[Cite as *Hills & Dales v. Ohio Dept. of Edn.*, 2007-Ohio-5156.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

The Village of Hills & Dales,	:	
Appellant-Appellant,	:	
		No. 06AP-1249
v.	:	(C.P.C. No. 05CVF09-10664)
Ohio Department of Education,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

O P I N I O N

Rendered on September 28, 2007

Buckingham, Doolittle & Burroughs, LLP, Paul J. Pusateri, Thomas R. Himmelspack, and *Peter W. Hahn*, for appellant.

Marc Dann, Attorney General, and *Todd R. Marti*, for appellee.

Vorys, Sater, Seymour and Pease LLP, Elizabeth T. Smith, Amanda Martinsek, and *Elizabeth A. Ratliff*; *John Wirtz*, for Plain Local School District.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, P.J.

{¶1} Appellant, Village of Hills & Dales ("appellant" or "Village"), appeals from the decision of the Franklin County Court of Common Pleas, which dismissed appellant's appeal from a resolution of the Ohio State Board of Education ("Board")

denying a request to transfer property within the Village from the Plain Local School District ("Plain Local") to the Jackson Local School District ("Jackson Local"). For the following reasons, we affirm.

{¶2} The transfer process began with the filing of a petition to transfer certain school district territory within the Village from Plain Local to Jackson Local pursuant to R.C. 3311.24. As required by statute, the petitioners represented at least 75 percent of the qualified electors residing within the territory proposed to be transferred.

{¶3} In a letter dated May 21, 2004, counsel confirmed to appellee, the Ohio Department of Education ("Department"), his representation of "the petitioners from the Village of Hills & Dales." In the letter, the petitioners requested a hearing on the petition.

{¶4} The hearing commenced on March 16, 2005. Counsel appeared at the hearing and stated that he "represent[ed] the petitioners." In his opening statement, the petitioners' counsel described how a group of parents within the Village began a petition effort. He also stated that "eventually the Village Council itself took on the financial burden of paying for this continued process."

{¶5} Edward Schirack, a member of the Hills & Dales Village Council, testified that the council had passed an ordinance to appropriate $20,000 for legal expenses related to the proposed property transfer, including the hiring of the petitioners' counsel as the Village's special counsel. The Village approved the transfer of funds after the petitioning citizens filed the petition with Plain Local. Harry MacNealy, mayor of the Village, attended the hearing, but did not testify.

{¶6} Following the hearing, the hearing examiner recommended denial of the petition. Her report and recommendation identified the petitioners as "121 residents of the Village of Hills and Dales[.]" The Board thereafter passed a resolution accepting the recommendation and denying the proposed transfer.

{¶7} On September 28, 2005, a notice of appeal was filed in the trial court. The case was captioned: "THE VILLAGE OF HILLS & DALES" v. Ohio Department of Education. The notice stated: "[T]he Village of Hills & Dales (the 'Village') hereby appeals the resolution (the 'Resolution') of the Ohio Department of Education ('ODE') denying the proposed transfer[.]" The notice used the term "Village" throughout and did not reference any other petitioners or residents of the Village. The civil case information form also identified the plaintiff/appellant as "The Village of Hills & Dales."

{¶8} Attorneys for Plain Local entered their appearance and identified opposing counsel as "Attorneys for Appellant, The Village of Hills & Dales[.]" On November 14, 2005, Plain Local moved to dismiss the appeal on grounds that "the Village of Hills & Dales lacks standing to initiate an appeal from" the transfer denial. The memorandum in support argued that the Village had not entered an appearance in the proceedings, was not a party adversely affected by the resolution, and, therefore, had no standing to appeal the denial under R.C. 119.12. The memorandum also argued that none of the actual parties—the 121 resident petitioners, Plain Local, Jackson Local, and the Board—were named in the caption or the body of the notice of appeal. For this latter failure, Plain Local argued, the notice was defective and should be dismissed. Plain Local also moved to intervene in the appeal.

{¶9} On December 21, 2005, "Appellant Village of Hills & Dales" filed a document entitled: "APPELLANT VILLAGE OF HILLS & DALES' MEMORANDUM CONTRA MOTION TO DISMISS, MOTION TO STRIKE MOTION TO DISMISS, AND MOTION FOR LEAVE TO AMEND NOTICE OF APPEAL OR, IN THE ALTERNATIVE, TO SUBSTITUTE PARTIES[.]" By this filing, the Village sought to strike Plain Local's motion to dismiss because Plain Local was not a party. But to the extent the court entertained Plain Local's motion, the Village asked the court to deny dismissal based on the alleged "defects" in its notice of appeal.

{¶10} From the outset of its memorandum contra, the Village characterized its identification of the appellant as an "inadvertent misidentification of the appellant," a defect it described as curable, rather than fatal. The Village argued that it had met the jurisdictional requirements of R.C. 119.12 by filing a timely notice of appeal with the Department and the trial court. The Village further argued that the inadvertent misidentification of the appellant did not warrant dismissal. The Village argued, in pertinent part:

> The true appellants in this administrative appeal are the "121 Residents of the Village of Hills & Dales," who initiated the territory transfer request under R.C. 3311.24 (the "Petitioners"). These appellants were inadvertently misidentified in the Notice of Appeal as the Village of Hills & Dales due to the parties' erroneous captioning of the case at the administrative level.

{¶11} The Village asked the court to amend the notice of appeal, pursuant to App.R. 3(F), to reflect the proper appellants. In the alternative, the Village asked the court to substitute the proper parties under Civ.R. 17(A). These changes, appellant

argued, would not add any new party not already engaged in the appeal, require the appearance of new counsel or affect the briefing schedule.

{¶12} As to the other parties, the Village argued that the Department was the proper appellee and that Plain Local and Jackson Local were not necessary parties to the appeal. On January 11, 2006, counsel for "Appellant of Village Hills & Dales and Proposed Appellants 121 Residents of the Village of Hills & Dales" filed a brief on the merits of the appeal.

{¶13} The Village eventually removed any opposition to the intervention of Plain Local, and, by agreed entry, the court allowed Plain Local to intervene as an appellee. The Board also entered an appearance as an appellee and moved to dismiss the appeal for the reasons given by Plain Local. (Hereinafter, we refer to Plain Local and the Board, collectively, as "appellees.")

{¶14} On November 8, 2006, the trial court issued decisions and entries granting appellees' motions to dismiss the appeal and denying appellant's motion for leave to amend the notice of appeal or, in the alternative, to substitute parties. In its decision, the trial court confirmed that the Village had not been a party to the proceedings below and, therefore, had no standing to appeal the denial of the transfer. Further, the court concluded that the Village could not amend the notice of appeal because a notice of appeal could only be amended within the time for filing the notice. Because the Village sought to amend the notice at a time outside the original 15-day filing requirement, the court found, its motion to amend and/or substitute parties could not be granted. Accordingly, the court dismissed the case for lack of subject-matter jurisdiction.

{¶15} On appeal, appellant raises the following assignments of error:

> ASSIGNMENT OF ERROR NO. 1. The Court of Common Pleas erred in its November 15, 2006 entry dismissing the administrative appeal for lack of subject matter jurisdiction.
>
> ASSIGNMENT OF ERROR NO. 2. The Court of Common Pleas erred in its November 15, 2006 entry denying Appellant's Motion for Leave to Substitute Parties.

{¶16} We begin with appellant's first assignment of error, which asserts that the trial court erred in determining that it lacked subject-matter jurisdiction over the appeal. Subject-matter jurisdiction is the power conferred on a court to decide a particular matter on its merits and render an enforceable judgment over the action. *Morrison v. Steiner* (1972), 32 Ohio St.2d 86, 61 O.O.2d 335, 290 N.E.2d 841, paragraph one of the syllabus. The question of subject-matter jurisdiction is a question of law we review de novo. *Yusuf v. Omar*, Franklin App. No. 06AP-416, 2006-Ohio-6657, at ¶7. In doing so, we begin with the statutory scheme.

{¶17} R.C. 3311.24(A) grants to the Board the discretion to approve or disapprove a proposed transfer of territory from one school district to another. Pursuant to this authority, the Board disapproved the residents' proposal to transfer the territory within the Village from Plain Local to Jackson Local.

{¶18} The Board's denial of the proposed transfer was appealable to the common pleas court under R.C. 119.12. *Rossford Exempted Village School Dist. v. State Bd. of Edn.* (1989), 45 Ohio St.3d 356, 544 N.E.2d 651, syllabus. R.C. 119.12 provides, in pertinent part:

> Any party adversely affected by any order of an agency issued pursuant to any [adjudication not otherwise identified in R.C. 119.12] may appeal to the court of common pleas of Franklin county * * *.

> * * *
>
> 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.

{¶19} Where a statute confers the right of appeal, an appeal may be perfected only in the manner prescribed by statute. *CHS-Windsor, Inc. v. Ohio Dept. of Job & Family Servs.*, Franklin App. No. 05AP-909, 2006-Ohio-2446, at ¶6, citing *Zier v. Bur. of Unemployment Comp*. (1949), 151 Ohio St. 123, 38 O.O. 573, 84 N.E.2d 746, paragraph one of the syllabus. 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, 52, 2007-Ohio-2877, 868 N.E.2d 246, at ¶17.

{¶20} Under the plain terms of R.C. 119.12, proper filing includes a requirement that the appeal be filed by a party "adversely affected by any order of an agency[.]" In this case, the filing of an appeal in the name of the Village of Hills & Dales did not meet this requirement since, as admitted by appellant, the Village was not a party adversely affected by the appellee's decision because it was not and could not have been a party to the proceedings before the agency. Consequently, the notice of appeal filed in the Franklin County Court of Common Pleas did not properly invoke that court's subject-matter jurisdiction.

{¶21} The issue then becomes whether the notice of appeal could have been amended to name the 121 petitioners as appellants rather than the Village. R.C. 119.12 contains no provision allowing a party to amend a notice of appeal once it has been filed with the court of common pleas. However, we have previously held that, under the plain language of R.C. 119.12, amendments to a notice of appeal filed pursuant to that section can be made during the 15-day period following the mailing of the adjudication order by the agency. *CHS-Windsor, Inc. v. Ohio Dept. of Job & Family Servs.*, supra.

{¶22} In this case, the motion to amend the notice of appeal to name the 121 petitioners as appellants was made outside the 15-day period during which the notice had to be filed. Consequently, the trial court correctly determined that the amendment could not be made.

{¶23} Thus, we conclude that the notice of appeal filed in the name of the Village did not properly invoke the subject-matter jurisdiction of the Franklin County Court of Common Pleas because it was not filed by a party adversely affected by an agency's action, and the notice was not amended to name such a party within the 15-day period during which an amended notice could have been filed. Therefore, we overrule appellant's first assignment of error.

{¶24} In its second assignment of error, the Village also argues that it should have been allowed to substitute the 121 petitioners as a party to the action. The Village argues that such a substitution should have been allowed under Civ.R. 17(A). However, the trial court's lack of subject-matter jurisdiction makes it unnecessary for us to determine whether Civ.R. 17(A) provides a mechanism to allow substitution of parties

in an appeal filed under R.C. 119. Consequently, we overrule appellant's second assignment of error as moot.

{¶25} Having overruled appellant's first assignment of error and overruled appellant's second assignment of error as moot, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

KLATT, J., concurs.
FRENCH, J., dissents.

FRENCH, J., dissenting.

{¶26} I respectfully dissent.

{¶27} The trial court construed R.C. 119.12 to mean that the Village had no standing to appeal from the Board's order, and I agree. The Village was interested in the proceedings, but it was not a "party" to the proceedings and had no standing to appeal.

{¶28} The court's conclusion as to the Village's standing, however, did not determine whether the notice of appeal was sufficient to invoke jurisdiction in the first instance. Once appellees moved to dismiss the notice of appeal for lack of standing and other defects, counsel for the Village readily acknowledged the error and sought to amend the notice in order to reflect that the correct appellants were the petitioning 121 residents of the Village, not the Village itself. If the court had allowed the amendment, the Village's standing (or lack thereof) would have been irrelevant. The trial court, however, did not reach the merits of the motion to amend. Rather, the court concluded that no amendments to the notice of appeal could occur beyond the original 15-day

filing period provided in R.C. 119.12. Because appellant filed its motion to amend the notice of appeal beyond that 15-day time period, the court found, the motion was untimely.

{¶29} I agree with the majority's observation that R.C. 119.12 contains no provision for amending a notice of appeal after filing with the common pleas court. However, in my view, the absence of such a provision does not necessarily preclude an amendment.

{¶30} In the context of an appeal taken from a final order of an administrative agency to the court of common pleas under R.C. 119.12, this court has observed that, "[w]hile R.C. Chapter 119 contains no provision for the amendment of a notice of appeal," R.C. Chapter 2505 "provide[s] an adequate basis for the common pleas court to grant a motion to amend." *Potters Med. Ctr., Inc. v. Ohio Dept. of Ins.* (1989), 62 Ohio App.3d 476, 481. R.C. Chapter 2505 applies to R.C. Chapter 119 appeals, in some circumstances, via R.C. 2505.03(B), which provides, in pertinent part:

> Unless, in the case of an administrative-related appeal, Chapter 119. or other sections of the Revised Code apply, such an appeal is governed by this chapter and, to the extent this chapter does not contain a relevant provision, the Rules of Appellate Procedure. * * *

See, also, *In re Namey* (1995), 103 Ohio App.3d 322, 325-326 (explaining relationship among R.C. 119.12, R.C. Chapter 2505, and rules of appellate procedure).

{¶31} R.C. Chapter 2505 contains two provisions that may apply to the question whether an appellant may amend a notice of appeal. First, R.C. 2505.04 provides that the only jurisdictional prerequisite to perfecting an appeal is the timely filing of notice. "After being perfected, an appeal shall not be dismissed without notice to the appellant,

and no step required to be taken subsequent to the perfection of the appeal is jurisdictional." R.C. 2505.04. Second, R.C. 2505.05 also provides: "In the case of an administrative-related appeal, the failure to designate the type of hearing upon appeal is not jurisdictional, and the notice of appeal may be amended with the approval of the appellate court for good cause shown."

{¶32} Relying on these provisions, this court, in *Potters Med. Ctr.*, held that "it was within the discretion of the common pleas court to grant [the appellant's] motion to amend on the grounds of 'inadvertence' when captioning the parties." *Potters* at 481. Thus, pursuant to a motion filed five months after its original R.C. 119.12 notice of appeal, the appellant could amend the notice to add a party-appellee.

{¶33} Similarly, in *Russell v. City of Dublin Planning & Zoning Comm.*, Franklin App. No. 06AP-492, 2007-Ohio-498, this court relied again on R.C. 2505.05 to reverse the trial court's dismissal of a notice of appeal filed under R.C. 2505.06 for failure to name a necessary party. In doing so, this court affirmed the principle that " 'R.C. 2505.05 has universally been liberally construed so as not to deny an appeal on technical grounds.' " Id. at ¶24, quoting *Woods v. Civil Serv. Comm.* (1983), 7 Ohio App.3d 304, 305-306.

{¶34} To be sure, a trial court may not allow an amendment to a notice of appeal that was not sufficient to invoke the jurisdiction of the court in the first instance. As the majority notes, this court has held that a "notice of appeal may be amended. However, the amended notice must be filed within the time for the filing of the notice of appeal." *CHS-Windsor, Inc. v. Ohio Dept. of Job & Family Servs.*, Franklin App. No. 05AP-909, 2006-Ohio-2446, at ¶11. We (and the Supreme Court of Ohio) have held so, however,

in cases where the amendment was necessary in order for the notice of appeal to meet the statutory requirements for invoking jurisdiction.

{¶35} For example, in *CHS-Windsor*, the appellants failed to state a cognizable ground for the appeal in their notice of appeal, a jurisdictional requirement under R.C. 119.12, and this court affirmed the trial court's dismissal of the appeal. Similarly, in *American Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147, the Supreme Court held that an appellant could not amend a notice of appeal filed timely with the board of tax appeals in order to comply with mandatory General Code filing requirements after the original 30-day appeal period. And, in *Deerhake v. Limbach* (1989), 47 Ohio St.3d 44, the court relied upon *American Restaurant* to deny an appellant's attempt to amend his notice of appeal so that it would adhere to Ohio Revised Code filing requirements. Quoting *American Restaurant*, the court reasoned:

> * * * ["]Any of the other statutory requirements as to the notice would be a nullity if, subsequent to the time prescribed for perfection of the appeal, amendment of the notice, by supplying the statements required by the statute, would be permitted; for that would be equivalent to filing the required notice of appeal after the expiration of the time limit prescribed therefor.["] * * *

Id. at 45, quoting *American Restaurant* at 151. See, also, *City of Cincinnati v. Budget Comm. of Hamilton Cty.* (1979), 59 Ohio St.2d 43 (affirming a dismissal where the notice of appeal failed to provide statutorily required information).

{¶36} The question, then, is whether a mistake in the identification of the appellant is a jurisdictional defect under R.C. 119.12 such that it cannot be cured outside the 15-day time frame for filing the original notice of appeal. I conclude that it is not.

{¶37} R.C. 119.12 contains four minimum statutory requirements: the notice must be timely; it must identify the order appealed from; it must state the grounds for the appeal; and it must be properly filed. By comparison, while certainly imperfect, the notice of appeal filed in this case met the minimum filing requirements specified in R.C. 119.12, i.e., it was timely, it identified the order appealed from, it stated the grounds of the appeal, and it was properly filed. Thus, the notice of appeal was sufficient to invoke the subject-matter jurisdiction of the court, and the court could thereafter entertain a motion to amend the notice.

{¶38} Appellees have argued that the notice of appeal did not meet statutory filing requirements because the Village was not a "party," and only a "party" may file a notice of appeal. See R.C. 119.12. I find, however, that the Village's lack of standing does not determine whether the notice of appeal was sufficient to invoke the jurisdiction of the court in the first instance or whether the court could consider a request to reflect the proper parties on the record beyond the 15-day filing time frame. Because the notice of appeal met the minimum statutory filing requirements, the trial court erred in denying appellant's motion to amend as untimely. Accordingly, I would sustain the first assignment of error.

{¶39} Having concluded that the trial court erred in denying appellant's motion as untimely, the question becomes whether the court should have granted the motion to amend the notice of appeal or, in the alternative, to substitute parties, as appellant asserts in the second assignment of error.

{¶40} In considering whether to allow an amendment to a notice of appeal, Ohio courts have engaged in a balancing of interests. In *Maritime Mfrs., Inc. v. Hi-Skipper*

Marina (1982), 70 Ohio St.2d 257, the Ohio Supreme Court examined its prior decisions and concluded that it had "consistently adhered to the policy of exercising all proper means to prevent the loss of valuable rights when the validity of a notice of appeal is challenged solely on technical, procedural grounds." Id. at 258-259. Stated differently, procedures should be liberally construed so that cases are decided on their merits.

{¶41} Courts also have considered, however, whether the recipient(s) of a defective notice of appeal received adequate notice and whether an amendment would prejudice any of the parties. The purpose of a notice of appeal "is to '* * * apprise the opposite party of the taking of an appeal.' " Id. at 259. If this is done " 'beyond [the] danger of reasonable misunderstanding, the purpose of the notice of appeal is accomplished.' " Id., quoting *Couk v. Ocean Accident & Guar. Corp., Ltd.* (1941), 138 Ohio St. 110, 116. In other words, a notice of appeal is sufficient if it substantially informs all parties of the appeal. *Moore v. Cleveland Civil Serv. Comm.* (1983), 11 Ohio App.3d 273. And, where an appellee can show no prejudice from an amendment, a trial court does not abuse its discretion by allowing it. *C.J. Mahan Constr. Co. v. Jackson Twp. Bd. of Zoning App.* (May 9, 1989), Franklin App. No. 88AP-1062.

{¶42} Adhering to these principles, this court and others have allowed amendments to notices of appeal in a multitude of contexts, including amendments that corrected and/or added parties. See, e.g., *Russell* (reversing trial court's dismissal of notice of appeal filed under R.C. 2505.05 that failed to name necessary party); *Grand Council of Ohio v. Owens* (1993), 86 Ohio App.3d 215, 218-219 (applying App.R. 3 to deny motion to dismiss all appellants not specifically named in notice of appeal that identified some appellants simply as "et al." and allowing amendment to notice of

appeal); *C.J. Mahan Constr. Co.* (allowing amendment to reflect proper parties where opposing party had not demonstrated prejudice); *Name Brand Furniture Warehouse, Inc. v. Cuyahoga Cty. Bd. of Revision* (1987), 41 Ohio App.3d 47 (reversing trial court's dismissal of notice of appeal that failed to name real party in interest, even though appellant lacked standing).

{¶43} These principles do not support amendment in every case, however. See, e.g., *Pennington v. Fairfield Cty. Bd. of Revision* (Dec. 21, 1992), Fairfield App. No. 24-CA-92, 1992 Ohio App. LEXIS 6686 (affirming judgment setting aside board of revision decision where complaint filed with the board named Lancaster Board of Education as the appellant rather than the proper complainant, Lancaster City Schools, and board vote was also improper); *Seipelt v. Motorists Mut. Ins. Co.* (1992), 81 Ohio App.3d 530 (applying App.R. 3(C) and *Torres v. Oakland Scavenger Co.* (1988), 487 U.S. 312, to deny motion to amend notice of appeal that identified certain appellants only as "et al." and finding lack of jurisdiction over these appellants).

{¶44} In the absence of a trial court ruling on the merits of appellant's request to amend in this case, however, I would decline to rule on this question. Instead, I would remand this case for the trial court to consider the merits of appellant's motion to amend or, in the alternative, to substitute parties. As reflected in my prior discussion, I would find that the Village's lack of standing is not relevant to the court's consideration of whether the notice may be amended or the record otherwise corrected, and that the notice satisfied the minimum filing requirements under R.C. 119.12.

{¶45} In summary, I would sustain appellant's first assignment of error and decline to consider appellant's second assignment of error. I would remand this case to

the trial court for consideration of appellant's motion to amend the notice of appeal or, in the alternative, to substitute parties, as well as any other proceedings not inconsistent with this opinion or applicable law. Accordingly, I respectfully dissent from the majority opinion.
