

TENTH APPELLATE DISTRICT

Alonzo Austin, :
 :
 Plaintiff-Appellant, :
 :
 v. : No. 10AP-895
 : (C.P.C. No. 10CVF-06-8528)
 Ohio FAIR Plan Underwriting Association, : (ACCELERATED CALENDAR)
 :
 Defendant-Appellee. :

D E C I S I O N

Rendered on April 28, 2011

Alonzo Austin, pro se.

*Crabbe, Brown & James, LLP, and Matthew R. Planey, for
appellee.*

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Appellant, Alonzo Austin, appeals the judgment of the Franklin County Court of Common Pleas, which granted a motion filed by appellee, Ohio FAIR Plan Underwriting Association ("the association"), to dismiss Austin's appeal of an order issued by the Superintendent of the Ohio Department of Insurance ("superintendent") concerning a proof of loss submitted by Austin to the association. Having concluded that the trial court did not err by dismissing the appeal, we affirm.

{¶2} In this appeal, Austin raises three assignments of error, all of which contend that the trial court erred by dismissing his appeal. We will address Austin's assignments of error together.

{¶3} The association is a statutorily-created entity that provides property-related insurance to persons unable to obtain insurance in the voluntary market. See R.C. 3929.41 et seq. Austin owned property insured through the association. He made a claim for payment after the property was destroyed by fire. While the association paid on the claim, Austin disagreed with the amount paid.

{¶4} As required under state law, Austin initially appealed to the association's Board of Governors Appeals Committee, which affirmed the decision of the association. Austin then appealed to the superintendent, who affirmed the committee's decision.

{¶5} The parties agree that the superintendent's order was dated April 2, 2010. They also agree that the order was mailed to Austin on April 5, 2010, via certified mail, return receipt requested. Austin thereafter appealed to the trial court. The question is whether he did so timely.

{¶6} Austin's appeal is subject to R.C. 119.12. See R.C. 3929.47. R.C. 119.12 provides that any party desiring to appeal an agency's order must file a notice of appeal with the agency. The party must also file a copy of the notice of appeal with the court. These notices "shall be filed within fifteen days after the mailing of the notice of the agency's order." R.C. 119.12. Failure to meet this filing deadline will result in dismissal of the untimely appeal, as it precludes jurisdiction in the trial court. *Thompson & Ward Leasing Co. v. Ohio State Bur. of Motor Vehicles*, 10th Dist. No. 08AP-41, 2008-Ohio-3101, ¶10.

{¶7} As applied here, R.C. 119.12 required Austin to file his notice of appeal with the Department of Insurance and to file a copy of the notice of appeal with the Franklin County Court of Common Pleas. The deadline for both of these filings was 15 days from the date the superintendent mailed the order or by April 20, 2010.

{¶8} The record shows that the Department of Insurance received Austin's notice of appeal on April 21, 2010, one day past the filing deadline. The record also shows that the Franklin County Court of Common Pleas received a copy of Austin's notice of appeal on June 7, 2010, several weeks past the filing deadline. Because Austin failed to comply with R.C. 119.12, the trial court properly dismissed his appeal.

{¶9} In his brief, Austin appears to contend that he mailed his notice of appeal to the Department of Insurance via certified mail, return receipt requested, and his sales receipt for the certified mail identified the expected date of delivery as April 20, 2010, which would have met the deadline. As the court stated, however, in order to comply with R.C. 119.12, an appellant must *file*, not just mail, a notice of appeal by the 15-day deadline. But even if the Department of Insurance had received and filed Austin's notice of appeal by the deadline, his filing with the Franklin County Court of Common Pleas would still have been untimely, given that he did not file a copy of the notice of appeal with the court until June 7, 2010. See *Nibert v. Ohio Dept. of Rehab. & Corr.*, 84 Ohio St.3d 100, 102, 1998-Ohio-506 (holding that failure to file a copy of the notice of appeal with the trial court constitutes a jurisdictional defect and requires dismissal). For all these reasons, the court concluded correctly that Austin had failed to comply with R.C. 119.12. Therefore, the court did not err by dismissing Austin's appeal.

{¶10} Having concluded that the trial court did not err by dismissing Austin's appeal, we overrule his three assignments of error. We affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK and CONNOR, JJ., concur.
