

[Cite as *Bryant Health Center, Inc. v. Ohio Dept. of Job & Family Serv.*, 2004-Ohio-545.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Bryant Health Center, Inc.,	:	
Appellant-Appellant,	:	
v.	:	No. 03AP-482 (C.P.C. No. 02CVF12-13854)
Ohio Department of Job & Family Services,	:	(REGULAR CALENDAR)
Appellee-Appellee Cross-Appellant.	:	
Bryant Health Center, Inc.,	:	
Appellant-Appellee,	:	No. 03AP-510 and No. 03AP-511 (C.P.C. No. 02CVF12-13854)
v.	:	
Ohio Department of Job & Family Services,	:	(REGULAR CALENDAR)
Appellee-Appellant.	:	

D E C I S I O N

Rendered on February 3, 2004

Geoffrey E. Webster and *J. Randall Richards*, for Bryant Health Center, Inc.

*Jim Petro, Attorney General, and Rebecca L. Thomas, for
Ohio Department of Job & Family Services.*

APPEALS from the Franklin County Court of Common Pleas.

BOWMAN, J.

{¶1} These consolidated appeals are taken from judgments of the Franklin County Court of Common Pleas arising out of an administrative appeal by Bryant Health Center, Inc. ("Bryant") from adjudicative orders by the Ohio Department of Job and Family Services ("Department").

{¶2} Briefly, the facts indicate that the Department audited Medicaid cost reports by Bryant and determined that Bryant owed the Department approximately \$386,000. As a result, in October 2002, the Department issued proposed adjudication orders which indicated as much, and additionally informed Bryant that it was entitled to a hearing on the matter if a hearing was requested within 30 days. When no request was forthcoming, the Department issued final adjudication orders implementing the proposed settlements. Bryant appealed the orders to the common pleas court, pursuant to R.C. Chapter 119, and the Department countered with a motion to dismiss for failure to exhaust administrative remedies.

{¶3} On April 7, 2003, the trial court issued a decision granting the Department's motion to dismiss for failure to exhaust administrative remedies, and this decision was journalized in a judgment entry on April 21, 2003. On April 24, 2003, the court issued a second decision declaring the Department's notice to Bryant to be defective, overruling the Department's motion to dismiss, and remanding the case back to the Department; however, no entry was journalized to that effect.

{¶4} On May 21, 2003, Bryant filed a notice of appeal to this court in case No. 03AP-482. According to the file stamp, one hour later, the trial court journalized an order vacating its April 7, 2003 judgment. In response to Bryant's notice of appeal, the Department filed a cross-appeal in case No. 03AP-482, and also filed a notice of appeal from the common pleas court's order of May 21, 2003, vacating its April 7, 2003 decision (case No. 03AP-510), and a notice of appeal from the court's unjournalized decision of April 24, 2003 (case No. 03AP-511).

{¶5} Bryant has assigned two errors:

ASSIGNMENT OF ERROR NO. I

THE LOWER COURT ERRED AS A MATTER OF LAW (IN ITS FIRST DECISION) IN FINDING THAT BRYANT FAILED TO EXHAUST ITS ADMINISTRATIVE REMEDIES.

ASSIGNMENT OF ERROR NO. II

THE LOWER COURT HAD JURISDICTION AND AUTHORITY TO RECONSIDER AND VACATE ITS FIRST DECISION SUA SPONTE.

{¶6} On cross-appeal, the Department has assigned one conditional assignment of error:

To The Extent That This Court Determines That The Lower Court Erred By "Dismissing" The Appeal On [The Department]'s Motion Instead Of Entering Judgment On The Briefs, [The Department] Should Still Prevail. The Lower Court Had The Briefs At The Time Of Dismissal, The Same Arguments Were Presented, And The Lower Court Correctly Denied Bryant Judicial Relief Based On Failure To Exhaust Administrative Remedies.

{¶7} The Department's additional assignments of error are:

First Assignment of Error

The lower court acted outside its jurisdiction when it issued the April 24, 2003, Decision and the May 21, 2003, Order.

Second Assignment of Error

If the lower court had jurisdiction to issue the April 24, 2003, Decision and/or the May 21, 2003, Order, it erred in doing so because those filings are incorrect on the merits.

{¶8} Although at first blush the procedural history and issues raised by the assignments of error seem complicated, the questions before this court are simple: first, did the notice provided Bryant by the Department comply with due process so as to provide it with an administrative remedy; and second, what effect, if any, flowed from orders and entries by the trial court subsequent to its April 7, 2003 judgment?

{¶9} In 2001, this court decided *Chirila v. Ohio State Chiropractic Bd.* (2001), 145 Ohio App.3d 589, an administrative appeal in which a chiropractor argued that the board had not provided adequate notice of his right to an administrative hearing prior to revoking his license. In that case, the notice provided to Chirila indicated, at 594:

"Under Section 119.07 of the Ohio Revised Code, you have a right to request a hearing on these allegations. If you request such a hearing, **you must do so within thirty days of the date of this notice.** If you do not request such a hearing within thirty days of the mailing of this notice, the State Board of Chiropractic Examiners, upon consideration of the charges cited, may in its discretion revoke or suspend your license as a doctor of chiropractic, without such a hearing."

(Emphasis sic.)

{¶10} Chirila attempted to request a hearing, but his written request was received one day after the expiration of the 30 days named in the notice. Despite an argument by the board that implicit in the wording of the notice was the idea that the request be received by the board within 30 days, this court held that, in order to be

effective, the notice must expressly indicate that the request for a hearing must be received within the 30 days. We thus held that the order revoking Chirila's license was void under R.C. 119.06 and 119.07. Id. at 596.

{¶11} In the case at bar, the notices sent to Bryant provided:

You are entitled to a hearing on this matter, in accordance with sections 119.09 and 5111.06 of the Ohio Revised Code, provided you request the same within thirty (30) days of mailing of this letter. * * *

{¶12} The Department argues that, because Bryant never even attempted to meet the 30-day deadline, only sending a request some 146 days after the mailing of the Department's notice, Bryant is not eligible to invoke the holding in *Chirila* in support of its position that it had not failed to exhaust its administrative remedies. However, in *Chirila*, we specifically stated that "the failure to timely request a hearing does not preclude a court's consideration of whether an agency's procedures comply with due process." Id. at 595-596. Contrary to the Department's argument, this court's holding in *Chirila* was not premised on the fact that the doctor attempted to comply with the notice by mailing a request for a hearing within 30 days that was received by the board on the 31st day but was based on the constitutionally defective nature of the notice itself. In this case, the Department's notice was substantially identical to the notice found deficient in *Chirila* and, therefore, was constitutionally defective and any order issued pursuant to that notice is void. Thus, we sustain Bryant's first assignment of error.

{¶13} All four of the remaining assignments of error of both parties address the significance and effect of the common pleas court's decision of April 24, 2003, and the court's order of May 21, 2003. First, we note that, regardless of whether the common pleas court had authority to reconsider and/or vacate its April 7, 2003 decision,

journalized by judgment entry on April 21, 2003, the court's decision of April 24, 2003, was not properly journalized, and, therefore, is ineffective. See Civ.R. 58(A).

{¶14} Regarding the court's order of May 21, 2003, we need not reach the question of whether the court properly vacated its early April decision because the order was journalized after Bryant filed its notice of appeal to this court. The filing of a notice of appeal divested the common pleas court of jurisdiction, and so the court's April 21, 2003 judgment entry remained the final judgment of the case. See, e.g., *Duncan v. Capitol South Community Urban Redevelopment Corp.* (Mar. 18, 2003), Franklin App. No. 02AP-653; *Howard v. Catholic Social Serv. of Cuyahoga Cty., Inc.* (1994), 70 Ohio St.3d 141, 147.

{¶15} Therefore, only the April 7, 2003 decision, journalized April 21, 2003, from which Bryant filed its notice of appeal is properly before this court. Because we sustain Bryant's first assignment of error holding that the trial court erred in dismissing Bryant's administrative appeal, we need not reach the procedural questions surrounding the court's other determinations, and so overrule as moot the remaining four assignments of error.

{¶16} Bryant's first assignment of error is sustained, Bryant's second assignment of error, the Department's assignment of error on cross-appeal, and the Department's remaining two assignments of error are all overruled as moot. The judgment of the trial court is reversed and this cause is remanded to the trial court with instructions to remand to the Ohio Department of Job and Family Services for further proceedings consistent with this decision.

Judgment reversed and cause
remanded with instructions.

LAZARUS, P.J., and SADLER, J., concur.
