

FILED
ROSS COUNTY COMMON PLEAS
CLERK OF COURTS
TY O. HINTON

DENNIS M. DEPUGH

APPELLANT,

CASE NO. 17 CI 98

-VS-

JUDGE NUSBAUM

**OHIO DEPARTMENT OF
PUBLIC SAFETY, BUREAU
OF MOTOR VEHICLES**

JOURNAL ENTRY

APPELLEE.

* * * * *

This cause came on for non-oral hearing on the Motion to Dismiss filed by the Appellee, Ohio Department of Public Safety, Bureau of Motor Vehicles. The Court has considered the memoranda filed in support and opposition thereto by Appellee and the Appellant, Dennis DePugh. Based on the following reasoning, the Court hereby grants said motion.

On February 21, 2017, Appellant filed a Notice of Appeal involving a final order of suspension regarding Appellant’s driving privileges and vehicle registration privileges. Appellant’s privileges were suspended because he failed to provide proof of automobile insurance upon random selection. The date of the letter informing Appellant of his suspension was February 2, 2017.

O.R.C. Section 119.12 governs this appeal. Specifically, O.R.C. Section 119.12(D) provides:

“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. The amendments made to this paragraph by Sub. H.B. 215 of the 128th general assembly are procedural, and this paragraph as amended by those amendments shall be applied retrospectively to all appeals pursuant to this paragraph filed before September 13, 2010, but not earlier than May 7, 2009, which was the date the supreme court of Ohio released its opinion and judgment in *Medcorp, Inc. v. Ohio Dep't. of Job and Family Servs.* (2009), 121 Ohio St.3d 622.

Appellant has failed to file his notice of appeal within fifteen (15) days of the mailing of the agency's order. Thus, this Court does not have jurisdiction over the appeal. Nibert v. Ohio Dept. of Rehabilitation and Corrections (1998), 84 Ohio St. 3d 100; Swartz v. Ohio Dept. of Job & Family Services, 2014 – Ohio – 3552; Austin v. Ohio FAIR Plain Underwriting Association, 2011 – Ohio – 2050; and Morrison v. Ohio Dept. of Insurance, 2002 – Ohio – 5968.

Having determined that this Court does not have jurisdiction because of the late filing of the appeal, the Court will still address the sufficiency of the notice of appeal. Appellant's notice of appeal alleges specific grounds for relief, but the notice does not state that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. As Appellant's notice of appeal does not include this required statement to invoke this Court's jurisdiction, this Court lacks subject matter jurisdiction. Foreman v. Lucas County Court of Common Pleas (2010), 189 Ohio

App. 3d 678; Siegler v. Ohio State University, 2011 – Ohio – 2485; and River Room, Inc.

v. Ohio Liquor Control Commission, 2015 – Ohio – 2924.

THESE CASES DIFFER WITH THE HOLDING IN ZIDIAN V. DEPT. OF COMMERCE. 2012- OHIO 1489, AS 44-45.

Appellant's notice of appeal fails to comply with the statutory requirements and must be dismissed. Accordingly, Appellee's Motion to Dismiss is hereby granted.

Appellant's appeal is hereby dismissed for lack of subject matter jurisdiction.

Exceptions to Appellant.

Costs to Appellant.

THIS IS A FINAL APPEALABLE ORDER.

ENTER: 5/12, 2017.

Maul By Assign.
SCOTT W. NUSBAUM, JUDGE
COMMON PLEAS COURT #2
ROSS COUNTY, OHIO WARD

The Clerk of this Court is hereby directed to serve a copy of the Journal Entry and its date of entry upon the Journal, upon all counsel of record and all parties not represented by counsel, by U. S. Mail and to note service on the Docket.

Recipients of the Journal Entry:

Dennis M. DePugh
314 Vine Street
Chillicothe, OH 45601

Tyler J. Herrmann
Assistant Attorney General
30 East Broad St., 26th Floor
Columbus, OH 43215-3400

The Clerk of the Court is hereby directed to serve a copy of this Judgment Order, and its date of entry upon the Journal, upon all counsel of record and all parties not represented by counsel, by personal service or by U.S. Mail, and to note service on the Docket.

Judge Scott W. Nusbaum