

IN THE COMMON PLEASE COURT OF FRANKLIN COUNTY, OHIO

DONNA KUNKEL,

CASE NO: 16CVF-09-9121

Appellant,

v.

JUDGE: YOUNG

OHIO STATE DEPARTMENT OF JOB
AND FAMILY SERVICES,

Appellee.

DECISION AND ENTRY
AFFIRMING THE ADJUDICATION ORDER
DATED AUGUST 4, 2016
AND
DECISION AND ENTRY
HOLDING MOOT THE APPELLEE'S MOTION FOR JUDGMENT ON THE
RECORD AS FILED ON DECEMBER 16, 2016

YOUNG, JUDGE

Before this Court is the appeal filed by Donna Kunkel (Appellant). The Appellant named the Ohio State Department of Job and Family Services (Appellee). The Appellant has appealed from the Appellee's Adjudication Order of August 4, 2016 that revoked the Appellants type B home provider license. The Appellant has not filed a brief nor has she requested additional time to respond. On December 16, 2016 the Appellee filed a 'Combined Brief of Appellee and Motion for Judgment on the Record'. As of the date of the signing of this Decision and Entry, the Appellant has not responded to said motion

For the reasons that follow this Court **AFFIRMS** the August 4, 2016 Adjudication Order of the Appellee.

I. STATEMENT OF THE CASE

Appellant was sanctioned by the Appellee and her type B license was revoked. The Appellant had not properly maintained the license nor did she respond to the Appellee's notice giving her an opportunity to have a hearing. After her license was revoked, the Appellant filed her Notice of Appeal with this Court.

II. STATEMENT OF THE FACTS

As noted, the Appellant had her license revoked. The following facts come out of the Appellee's filing of December 12, 2016:

Ms. Kunkel had a type B home provider license, which means she was permitted to care for up to six children in her home at one time and received public funding for doing so. See Ohio Adm.Code 5101:2-14-18. On June 23, 2016, ODJFS issued a Notice to Ms. Kunkel proposing revocation of her license. Revocation was based on Ms. Kunkel's alleged failure to cooperate with the Franklin County Department of Job and Family Services ("County") and her alleged failure to provide publicly-funded care within the previous six months. (Rec. at 6-7) The "Rec." refers to the record certified by the agency in this case, which was filed with the Court on October 12, 2016 and consists of Bates-stamped pages 1 through 16. These allegations are violations of Ohio Adm. Code 5101:2-14-04(A)(3) and (A)(12). (Rec. at 6-7) The Notice informed Ms. Kunkel that "you are entitled to a hearing on this matter if the hearing is requested in writing within thirty (30) days of the date of the mailing of this notice," and it instructed her on how to submit her hearing request. (Rec. at 7) It also warned Ms. Kunkel "that failure to timely request such a hearing will cause ODJFS to enter an adjudication order to revoke the Type B Home provider license of Donna Kunkel." (Rec. at 7) The Notice was sent to Ms. Kunkel via certified mail on June 23, 2016, and it was successfully delivered to her home. (Rec. at 8 – 9)

By August 4, 2016, 42 days later, Ms. Kunkel had not submitted a hearing request, so an Adjudication Order revoking Ms. Kunkel's license was signed and issued by ODJFS. (Rec. at 11) The Adjudication Order was sent to Ms. Kunkel via certified mail on August 4, 2016, but was returned to ODJFS as unclaimed on September 8, 2016. (Rec. at 14 – 15) The Adjudication Order was then re-sent to Ms. Kunkel via a certificate of mailing on September 20, 2016. (Rec. at 16) Ms. Kunkel had 15 days from the mailing of the Adjudication Order to appeal the Adjudication Order to common pleas court, and she timely filed her appeal on September 26, 2016. See Docket, Case No. 16CVF-09-9121. Ms. Kunkel's brief was due on December 5, 2016. To date, she has not filed a brief.

The matter is ready for review.

III. STANDARD OF REVIEW

Review by this Court of an administrative agency is governed by R.C. §119.12 and the multitude of cases addressing that section. An often cited case is that of *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 108, 407 N.E.2d 1265. The *Conrad* decision

states that in an administrative appeal filed pursuant to R.C. §119.12, the trial court must review the agency's order to determine whether it is supported by reliable, probative and substantial evidence and is in accordance with law. The *Conrad* court stated at pages 111 and 112 that:

In undertaking this hybrid form of review, the Court of Common Pleas must give due deference to the administrative resolution of evidentiary conflicts. For example, when the evidence before the court consists of conflicting testimony of approximately equal weight, the court should defer to the determination of the administrative body, which, as the fact-finder, had the opportunity to observe the demeanor of the witnesses and weigh their credibility. However, the findings of the agency are by no means conclusive.

Where the court, in its appraisal of the evidence, determines that there exist legally significant reasons for discrediting certain evidence relied upon by the administrative body, and necessary to its determination, the court may reverse, vacate or modify the administrative order. Thus, where a witness' testimony is internally inconsistent, or is impeached by evidence of a prior inconsistent statement, the court may properly decide that such testimony should be given no weight. Likewise, where it appears that the administrative determination rests upon inferences improperly drawn from the evidence adduced, the court may reverse the administrative order.

The *Conrad* case has been cited with approval numerous times. *Ohio Historical Soc. v. State Emp. Relations Bd.* (1993), 66 Ohio St. 3d 466, 471, 613 N.E.2d 591 noted *Conrad* and stated that although a review of applicable law is *de novo*, the reviewing court should defer to the agency's factual findings. See *VFW Post 8586 v. Ohio Liquor Control Comm.* (1998), 83 Ohio St.3d 79, 82, 697 N.E.2d 655.

In addition, a court must give due deference to the agency's construction of a statute or rule enforced by the agency, and should follow that construction unless it is unreasonable or impermissible. See *Leon v. Ohio Bd. of Psych.*, 63 Ohio St.3d 683, 687 (1992) (citing *Lorain City Bd. of Educ. v. State Emp. Rel. Bd.*, 40 Ohio St.3d 257 (1988)); *Morning View Care Center—Fulton v. Ohio Dept. of Human Servs.*, 148 Ohio App.3d 518, 533, 2002-Ohio-2878, ¶43 (10th Dist.).

From within the above noted legal frameworks this Court will now analyze the arguments of counsel.

IV. ANALYSIS

The only motion or pleading filed by the Appellant was her Notice of Appeal. In her Notice she stated that she had stopped working as a home care provider in order to make more money for her family. Appellant's Notice contained an admission that she had not been present when the Appellee attempted to conduct at home visits. She also stated in her Notice that she felt that she was ready to return to home care work but would not be able to because the Appellee had decided to revoke her license.

This Court has reviewed the certified record and the actions of the Appellee relevant to the Appellant's license. This Court finds that the Adjudication Order issued by the Appellee is supported by reliable, probative and substantial evidence and is in accordance with law. The Appellant failed to request a hearing at the administrative level so the Appellant failed to give the Appellee the ability to address the matter and create an administrative proceeding subject to review.

The Appellee's interpretation of the need for a hearing as it relates to its interpretation of the Statute and its own administrative codes are not unreasonable or repugnant. There is no merit in the Appellant's appeal.

Furthermore, the Appellant's Notice of Appeal does not meet the requirements of R.C. §119.12. Please note the following language from the code in question:

R.C. §119.12(D) 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.
(Emphasis added)

The statute contains a clear pronouncement as shown by the emphasized text. An administrative appeal must contain certain language.

Pursuant to the authority of *River Room, Inc. v. Ohio Liquor Control Comm.*, 2015-Ohio-2924, (10th Dist.) the failure to have the necessary language in her Notice was a jurisdictional flaw leading to the same result as this Court's decision on the merits; i.e., the Appellant's request for relief from the Appellee's Adjudication Order fails.

V. DECISION

The Court **AFFIRMS** the Ohio State Department of Job and Family Services' Adjudication Order as rendered on August 4, 2016.

The Appellee's Motion for Judgment on the Record as filed on December 16, 2016 is **MOOT**.

THIS IS A FINAL APPEALABLE ORDER

David C. Young, Judge

Copies to:

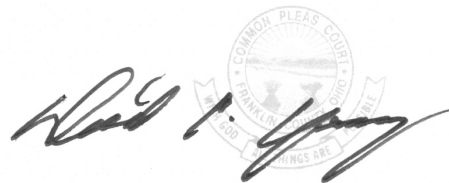
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Franklin County Court of Common Pleas

Date: 01-09-2017
Case Title: DONNA KUNKEL -VS- OHIO STATE DEPARTMENT JOB
FAMILY SERVICE
Case Number: 16CV009121
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "David C. Young", is written over a circular official seal. The seal features a central emblem and the text "COMMON PLEAS COURT" at the top and "FRANKLIN COUNTY OHIO" at the bottom.

/s/ Judge David C. Young

Court Disposition

Case Number: 16CV009121

Case Style: DONNA KUNKEL -VS- OHIO STATE DEPARTMENT
JOB FAMILY SERVICE

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes