[Cite as *McGath v. Hamilton Local School Dist. Bd. of Edn.*, 2010-Ohio-5445.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Timothy McGath et al.,	:	
Appellants-Appellants,	:	
		No. 10AP-341
v.	:	(C.P.C. No. 10CVF-01-00875)
Hamilton Local School District and Board of Education,	:	(REGULAR CALENDAR)
	:	
Appellees-Appellees.	:	

D E C I S I O N

Rendered on November 9, 2010

Eric E. Willison, for appellants.

Freund, Freeze & Arnold, *Megan M. Goeser* and *Sandra R. McIntosh*, for appellees.

APPEAL from the Franklin County Court of Common Pleas.

McGRATH, J.

{¶1} Appellants, Timothy, Michelle, and Joshua McGath ("appellants"), appeal from a judgment of the Franklin County Court of Common Pleas dismissing their appeal from a decision of appellees, Hamilton County Local School District and Board of Education ("appellees"). For the following reasons, we affirm that judgment.

{¶2} The following facts are germane to this appeal. On the morning of September 23, 2009, appellant Joshua McGath ("McGath"), who was then a student at Hamilton Township High School ("the school"), was observed smoking marijuana before

school started. The school conducted an investigation into the matter and concluded that McGath had, in fact, smoked marijuana prior to the start of the school day that morning. McGath was immediately suspended; he was provided with written notice of the suspension and by a letter dated September 24, 2009, was apprised of appellees' intent to expel McGath from the school.

{¶3} Appellants appealed, and a hearing was held on December 14, 2009, at the conclusion of which appellees voted to affirm McGath's expulsion. Appellants were advised of appellees' decision at that time. On December 21, 2009, appellees sent appellants, by certified mail, a document styled, "Expulsion Appeal Hearing Findings of Fact and Conclusions." That document contained appellees' determination, as well as the bases underlying the same. Appellants received the foregoing on December 22, 2010.

{¶4} On January 20, 2010, appellants filed a notice of appeal with the Franklin County Court of Common Pleas but did not file a notice of appeal directly with appellees. Rather, the clerk of courts served appellees with a copy of appellants' notice of appeal, which was received by appellees on January 27, 2010.

{¶5} Appellees moved to dismiss appellants' appeal, arguing that the trial court lacked subject-matter jurisdiction. Specifically, appellees asserted that appellants failed to perfect their notice of appeal in accordance with R.C. 2505.04 in that appellants did not file their appeal with appellees but, rather, filed their appeal with the Franklin County Court of Common Pleas and had the clerk of courts serve appellees with a copy of their notice of the appeal. Appellees additionally asserted that appellants failed to timely perfect their appeal in accordance with R.C. 2505.07, which requires an appeal be filed

within 30 days. Appellees argued that their written decision was issued on December 21, 2009, and, as such, a notice of appeal was required to have been filed with them (and not the court) no later than January 20, 2010, and such procedure was not followed. The trial court agreed and granted appellees' motion to dismiss.

{¶6} Appellants appeal and assert the following four assignments of error:

> I. The Trial Court erred when it dismissed the Plaintiff's Administrative Appeal for lack of timely filing with the School District.
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> II. The Trial Court erred when it ruled that the time for serving the Defendant School Board with the Administrative Appeal ran from the date of the Board's mailed decision rather than the decision was adopted by the Board into its minutes.
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> III. Trial Court erred when it found that the time for filing the Administrative Appeal was not tolled by Plaintiff's incapacity.
>
> IV. The Trial Court erred when it found that it had no equitable power to hear the matter of the Plaintiff's Administrative Appeal.

{¶7} Because appellants' assignments of error are interrelated, we shall address them together. The gravamen of appellants' assignments of error is that the trial court erred in dismissing their appeal on the basis that they failed to timely perfect their appeal.

{¶8} Upon review, we find the issue presented in this appeal is twofold. The first question is whether service of a notice of appeal by a clerk of courts upon an administrative agency is sufficient to perfect an appeal pursuant to R.C. 2505.04. The second question is whether appellants filed their appeal within the time prescribed by R.C. 2505.07.

{¶9} We begin by noting that the question of subject-matter jurisdiction is a question of law that we review de novo. *Crosby-Edwards v. Ohio Bd. of Embalmers &*

Funeral Directors, 175 Ohio App.3d 213, 2008-Ohio-762, ¶21; *Hills & Dales v. Ohio Dept. of Edn.,* 10th Dist. No. 06AP-1249, 2007-Ohio-5156, ¶16.

{¶10} Jurisdiction over an administrative appeal does not vest in a common pleas court unless and until an appeal is perfected. *Weatherholt v. Hamilton,* 1st Dist No. CA2007-04-098, 2008-Ohio-1355, ¶6. R.C. 2505.04 establishes the requirements for the perfection of an R.C. Chapter 2506 appeal. *Russell v. Dublin Planning & Zoning Comm.,* 10th Dist. No. 06AP-492, 2007-Ohio-498, ¶15. When a right to appeal is conferred by statute, perfection of such appeal is governed solely by that statute. *Hansford v. Steinbacher* (1987), 33 Ohio St.3d 72, 72-73.

{¶11} At issue here is R.C. 2505.04, which provides that:

> An appeal is perfected when a written notice of appeal is filed, * * * in the case of an administrative-related appeal, with the administrative officer, agency, board, department, tribunal, commission, or other instrumentality involved. * * * 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.

Thus, under R.C. 2505.04, timely filing a notice of appeal with the appropriate administrative agency is the only jurisdictional requirement. *Russell* at ¶17, quoting *Woods v. Civil Serv. Comm.* (1983), 7 Ohio App.3d 304, 305; see also *John Roberts Mgt. Co. v. Village of Obetz*, 10th Dist. No. 09AP-1103, 2010-Ohio-3382; *In re Annexation of 259.15 Acres*, 159 Ohio App.3d 736, 2005-Ohio-1027, ¶12.

{¶12} In this case, it is undisputed that appellants never filed a notice of appeal directly with appellees. Rather, appellants filed their notice of appeal with the Franklin County Common Pleas Court, and the clerk of courts served appellees with appellants'

notice of appeal. Given the express language of R.C. 2505.04, such procedure does not comport with the statute's requirements.

{¶13} In so holding, we note that there is a split of authority among Ohio's appellate districts. Recently, the Ohio Supreme Court has granted certiorari in the case of *Welsh Dev. Co., Inc. v. Warren City Regional Planning Comm.*, 186 Ohio App.3d 56, 2010-Ohio-592, cert. granted, 125 Ohio St.3d 1460, 2010-Ohio-2753, to resolve the conflict among the districts. The court certified the following question: "Is a service of summons by a clerk of courts upon an administrative agency, together with a copy of a notice of appeal filed in the common pleas court, sufficient to perfect an administrative appeal pursuant to R.C. 2505.04 as long as the agency receives the notice within the time prescribed by R.C. 2505.07?" In light of the foregoing, our discussion, thus, proceeds to determine whether the requirements of R.C. 2505.07 have been met in this case.

{¶14} R.C. 2505.07 provides: "After the entry of a final order of an administrative officer, agency, board, department, tribunal, commission, or other instrumentality, the period of time within which the appeal shall be perfected, unless otherwise provided by law, is thirty days." Here, appellees issued their written decision on December 21, 2009, which gave appellants until January 20, 2010, to perfect their appeal. The record is clear—appellants did not meet the 30-day time requirement found in R.C. 2505.07. Even if the court answers the certified question in *Welsh Dev. Co*. in the affirmative, service in this case was not accomplished until January 27, 2010, seven days too late. Thus, regardless of how *Welsh Dev. Co* is resolved, appellants' appeal was not timely.

{¶15} Appellants advance several arguments as to why the written decision issued by appellees on December 21, 2009, does not trigger the appeal time running. One argument is that the appeal time did not start running until January 11, 2010, when appellees approved the minutes of the hearing held on December 14, 2009, thus making appellees' receipt of the notice of appeal from the clerk of courts on January 27, 2010, timely. This argument, however, fails.

{¶16} R.C. 2506.01 provides:

> (A) Except as otherwise provided * * * every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located as provided in Chapter 2505. of the Revised Code.
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> * * *
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> (C) As used in this chapter, "final order, adjudication, or decision" means an order, adjudication, or decision that determines rights, duties, privileges, benefits, or legal relationships of a person * * *.

We find that the written decision dated December 21, 2009, meets the definition of a "final order, adjudication, or decision" under R.C. 2506.01. To the extent that appellees were required to reduce the minutes of the hearing to a written format, such does not somehow render the written decision of appellees issued on December 21, 2009, meaningless. Appellants have failed to cite any legal authority that stands for the proposition that when a board issues a written decision, and subsequently reduces its hearing minutes to writing, the latter controls for the purpose of what constitutes a "final order, adjudication, or decision" under R.C. 2506.01.

{¶17} Another argument advanced by appellants is that the time for filing appellants' administrative appeal was tolled by the minority status of appellant Joshua McGath. In other words, appellants had until appellant Joshua McGath reached the age of 18 to perfect their appeal. We find this argument to be unpersuasive and unsupported by case law.

{¶18} Lastly, appellants argue that the trial court erred in ruling it had no equitable jurisdiction to consider appellants' appeal. We have no issue with the trial court's ruling, and we are hard pressed to find that, in this case, equitable jurisdiction can somehow be substituted for subject-matter jurisdiction.

{¶19} Based on the foregoing, we hold that the trial court did not err in dismissing appellants' administrative appeal for lack of subject-matter jurisdiction. Accordingly, we overrule appellants' four assignments of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT and KLATT, JJ., concur.

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