

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

FATIMA PARKER,

Appellant,

v.

OHIO STATE DEPARTMENT OF  
COMMERCE, DIVISION OF REAL  
ESTATE,

Appellant.

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: Case No. 17CVF-007921  
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: JUDGE HOLBROOK  
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**DECISION AND ENTRY GRANTING APPELLEE OHIO STATE DEPARTMENT OF COMMERCE, DIVISION OF REAL ESTATE'S MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION (FILED OCTOBER 13, 2017) AND NOTICE OF FINAL APPEALABLE ORDER**

**HOLBROOK, JUDGE**

This matter comes before the Court upon Appellee Ohio State Department of Commerce, Division of Real Estate's October 13, 2017 motions to dismiss. Appellee submits that the Appellant's appeal should be dismissed for lack of subject matter jurisdiction as it was untimely filed. Because the motion to dismiss raises a fatal flaw to the Appellant's appeal, there is no reason to delay ruling on the motion. For the reasons that follow, the Appellee's motion is granted.

**LAW AND ANALYSIS**

Subject-matter jurisdiction is a court's power to hear and decide a particular class of cases and is therefore a threshold issue. *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, ¶ 19; *Hodkinson v. Ohio State Racing Comm.*, 10th Dist. No. 17AP-33, 2017-Ohio-7494, ¶ 9. See *Turner v.*

*Ohio Dept. of Rehab. & Corr.*, 180 Ohio App.3d 86, 2008-Ohio-6608, ¶ 9 (10th Dist.) (“Whether there is subject matter jurisdiction is a threshold question that will prevent a court from reaching the underlying issues in a case.”). With regard to appeals from the Ohio State Department of Commerce, Division of Real Estate, the appeal is governed by R.C. 119.12, which provides, in pertinent part:

Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of the party's appeal. A copy of the notice of appeal shall also be filed by the appellant with the court. 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. (emphasis added).

It is well-settled that the failure to file a notice of appeal with the appropriate agency within the 15-day limit provided for in R.C. 119.12 results in a divestiture of subject-matter jurisdiction. *Brass Pole v. Ohio Dept. of Health*, 10th Dist. 08AP-1110, 2009-Ohio-5021 at ¶ 7; *Frasca v. State Bd. of Chiropractic Examiners* (July 30, 1998), 10th Dist. No. 97APE10-1387; *Harrison v. Ohio State Med. Bd.*, 103 Ohio App. 3d 317, 322 (1995).

Where a statute confers the right of appeal, an appeal may be perfected only in the manner prescribed by statute. *Camper Care, Inc. v. Forest River, Inc.*, 10th Dist. No. 08AP-146, 2008-Ohio-3300 (citations omitted). 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, 2007-Ohio-2877, ¶ 17. The Tenth District Court of Appeals has also held that the failure to file a notice of appeal

with the appropriate agency within the 15-day limit provided for in R.C. 119.12 is a jurisdictional defect, and deprives the common pleas court of subject-matter jurisdiction over the appeal. *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 (10th Dist.1996) (holding that compliance with the requirements of R.C. 119.12, including the time of filing, is a condition precedent to jurisdiction); *Brass Pole*, 2009-Ohio-5021 at ¶ 13; *Amoako v. Ohio Motor Vehicle Dealers Ltd.*, 10<sup>th</sup> Dist. No. 13AP-749, 2014-Ohio-801 at ¶ 6.

Depositing the notice of appeal in the mail does not constitute a filing under R.C. 119.12. To be timely filed, a notice a notice of appeal must be received within the time period set forth in R.C. 119.12. *Brass Pole*, 2009-Ohio-5021 at ¶ 14; *Watts v. Ohio Dept. of Ins.*, 8th Dist. No. 87849, 2007-Ohio-81; *Leonard v. Ohio Bd. of Nursing* (June 8, 2000), 10th Dist. No. 99AP-1154; *Burton v. Dept. of Agriculture* (Feb. 9, 1993), 10th Dist. No. 92AP-1499. This means that a notice of appeal must actually be delivered to the Ohio State Department of Commerce, Division of Real Estate and this Court within the 15-day period, not merely deposited in the mail.

In this appeal, a review of the record on appeal reveals that on August 16, 2017, the Ohio State Department of Commerce, Division of Real Estate issued a Final Adjudication Order denying Ms. Parker's application to sit for the real estate sales examination. R. p. 4. The Final Adjudication Order advised Ms. Parker that she had the right to appeal to the court of common pleas and that the notice of appeal had to be filed with both the court and the Ohio State Department of

Commerce, Division of Real Estate within fifteen days of the day of the final order. *Id.*

Pursuant to R.C. 119.12(D), Appellant Parker had until August 31, 2017 to deliver her notice of appeal to the Ohio State Department of Commerce, Division of Real Estate and to file it with this Court. Appellant Parker failed to do so. Her notice of appeal was not filed with this Court until September 1, 2017. The date next to her signature on the Notice of Appeal is September 1, 2017, and the date at the top of her Notice of Appeal is September 1, 2017, in addition to the electronic time-stamp, which indicates that her Notice of Appeal was filed with the Court on September 1, 2017 (a Friday) at 3:55 p.m. See also R. p. 1-3. As a result, her Notice of Appeal was not delivered to the Court until after the time to appeal had run on August 31, 2017. Consequently, the appeal was untimely filed.

Under the above authority, Appellant's failure to file this appeal within the fifteen days allowed by R.C. 119.12 is a jurisdictional defect requiring dismissal of the appeal.

Ohio case law continues to hold that *pro se* litigants are held to the same standards as a practicing attorney. *Justice v. Lutheran Social Services*, Franklin Cty. No. 92AP-1153, unreported, 1993 Ohio App. LEXIS 2029 at \*6 (10th Dist.). The *pro se* litigant is to be treated the same as one trained in the law as far as the requirements to follow procedural law and adherence to court rules, and are presumed to have knowledge of the law and of correct legal procedure. *Kessler v. Kessler*, 2010-Ohio-2369, ¶8 (10thDist.); *Meyers v. First Natl. Bank*, 3 Ohio

App.3d 209, 210 (1st Dist.1981); *Erie Ins. Co. v. Bell*, 2002-Ohio-6139 (4thDist.). *Pro se* civil litigants are also bound by the same rules and procedures as those litigants who retain counsel. *White v. Fifth Third Bank*, 2010-Ohio-4611, ¶13 (10thDist.), citing *Zukowski v. Brunner*, 125 Ohio St.3d 53, 2010-Ohio-1652; *Raccuia v. Kent State Univ.*, 2010-Ohio-3014, ¶13 (10th Dist.); *Copeland v. Rosario*, Summit Cty. No. 18452, 1998 Ohio App. LEXIS 260 at \*7 (9thDist.). If the Court treats a *pro se* litigant differently, the Court begins to depart from its duty of impartiality and prejudices the handling of the case as it relates to other litigants represented by counsel. Accordingly, under Ohio law, *pro se* litigants are not accorded greater rights and must accept the results of their mistakes and errors. *Kilroy v. B.H. Lakeshore*, 111 Ohio App.3d 357, 363 (8thDist.1996); *Harris v. Housing Appeals Board*, 2003-Ohio-724, 11 (9thDist.).

Appellant has not complied with the strict filing deadlines and limitations of R.C. 119.12. Consequently, the Court's jurisdiction has not been invoked to review any decision of the Ohio State Department of Commerce, Division of Real Estate with regard to Appellant. 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 via electronic notification to:

Counsel and parties of record

Franklin County Court of Common Pleas

**Date:** 10-17-2017  
**Case Title:** FATIMA PARKER -VS- OHIO STATE DEPARTMENT  
COMMERCE  
**Case Number:** 17CV007921  
**Type:** DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, which appears to read "Michael J. Holbrook", is written over a blue circular official seal. The seal contains the text "COMMON PLEAS" at the top, "FRANKLIN COUNTY, OHIO" around the inner edge, and "IN GOD WE TRUST" and "ALL THINGS ARE POSSIBLE" around the bottom edge.

/s/ Judge Michael J. Holbrook

Court Disposition

Case Number: 17CV007921

Case Style: FATIMA PARKER -VS- OHIO STATE DEPARTMENT  
COMMERCE

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 17CV0079212017-10-1399970000  
Document Title: 10-13-2017-MOTION TO DISMISS -  
DEFENDANT: OHIO STATE DEPARTMENT COMMERCE  
Disposition: MOTION GRANTED