[Cite as *Stultz v. Ohio Dept. of Adm. Services,* 2005-Ohio-200.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Steven Stultz,	:	
Appellant-Appellant,	:	
		No. 04AP-602
v.	:	(C.P.C. No. 03CVF06-6835)
Ohio Department of Administrative Services,	:	(REGULAR CALENDAR)
	:	
Appellee-Appellee.	:	

O P I N I O N

Rendered on January 20, 2005

Steven Stultz, pro se.

Jim Petro, Attorney General, and *Barry D. McKew*, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Appellant, Steven Stultz, appeals from the dismissal of his R.C. 119.12 appeal from the Ohio Department of Administrative Services' ("DAS") denial of his application for disability benefits. The Franklin County Court of Common Pleas

dismissed appellant's appeal for failing to comply with R.C. 119.12, which provides, in 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 such notice of appeal shall also be filed by appellant with the court. Unless otherwise provided by law relating to a particular agency, such 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. * * *

{¶2} The common pleas court found appellant had not complied strictly with the requirements of R.C. 119.12 because, although he had filed his notices of appeal within the 15-day window, he first filed his appeal with the common pleas court and then, three days later, filed a copy with DAS. The court also determined that, because appellant's notice of appeal simply gave the names and addresses of the parties and a reference to his claim number, appellant failed to set forth grounds for his appeal as required by R.C. 119.12.

{¶3} Appellant now assigns the following as error:

> The trial court erred by not allowing the plaintiff-appellant's notice of appeal that was timely filed with the common pleas court and Ohio Department of Administrative Services to stand.

{¶4} In deciding that appellant had failed to comply with R.C. 119.12 by first filing an original notice of appeal with the trial court, rather than with DAS, the trial court relied upon this court's holding in *Smith v. Ohio State Dept. of Commerce* (Aug. 21, 2001), Franklin App. No. 00AP-1342. In that case, although the appellant had filed a notice of appeal to the common pleas court and a facsimile to the state agency within the 15-day period, we determined that this was not sufficient to comply with the

requirements of R.C. 119.12, because the statute did not specify that a facsimile would suffice; a facsimile was, by its nature, a copy and the statute required the original to go to the agency; and the actual hard copy sent to the administrative agency did not arrive until after the 15-day period had expired.

{¶5} By comparison, in the case at bar, appellant filed an original, handwritten notice of appeal with the common pleas court, and, three days later, a photocopy with DAS. The parties do not dispute that both notices arrived within the 15-day time frame. A similar fact pattern was at issue in *Buchler v. Ohio Dept. of Commerce/Real Estate* (July 12, 2001), Cuyahoga App. No. 78401. In *Buchler,* the appellant filed a notice of appeal in the Cuyahoga County Court of Common Pleas, then sent a copy of the notice to the state agency. While both notices were timely, the trial court dismissed the appeal on the basis that the appellant had not complied with R.C. 119.12 by first filing an original with the state agency and then filing a copy with the common pleas court. The Eighth District Court of Appeals affirmed, rejecting the appellant's argument that his failure to file an original notice of appeal with the agency was a minimal error that did not affect the jurisdiction of the common pleas court. Following this court's holding in *Harrison v. Ohio State Med. Bd.* (1995), 103 Ohio App.3d 317, the court maintained that "[i]f it were sufficient to file a copy of the notice of appeal with the administrative agency, the statute would have so provided." *Buchler*.

{¶6} Here, there is no doubt that DAS received a photocopy of the original, because appellant hand-wrote his notice of appeal in ballpoint pen blue ink, and the file contains both the "blue-ink" version, time-stamped by the common pleas court's clerk, and the photocopy version, received by DAS. Although it seems pointless to require the

common pleas court to determine whether a notice of appeal is a copy or an original, nevertheless, courts consistently have interpreted R.C. 119.12 as requiring that the original notice first go to DAS, with the copy then going to the common pleas court.

{¶7} Based upon the above discussion, we conclude that, by first filing an original notice of appeal with the common pleas court and then filing a copy with DAS, appellant failed to comply with the requirements of R.C. 119.12, and the trial court properly dismissed his appeal. In doing so, however, we once again draw the Ohio legislature's attention to the seemingly unnecessary burden this statutory requirement imposes upon unwitting appellants. A more flexible rule would better serve the interests of justice.

{¶8} The only remaining question is whether appellant complied with the requirement of R.C. 119.12 that his notice of appeal state the grounds of his appeal. In determining that appellant did not allege grounds for his appeal, the trial court followed *Jackson v. Ohio Bur. of Motor Vehicles* (June 30, 1989), Butler App. No. CA88-10-142, indicating where the notice of appeal states no grounds, but simply indicates the appellant is exercising his right to appeal, appellant does not comply with R.C. 119.12.

{¶9} We look to this court's position in *Ohio Real Estate Comm. v. Jones* (Mar. 27, 1984), Franklin App. No. 83AP-396, where, as in the current case, Jones' notice of appeal merely referenced the administrative order from which the appellant was appealing. Following *Zier v. Bureau of Unemployment Comp.* (1949), 151 Ohio St. 123, syllabus, in which the court had stated that a statutory appeal must be perfected only in the mode prescribed by statute, this court determined that the appellant had not stated grounds upon which his appeal was based, but, rather, merely referenced the

objectionable order. Thus, we held that the failure to state grounds is a jurisdictional defect requiring the common pleas court to dismiss the appeal without consideration of its merits. Id.

{¶10} In this case, appellant's notice of appeal referenced only the parties and the claim number and did not indicate a reason or basis for his appeal. The reference to the claim number, standing alone, does not meet R.C. 119.12's requirement that appellant state grounds for his appeal, and, thus, was insufficient to invoke the jurisdiction of the common pleas court.

{¶11} Based upon these considerations, we overrule appellant's assignment of error, and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

PETREE and LAZARUS, JJ., concur.

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