD OF COSMETOLOGY,	:	<u>FINAL APPEALABLE ORDER</u>
	:	
Appellee.	:	

**DECISION AND ENTRY
DISMISSING APPEAL FOR LACK OF JURISDICTION
AND GRANTING APPELLEE’S MOTION TO DISMISS FILED APRIL 1, 2014**

HOLBROOK, JUDGE

On April 1, 2014, Appellee Ohio State Board of Cosmetology filed a motion to dismiss this appeal.

Appellee asserts that this Court lacks jurisdiction because the Appellant did not file its appeal within fifteen days after the mailing of the notice of the agency’s order, as required by R.C. 119.12. Specifically, the record indicates Appellee Ohio State Board of Cosmetology mailed its Order to Appellant on January 28, 2014, and Appellant Crystal Nails admits that it received the Order on January 31, 2014. *See* Appellant’s Notice of Appeal and Exhibit A thereto. Appellant therefore had fifteen days from January 28, 2014, i.e. until on or before February 12, 2014, to file its Notice of Appeal with both the Ohio State Board of Cosmetology and the Franklin County Common Pleas Court. In this case, however, the record is clear that Appellant Crystal Nails never filed any documents, including a Notice of Appeal, with this Court until February 27, 2014.

Ohio courts have consistently held that “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, 52, 2007–Ohio–2877, ¶ 17. Specifically, R.C. 119.12 requires that all “notices of appeal shall be filed within fifteen days of the mailing of the notice of the agency's order as provided in this section.” Failure to properly perfect the appeal is fatal, as it divests the Court of subject-matter jurisdiction. *Williams v. Drabik*, 115 Ohio App.3d 295, 297 (10th Dist. 1996); see also *Brass Pole v. Ohio Depart. of Health*, 10th Dist. No. 08AP-1110, 2009-Ohio-5021, ¶ 14.

The notice of appeal must also be filed with both the agency and the court within the fifteen-day limit set forth in R.C. 119.12. *Nibert v. Ohio Dep't of Rehab. & Corr.*, 84 Ohio St.3d 100, 102 (1998) (both copies of the Notice of Appeal must be filed within the fifteen-day limit or the court lacks jurisdiction to hear administrative appeal); see also *Austin v. Ohio Fair Plan Underwriting Ass'n*, 10th Dist. No. 10AP-895, 2011-Ohio-2050, ¶ 9 (a Notice of Appeal must be received by both the agency and the Court within the fifteen-day period). The Notice of Appeal must be actually be received by both the court and the agency within the fifteen-day period, not merely placed the notice in the mail by the Appellant. See *Brass Pole v. Ohio Depart. of Health*, 10th Dist. No. 08AP-1110, 2009-Ohio-5021, ¶ 14-16. In this case, no notice of appeal was received by this Court until February 27, 2014.

Appellant asserts in its *Amended* Notice of Appeal, however, that it filed its “original notice of appeal in this matter on Thursday, February 13, 2014.” Appellant claims that a blank document e-mailed to the Tenth District Court of Appeals at 8:45 p.m. and attached as Exhibit B to its Amended Notice of Appeal constitutes its *original* notice of appeal. This argument is unavailing. First, pursuant to R.C. 119.12 and as set forth in the Cosmetology Board’s Order of January 28, 2014, Appellant was required to file its Notice of Appeal with the Franklin County Court of Common Pleas, not the Court of Appeals for the Tenth Appellate District. Second, a

blank notice of appeal form fails to comply with the requirements of R.C. 119.12, specifically the language requirements set forth in R.C. 119.12. Paragraph 4 of R.C. 119.12 requires that a notice of appeal set forth the order appealed from and state that the order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The Tenth District Court of Appeals has held that failure to include the required language is a jurisdictional defect requiring dismissal of the appeal. See *Foreman v. Lucas Cty. Court of Common Pleas*, 189 Ohio App. 3d 678, 2010-Ohio-4731, at ¶ 12; *Siegler v. The Ohio State University*, 10th Dist. No. 10AP-421, 2011-Ohio-2485, at ¶ 6. Appellant's failure to include the required language of R.C. 119.12 cannot be "fixed" by filing an amended notice of appeal with the proper court outside of the statutorily proscribed 15 day period under R.C. 119.12. See *Kingsley v. Ohio State Pers. Bd. of Review*, 10th Dist. No. 10AP-875, 2011-Ohio-2227, at ¶ 18. In the *Kingsley* case, the Tenth District found that any amendment "must occur within that 15-day period. Amendments made beyond this time period will fail." *Id.* at ¶ 12, citing *Hills & Dales v. Ohio Dept. of Edn.*, 10th Dist. No. 06AP-1249, 2007-Ohio-5156.

Third, a blank notice of appeal e-mailed at 8:45 pm at night on February 13, 2014, well after the close of the business and the close of the Clerk of Court's office, is still untimely and does not meet the filing deadline of on or before February 12, 2014. See Exhibit C to Amended Notice of Appeal. Indeed, Appellant was aware that it had missed the filing deadline and it admitted as much in its (i) e-mail sent on February 13, 2014 at 8:45 p.m. to Douglas W. Eaton, Deputy Court Administrator, Ohio Court of Appeals for the 10th Appellant District; and its (ii) e-mail that it attempted to send on February, 14, 2014 to attorney Thomas Taneff, Chairman of the Cosmetology Board, acknowledging that "[i]t's over the 15 days . . . Please help!" which was forwarded to Mr. Taneff later in the day on February 14, 2014 by legal counsel for Appellant. See Exhibit C to Notice of Appeal.

Therefore, it is clear from the record that Appellant has not complied with the mandatory requirements of R.C. 119.12. Consequently, the Court's jurisdiction has not been invoked to review any Order of the Ohio State Board of Cosmetology with regard to Appellant. Accordingly, the Court finds that it lacks subject-matter jurisdiction and, upon review, Appellee's Motion to Dismiss filed on April 1, 2014 is hereby **GRANTED**.

Additionally, because the Court lacks jurisdiction, its March 27, 2014 Entry Granting Motion for Stay of The Ohio State Board of Cosmetology Order, which Entry granted Appellant a stay of Appellee Ohio State Board of Cosmetology's January 28, 2014 Order "until the completion of all proceedings related to this matter," is a nullity and void ab initio. *See Stonehenge Condominium Assoc. v. Davis*, 10th Dist. App. No. 04AP-1103, 2005-Ohio-4637. Accordingly, the Court's March 27, 2014 Entry is sua sponte **VACATED**.

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 of this judgment and its date of entry upon all parties.

IT IS SO ORDERED.

Copies To:

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Franklin County Court of Common Pleas

Date: 04-08-2014
Case Title: CRYSTAL NAILS -VS- OHIO STATE BOARD COSMETOLOGY
Case Number: 14CV002176
Type: ENTRY

It Is So Ordered.

A handwritten signature in cursive script, reading "Michael J. Holbrook", 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 Michael J. Holbrook

Court Disposition

Case Number: 14CV002176

Case Style: CRYSTAL NAILS -VS- OHIO STATE BOARD
COSMETOLOGY

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 14CV0021762014-04-0199980000
Document Title: 04-01-2014-MOTION TO DISMISS
Disposition: MOTION GRANTED