

ORIGINAL



FILED
LORAIN COUNTY
2017 NOV -3 PM 3:08
COURT OF COMMON PLEAS
JOHN DELANDRO

**LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO**

**TOM ORLANDO, Clerk
JOURNAL ENTRY
John R. Miraldi, Judge**

Date 11/2/17

Case No. 17CV193167

KATHRYN WALSH
Plaintiff

PRO SE
Plaintiff's Attorney

VS

OHIO DEPARTMENT OF PUBLIC
SAFETY BUREAU OF MOTOR
VEHICLES
Defendant

JOSEPH S HESS
Defendant's Attorney (614)466-2833

**ENTRY AND ORDER DISMISSING APPEAL
FOR LACK OF JURISDICTION**

This cause came to be heard upon an administrative appeal filed by Appellant Kathryn Walsh from a decision of the Ohio Department of Public Safety – Bureau of Motor Vehicles, suspending her license for failure to provide proof of insurance. The BMW moved this court to dismiss the appeal for lack jurisdiction due to appellant's failure to file a notice of appeal with the agency as required by Ohio Revised Code §119.12(D). Upon receipt of the motion the court issued an order requiring Appellant Walsh to file any response thereto on or before October 23, 2017. Appellant has failed to respond to the Appellee's motion but did seek leave of court, and filed a response on October 31, 2017.

Ohio Revised Code §119.12(D) provides in pertinent part:

(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. 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. (Emphasis added.)

Courts have construed this section as mandating two requirements: 1) that the notice of appeal be filed with the agency rendering the decision; and, 2) that the original or copies be filed with the court. Both have been construed to be jurisdictional and mandatory in order to perfect an appeal. See, *Carrothers v. Ohio Bureau of Motor Vehicles*, 81 Ohio App.3d 826, 612 N.E.2d 419 (1992) ("This section clearly requires that one who wishes to appeal must file a notice of appeal with the agency within fifteen days of the date of the order from which the appeal is taken. A copy of the notice of appeal must also be filed with the court of common pleas.") *Burke v. Ohio Bureau of Motor Vehicles*, 114 Ohio Misc.2d 46, 759 N.E.2d 488. ("It is well established that where a statute confers a right of appeal, as in the instant case, strict adherence to the statutory conditions is essential.") See generally, *The State Medical Board of Ohio v. Brasseur, M.T.*, Licking App. No. CA3171, 1986 WL 7735 (5th Dist., 1986). ("The procedures of R.C. §119.12 provide the only method of appealing from an administrative decision, and must be strictly followed.")

While the court understands that Appellant Walsh is *pro se*. The Ninth District Court of Appeals has held the following with regard to *pro se* litigants:

[P]ro se litigants should be granted reasonable leeway such that their motions and pleadings should be liberally construed so as to decide the issues on the merits, as opposed to technicalities. However, a pro se litigant is presumed to have knowledge of the law and correct legal procedures so that he remains subject to the same rules and procedures to which represented litigants are bound. He is not given greater rights than represented parties, and must bear the consequences of his mistakes. This Court, therefore, must hold [a pro se appellant] to the same standard as any represented party.

See, *Stewart v. Hickory Hills Apartments*, Medina App. No. 14CA0038-M, 52 N.E.3d 259 (9th Dist., 2015) citing *Sherlock v. Myers*, 9th Dist. Summit No. 22071, 2004-Ohio-5178, 2004 WL 2244102, ¶ 3; and *Countrywide Home Loans Servicing, L.P. v. Murphy-Kesling*, 9th Dist. Summit No. 25297, 2010-Ohio-6000, 2010 WL 5071338, ¶ 4.

Therefore, because Appellant Walsh has failed to meet the jurisdictional requirements in order to perfect this appeal, it is therefore the order of the court that this appeal is hereby dismissed for lack of jurisdiction. While the court dismisses this appeal, appellant is directed to review Footnote 1 and Tab 4 in Appellee ODPS's brief regarding reinstating her driving privileges.

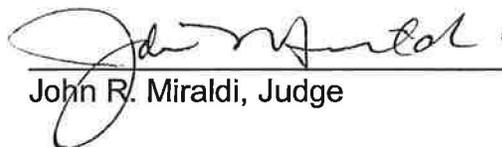




Appeal dismissed. Costs to Appellant Kathryn Walsh.

IT IS SO ORDERED.

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John R. Miraldi, Judge

cc: All Parties

**TO THE CLERK: THIS IS A FINAL
APPEALABLE ORDER
PLEASE SERVE UPON ALL PARTIES NOT IN
DEFAULT FOR FAILURE TO APPEAR,
NOTICE OF THE JUDGMENT AND
ITS DATE OF ENTRY UPON THE JOURNAL.**

