

IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS

KARMA KAFE

Appellant,

Case No. 15 CV 8615

v.

Judge Chris M. Brown

OHIO DEPARTMENT OF HEALTH

Appellee.

DECISION AND ENTRY
GRANTING APPELLEE'S MOTION TO DISMISS

This matter comes before the Court upon the November 9, 2015 Motion to Dismiss filed by Appellee Ohio Department of Health ("ODH"). In the Motion, ODH argues this matter should be dismissed for lack of subject-matter jurisdiction under Ohio Revised Code ("R.C.") Section 119.12 Appellant Karma Kafe filed a Response to the motion on November 13, 2015. ODH filed a Reply in Support of the motion on November 20, 2015. The Motion to Dismiss is deemed submitted to the Court pursuant to Local Rule 21.01.

For the reasons set forth in this Decision, the Court **GRANTS** the Motion to Dismiss.

I. OHIO REVISED CODE SECTION 119.12

The Ohio Department of Public Health is an administrative agency. As such, any appeal from an ODH administrative order must follow the requirements set forth by R.C. Section 119.12(D), which states, in pertinent part, as follows:

Any 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. For purposes of this paragraph, an order includes a determination appealed pursuant to division (C) of section 119.092 of the Revised Code. (emphasis added)

The right to appeal an administrative decision is not an inherent right. *Harrison v. Ohio State Med. Bd.*, 103 Ohio App.3d 317 (10th 1995). The appeal rights are conferred by statute and “strict adherence to the statutory conditions is essential.” *Id.*, citing *Holms v. Union Gospel Press* (1980), 64 Ohio St.2d 187, 188.

With respect to the 15-day filing requirement, courts have consistently held that failure to file a notice of appeal with both the administrative agency and the court is fatal to the appeal. *Harrison*, *supra*; See also *Jones v. Ohio Motor Vehicle Dealers Bd.*, 10th Dist. No. 12AP-785, 2013-Ohio-1212, ¶ 8. This Court lacks jurisdiction to hear an appeal not filed with an administrative agency within 15 days of the order.

II. ANALYSIS

On September 15, 2015, the State Ohio Department of Health issued an Adjudication Order finding Appellant in violation of R.C. Section 3794.02(A), Smoking in a Prohibited Area. This was the final adjudicative decision of the agency and the order contained language advising Appellant of its appeal rights, citing R.C. Section 119.12.

Appellant filed its Notice of Appeal with this Court on September 29, 2015. It is undisputed that Appellant did not file a Notice of Appeal with ODH.¹

Appellant's sole apparent argument is that ODH's Adjudicative Order contained misleading language about its statutory right of appeal. The Court has reviewed the advisory language, which clearly and unambiguously advises Appellant that an appeal filed is filed pursuant to R.C. Section 119.12. The Order states Appellant "may appeal this final finding by filing a notice of appeal with the agency." That is, if Appellant chooses to appeal, said appeal is filed with the agency. The Order later refers to such notice of appeal as "the notice of appeal," which "shall be filed with the Franklin County Court of Common Pleas." Therefore, if Appellant had filed a notice of appeal with ODH, said notice of appeal would then be filed with this Court. Appellant never filed a notice of appeal with ODH. This Court therefore lacks subject matter jurisdiction.

III. CONCLUSION

For the reasons set forth in this Decision, Appellee ODH's Motion to Dismiss is **GRANTED** and this matter is **DISMISSED**. This is a Final Appealable Order.

IT IS SO ORDERED.

JUDGE CHRIS M. BROWN

¹ Appellant obtained certified mail service of its Notice of Appeal upon ODH on October 2, 2015. Notwithstanding the issue of whether service by the Clerk of Court meets the filing requirements of R.C. Section 119.12, said service was after the expiration of the 15-day limit.

Franklin County Court of Common Pleas

Date: 12-01-2015

Case Title: KARMA KAFE -VS- OHIO DEPARTMENT HEALTH

Case Number: 15CV008615

Type: ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink, which appears to read "Christopher M. Brown". The signature is written over a circular official seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" in the middle, and "WITH GOD ALL THINGS ARE POSSIBLE" at the bottom. The seal also features a central emblem with a landscape scene.

/s/s Judge Christopher M. Brown

Court Disposition

Case Number: 15CV008615

Case Style: KARMA KAFE -VS- OHIO DEPARTMENT HEALTH

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 15CV0086152015-11-0999970000

Document Title: 11-09-2015-MOTION TO DISMISS -
DEFENDANT: OHIO DEPARTMENT HEALTH

Disposition: MOTION GRANTED