

IN THE COURT OF APPEALS FIRST
APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

OHIO STATE BOARD OF
EDUCATION,

Plaintiff-Appellant,

vs.

MARY C. BLUM,

Defendant-Appellee.

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APPEAL NO. C-150427
TRIAL NO. A-1500224

OPINION.

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed from Is: Appeal Dismissed

Date of Judgment Entry on Appeal: April 29, 2016

Michael DeWine, Ohio Attorney General, *James D. Miller* and *Marissa J. Palumbo*,
Assistant Attorneys General, for Plaintiff-Appellant,

Dinsmore & Shohl LLP, *Mark A. Vander Laan*, *Mark G. Arnzen, Jr.*, and *Alex M.*
Triantafilou, for Defendant-Appellee.

Please note: this case has been removed from the accelerated calendar.

CUNNINGHAM, Judge.

{¶1} Plaintiff-appellant the Ohio State Board of Education (“the Board”) appeals the judgment of the Hamilton County Court of Common Pleas reversing the Board’s resolution to suspend for five years the educational licenses of defendant-appellee Mary C. Blum. Because the Board lacks the authority under R.C. 119.12 to bring this administrative appeal, we lack the jurisdiction to consider it. Therefore, we dismiss it.

I. Background Facts and Procedure

{¶2} The Board, part of the Ohio Department of Education (“the Department”), is the state agency responsible for regulating Ohio educators. Blum is a licensed educator, holding professional principal and elementary teaching licenses and a permanent non-tax teaching certificate.

{¶3} In early 2014, Blum was notified that the Board intended to determine whether “to limit, suspend, revoke, or permanently revoke” her state education licenses on grounds that she had exhibited conduct unbecoming an educator, in violation of R.C. 3319.31(B)(1). In two counts, it was alleged that Blum, while the principal of St. John the Baptist School, had (1) yelled at a student, who she knew was autistic and anxious, resulting in the student’s hospitalization for psychiatric treatment, and (2) subsequently sent an email disclosing confidential information about the student in a nonprofessional manner.

{¶4} A multiday administrative hearing occurred before a hearing officer. The hearing officer issued an 85 page “Report and Recommendation” in which he detailed his recommendation of “no action.” The hearing officer noted the conflicts in the evidence and also determined that the Department had failed to prove the

allegations by a preponderance of the evidence. The Department filed objections to the report, concluding that “the hearing officer erred when he made erroneous factual conclusions and did not afford the Department’s evidence the weight it deserved.”

{¶5} Upon review of the administrative record, the Board rejected some of the hearing officer’s factual findings, including that the Department had failed to establish the allegations of the counts by a preponderance of the evidence. After making additional findings of fact, the Board adopted a resolution modifying the “Report and Recommendation” of the hearing officer by determining that Blum had engaged in conduct unbecoming the education profession. But with respect to the first count, the Board disciplined Blum only for “yelling at [the] student, whose disabilities were known to her,” and not for causing the student’s hospitalization. As discipline, the Board suspended Blum’s licenses for five years. Blum then appealed the Board’s resolution suspending her licenses to the Hamilton County Court of Common Pleas pursuant to R.C. 119.12.

{¶6} In support of her appeal, Blum contended that the resolution was not supported by reliable, probative, and substantial evidence, and was not in accordance with law, in light of the evidence presented, which the hearing officer had found to be insufficient. Although she discussed the application of R.C. 119.09, which provides that the Board “shall include in the record of its proceedings the reasons” for rejecting the recommendation of the hearing officer, she did not raise an issue as to the statute’s constitutionality, construction, or interpretation.

{¶7} In addition, Blum contended, as she had during the administrative proceedings, that her constitutional right to procedural due process had been violated. She essentially argued that it was unfair for the Board to charge her with

causing the psychiatric hospitalization of the student without providing her with the medical records of the student to mount a defense. And she further contended that it was unfair to deny her request to address the Board before it issued its resolution because, she alleged, the Department had been improperly permitted to do so.

{¶8} The Board urged the trial court to affirm, detailing the evidence in the record to support the Board’s decision. The Board also contended that Blum had been afforded all proper due process.

{¶9} While the appeal was pending, Blum moved for and was granted a stay of her license suspension. Subsequently, the trial court reversed the Board’s resolution and vacated the suspension of Blum’s educational licenses. The trial court found, “for the reasons set forth by Ms. Blum,” that the Board’s resolution “[wa]s not supported by reliable, probative, and substantial evidence and [wa]s not in accordance with law.” Additionally, the court accepted Blum’s argument that her procedural due-process rights had been violated.

{¶10} The Board then appealed to this court. Before the briefs were filed, Blum filed a motion to dismiss on the ground that the Board could not appeal the judgment and, therefore, this court lacked jurisdiction. Blum argued that the trial court’s ruling did not relate to a question of law involving the constitutionality, construction, or interpretation of statutes or agency rules, and therefore, the Board’s grounds for the appeal necessarily fell outside of the Board’s limited right to appeal adverse decisions as provided in R.C. 119.12. This court overruled Blum’s motion at that time.

{¶11} The Board has now filed its appellate brief. Raising a total of three assignments of error, the Board first contends that the trial court “abused its discretion” when it failed to properly defer to the Board’s resolution of evidentiary

conflicts as required by R.C. Chapter 119. Second, and relatedly, it contends that the trial court “abused its discretion” when it determined that the Board’s decision was not supported by reliable, probative, and substantial evidence, because sufficient evidence supports the Board’s decision. Finally, the Board argues that the trial court erred when it determined that Blum’s constitutional right to procedural due process was violated during the administrative proceedings. In its statement of jurisdiction, the Board did not address the limited right of an agency under R.C. 119.12 to appeal from an administrative decision rendered by the court of common pleas.

{¶12} Now that briefing is complete, we revisit the issue of our jurisdiction to determine if the Board has presented a question of law relating to the constitutionality, construction, or interpretation of statutes or agency rules, or if, as Blum maintains, the appeal is not proper and our jurisdiction is lacking.

II. Jurisdiction

{¶13} The Board’s right to appeal from an administrative decision rendered by the court of common pleas, and this court’s jurisdiction to review such a decision, depends upon statutory authority. *See Katz v. Dept. of Liquor Control*, 166 Ohio St. 229, 141 N.E.2d 294 (1957); *Mentor Marinas, Inc. v. Bd. of Liquor Control*, 1 Ohio App.2d 219, 221, 204 N.E.2d 404 (10th Dist.1964), citing *Corn v. Bd. of Liquor Control*, 160 Ohio St. 9, 113 N.E.2d 360 (1953); *Miller v. Bur. of Unemp. Comp.*, 160 Ohio St. 561, 117 N.E.2d 427 (1954). That authority is found in R.C. 119.12(N), which provides, in relevant part:

The judgment of the court [of common pleas] shall be final and conclusive unless reversed, vacated, or modified on appeal. These appeals may be taken either by the party or the agency * * *. An appeal by the agency

shall be taken on questions of law relating to the constitutionality, construction, or interpretation of statutes and rules of the agency, and, in the appeal, the court may also review and determine the correctness of the judgment of the court of common pleas that the order of the agency is not supported by any reliable, probative, and substantial evidence in the entire record.

{¶14} Thus, an agency’s *right* to appeal under R.C. 119.12 in the court of appeals is *only* on questions of law, and *only* on questions of law pertaining to the constitutionality, construction, or interpretation of state statutes and agency regulations and rules. *Miller v. Dept. of Indus. Relations*, 17 Ohio St.3d 226, 226-227, 479 N.E.2d 254 (1985), citing *Katz*; see *Miami-Jacobs Career College v. Ohio Bd. of Nursing*, 10th Dist. Franklin No. 11AP-544, 2012-Ohio-1416, ¶ 9.

{¶15} “Once the appeal is perfected on these grounds, the appellate court has jurisdiction to review the lower court’s ruling as to the particular question of law and whether it is supported by any reliable, probative and substantial evidence.” *Id.*; see *Queensgate Invest. Co. v. Liquor Control Comm.*, 1st Dist. Hamilton No. C-790901, 1981 Ohio App. LEXIS 12197, *5 (Feb. 25, 1981).

{¶16} Upon our examination of the proceedings below and the issues assigned, we conclude that the Board has failed to invoke this court’s jurisdiction.

III. Analysis

{¶17} The trial court reversed the Board’s resolution for two reasons. First, it found that the resolution “[wa]s not supported by reliable, probative, and substantial evidence and [wa]s not in accordance with law.” We discern that this determination was not based on the construction or interpretation of a statute or an

agency rule, or the constitutionality of such a statute or rule, but instead was based on its resolution of the disputed facts. Where the facts are in dispute and the court of common pleas reverses the agency's decision for lack of sufficient evidence, the agency is precluded from raising only the question of fact to this court on appeal. *Queensgate Invest.*, 1st Dist. Hamilton No. C-790901, 1981 Ohio App. LEXIS 12197, at *5, citing *Katz*, 166 Ohio St. 229, 141 N.E.2d 294; *Mentor Marinas*, 1 Ohio App.2d at 221, 204 N.E.2d 404.

{¶18} Moreover, other than referencing R.C. 119.12, the statute that conferred jurisdiction, the trial court did not mention any specific statute or rule in the decision, consistent with the issues presented by the parties. As clarified by the briefs, there is no "genuine question" presented concerning the constitutionality, interpretation, or construction of a statute or rule. *See Mentor Marinas* at 223.

{¶19} In *Katz*, the trial court had similarly determined that an administrative agency's order was not supported by reliable, probative, and substantial evidence. *Katz*, 166 Ohio St. 229, 141 N.E.2d 294. The question presented in that case was the correctness of the judgment in light of the facts. The Supreme Court upheld the appellate court's determination that the agency could not appeal the trial court's order and its dismissal of the appeal for lack of jurisdiction.

{¶20} Likewise, in *Miller*, the Supreme Court affirmed the appellate court's judgment dismissing an agency's appeal. *Miller v. Dept. of Indus. Relations*, 17 Ohio St.3d 226, 479 N.E.2d 254. The Supreme Court concluded that the agency had no right to appeal under R.C. 119.12, because the trial court's ruling "was made entirely on the evidence," and involved only "a determination concerning the facts," and not the constitutionality, construction, or interpretation of a statute or rule. *Id.* at 227.

{¶21} The second, and independent, reason the trial court provided in this case for reversing the Board's resolution was that Blum's procedural due-process rights were violated. Thus, the court considered in general the constitutionality of the proceedings, which involved a question of law. But the court's analysis on this question of law did not relate to the constitutionality, construction, or interpretation of a statute or rule, as required by R.C. 119.12(N).

{¶22} Similarly, in *Miami-Jacobs Career College*, 10th Dist. Franklin No. 11AP-544, 2012-Ohio-1416, the trial court determined that a college's procedural due-process rights had been violated in proceedings before the Board of Nursing that resulted in the board's withdraw of conditional approval status for a program at the college. The Tenth District determined that it was required to dismiss the board's appeal, emphasizing that although the trial court's decision was based on a question of law, that question of law did not relate to the constitutionality, construction, or interpretation of a statute or agency rule. *Id.* at ¶ 12. We reach the same conclusion in this case.

IV. Conclusion

{¶23} Because the Board's appeal was not perfected on an issue of law that relates to the constitutionality, construction, or interpretation of a statute or agency rule, the Board lacks the authority to bring the appeal, and we lack the jurisdiction to consider the merits of the appeal. Therefore, we dismiss the appeal.

Appeal dismissed.

FISCHER, P.J., and HENDON, J., concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.