

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Cuyahoga Re-Entry Agency,	:	
	:	
Plaintiff-Appellant,	:	No. 11AP-740
v.	:	(C.P.C. No. 10CVH-07-10771)
Ohio Department of Rehabilitation	:	(REGULAR CALENDAR)
and Correction,	:	
	:	
Defendant-Appellee.	:	
	:	

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D E C I S I O N

Rendered on May 8, 2012

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*The Spitz Law Firm, LLC, Brian D. Spitz and Fred M. Bean,*  
for appellant.

*Michael DeWine, Attorney General, and Debra Gorrell*  
*Wehrle, for appellee.*

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APPEAL from the Franklin County Court of Common Pleas.

BRYANT, J.

{¶ 1} Plaintiff-appellant, Cuyahoga Re-Entry Agency, appeals from a judgment of the Franklin County Court of Common Pleas (1) overruling plaintiff's objections to the magistrate's decision, adopting the magistrate's decision, and denying plaintiff's request for preliminary injunction, and (2) dismissing plaintiff's complaint pursuant to the motion to dismiss of defendant-appellee, Ohio Department of Rehabilitation and Correction ("ODRC"). Because the trial court properly denied plaintiff's request for

preliminary injunction, but improperly granted ODRC's motion to dismiss, we affirm in part and reverse in part.

### **I. Facts and Procedural History**

{¶ 2} On July 22, 2010, plaintiff filed a verified complaint seeking a temporary restraining order and preliminary injunction pending resolution of a separately filed administrative appeal. According to the complaint, plaintiff is a non-profit association in Cuyahoga County that operates a halfway house providing housing, supervision, and programs for adult criminal offenders. Pursuant to an agreement between plaintiff and ODRC executed on or about July 21, 2009, plaintiff provided, and ODRC paid for, such services to eligible offenders for a period of one year. In early July 2010, ODRC renewed the agreement with plaintiff, extending the agreement for one year so that plaintiff could be paid for clients it then was servicing.

{¶ 3} Nonetheless, "[o]n July 14, 2010, ODRC wrote to Plaintiff cancelling the agreement, effective August 14, 2010." (Complaint, ¶ 7.) Pursuant to the cancellation, ODRC formally advised plaintiff on July 21, 2010 that on July 22, 2010, it would remove approximately two-thirds of plaintiff's clients to transfer them to other locations. Plaintiff asserted that, unless the court restrained ODRC, ODRC would ignore its obligations under the agreement and improperly remove clients from plaintiff's facility. Couched in those facts, plaintiff's complaint sought under Count 1 specific performance of the contract, a judgment under Count 2 declaring ODRC to have breached the contract, and temporary and preliminary injunctive relief pursuant to Count 3 to preclude ODRC's removing clients from plaintiff's facility.

{¶ 4} The trial court granted plaintiff a temporary restraining order on July 27, 2010 and scheduled a preliminary injunction hearing date. ODRC followed with a motion to dismiss plaintiff's complaint. After an August 6 hearing on plaintiff's request for a preliminary injunction, the trial court's magistrate issued a decision on August 9, 2010 denying the requested injunction. Plaintiff objected to the decision.

{¶ 5} While plaintiff's objections were pending, plaintiff, with leave of court, responded on June 14, 2011 to ODRC's motion to dismiss. On August 2, 2011, the court filed a decision and entry overruling plaintiff's objections to the magistrate's decision, adopting the magistrate's decision as its own, and denying plaintiff's request for a

preliminary injunction. In addition, the court dismissed plaintiff's action based on one of the arguments presented in ODRC's motion to dismiss.

## **II. Assignments of Error**

{¶ 6} Plaintiff appeals, assigning the following errors:

### **ASSIGNMENT OF ERROR I:**

THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY OVERRULING CRA'S OBJECITONS TO THE MAGISTRATE'S FINDINGS OF FACT WITHOUT REVIEWING THE COMPLETE TRANSCRIPT FROM THE AUGUST 6, 2010 HEARING.

### **ASSIGNMENT OF ERROR II:**

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN GRANTING DEFENDANT'S MOTION TO DISMISS BY DETERMINING THAT THE TERMS OF THE CONTRACT WERE NOT AMBIGUOUS.

### **ASSIGNMENT OF ERROR III:**

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN GRANTING DEFENDANT'S MOTION TO DISMISS BY IGNORING THE FACT THAT DEFENDANT FAILED TO STRICTLY COMPLY WITH THE LANGUAGE IN PARAGRAPH 5 OF THE CONTRACT.

### **ASSIGNMENT OF ERROR IV:**

THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY ADOPTING THE MAGISTRATE'S AUGUST 9, 2010 DECISION AND DENYING CRA'S REQUEST FOR A PRELIMINARY INJUNCTION.

## **III. First Assignment of Error—Transcript of the Magistrate's Proceedings**

{¶ 7} Plaintiff's first assignment of error asserts the trial court violated Civ.R. 53 when it overruled plaintiff's objections to the magistrate's decision without reviewing the transcript of the magistrate's proceedings that plaintiff filed to support its objections.

{¶ 8} Civ.R. 53(D)(3)(b)(i) provides that "[a] party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the

court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i)." If a party objects to a factual finding, "whether or not specifically designated as a finding of fact under Civ.R. 53(D)(3)(a)(ii)," the objection "shall be supported by a transcript of all of the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available." Civ.R. 53(D)(3)(b)(iii). "The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause." *Id.*

{¶ 9} Here, plaintiff filed its objections on September 7, 2010, because the trial court granted plaintiff, pursuant to plaintiff's motion, an extension of time to file objections on or before September 15, 2010. The transcript of the magistrate's proceedings bears an August 30, 2010 time stamp in the common pleas court. Accordingly, the transcript was before the trial court in a timely manner and should have been considered in conjunction with plaintiff's objections to the magistrate's factual findings.

{¶ 10} Plaintiff contends that, contrary to the noted law, the trial court refused to consider the transcript. In particular, plaintiff points to those pages of the trial court's decision where the trial court (1) cited Civ.R. 53(D)(3)(b)(iii) and its requirement that a transcript of all evidence be filed relevant to objections to the magistrate's factual findings and (2) stated that "[i]n the absence of a transcript or an affidavit, the trial court is required to accept the magistrate's findings of fact and may only examine the legal conclusions drawn from those facts." (Decision & Entry, 12.)

{¶ 11} The trial court's decision does not state it overruled plaintiff's objections to the magistrate's factual findings for lack of a transcript. To the contrary, the decision states the trial court, "having reviewed the record of the proceedings before the Magistrate, agrees that [plaintiff] failed to present any evidence" concerning one of the issues under the preliminary injunction analysis. (Decision & Entry, 15.) Again reflecting its review of the transcript, the court pointed out that "[t]he only mention" of the issue "was during [plaintiff's] counsel's closing argument." (Decision & Entry, 15.) The court similarly stated that it found plaintiff "failed to present any evidence" concerning one of the other elements pertinent to granting a preliminary injunction; again, plaintiff only

addressed it during closing argument. (Decision & Entry, 15.) Contrary to plaintiff's contentions, the trial court specifically stated it reviewed the record of proceedings before the magistrate and then noted not only instances of plaintiff's failure to present evidence to support certain points but referenced plaintiff's arguments in closing that lacked evidentiary support.

{¶ 12} Because the trial court did not analyze plaintiff's objections as if no transcript were filed, but rather affirmatively stated and discussed its review of the record of the magistrate's proceedings, plaintiff's first assignment of error is overruled.

#### **IV. Second and Fourth Assignments of Error - Contract Ambiguity and Denial of Preliminary Injunction**

{¶ 13} Plaintiff's second assignment of error asserts the trial court erred in determining the agreement between plaintiff and ODRC is unambiguous insofar as it allows ODRC to terminate plaintiff's contract for any reason. Plaintiff's fourth assignment of error asserts the trial court erred in denying its request for a preliminary injunction.

{¶ 14} At issue in both arguments is the language of paragraph 5 of the agreement between plaintiff and ODRC stating that, "*except as provided in OAC 5120:1-3-02*, either party to this Agreement may terminate the Agreement for any reason by providing the other party with written notice sent by certified mail no less than thirty (30) days in advance of termination." (Emphasis added.) Plaintiff contends the "except" clause's reference to Ohio Adm.Code 5120:1-3-02 renders the sentence ambiguous. Plaintiff further contends that, given the language of the rule, the court should have granted its request for a preliminary injunction. Both of plaintiff's arguments thus implicate Ohio Adm.Code 5120:1-3-02.

##### *A. Ohio Adm.Code 5120:1-3-02*

{¶ 15} Ohio Adm.Code 5120:1-3-02, as effective at the time, was entitled "Licensing Requirements for a Halfway House or Community Residential Center as a Licensed Facility." Ohio Adm.Code 5120:1-3-02(A) charged the Division of Parole and Community Services with the responsibility to inspect, supervise, and license halfway houses or community residential centers as licensed facilities. As part of that responsibility, the division was to make annual on-site inspections of halfway houses or community residential centers during which the inspectors had full access to all areas of

the facility and to all records pertaining to the operation of the facility, including offender files. Ohio Adm.Code 5120:1-3-02(B) and (C).

{¶ 16} The inspectors were to ascertain the facility's compliance with the standards specified in the rule; within 30 days after the inspection, the division was to prepare a written report of the inspection, including any findings of noncompliance, and present the report to the person in charge of the facility. Ohio Adm.Code 5120:1-3-02(D)(1). In addition to a facility's appeal rights under R.C. 119.12, Ohio Adm.Code 5120:1-3-02(D)(2) allowed a licensed facility to appeal adverse decisions. In the appeal, the facility had the right to a fair hearing during the 30-day period following notification so as to rebut, clarify, or correct particulars outlined in the notification, after which the Division had final authority to terminate the contract or rescind prior notices. Ohio Adm.Code 5120:1-3-02(D)(2)(a) and (b).

{¶ 17} Under the rule, the division was to require the facility to correct the deficiencies within 30 days of notification or submit an "acceptable plan and timetable" to remedy them. Ohio Adm.Code 5120:1-3-02(D)(2)(c). Paragraph (D)(2)(d) stated that "[t]he division of parole and community services may terminate contracts for failure to comply with such notices at the end of this thirty-day period." The body of the administrative rule did not mention revocation of licensure.

{¶ 18} Ohio Adm.Code 5120:1-3-02 subsequently was amended. As amended, Ohio Adm.Code 5120:1-3-02(D)(3) provides that "[a]n appeal of an adverse decision on licensure taken pursuant to paragraph (D)(2) of this rule shall not affect the authority of the division of parole and community services to terminate a contract with a facility at any time pursuant to the terms of the contract." Similarly, Ohio Adm.Code 5120:1-3-02(D)(4), as amended, clarifies that "[t]he scope of the administrative appeal authorized under paragraph (D)(2) of this rule is limited to reviewing an adverse decision on licensure." Accordingly, "[a]n appeal may not be taken under paragraph (D)(2) of this rule for the purpose of challenging a decision by the division of parole and community services to terminate a contract with a licensed facility pursuant to the contract's terms" or "for any other purpose other than reviewing an adverse decision on licensure." Ohio Adm.Code 5120:1-3-02(D)(4).

### B. Ambiguity

{¶ 19} Plaintiff contends the agreement's reference to the administrative rule in the "except clause" renders the contract provision at issue ambiguous.

{¶ 20} "The intent of the parties to a contract is presumed to reside in the language they chose to employ in the agreement." *Kelly v. Med. Life Ins. Co.*, 31 Ohio St.3d 130 (1987), paragraph one of the syllabus, following and approving *Blosser v. Enderlin*, 113 Ohio St. 121 (1925), paragraph one of the syllabus. When the terms of a contract are unambiguous, a court looks to the plain language of the document and interprets it as a matter of law. *State ex rel. Parsons v. Fleming*, 68 Ohio St.3d 509, 511 (1994); *Latina v. Woodpath Dev. Co.*, 57 Ohio St.3d 212, 214 (1991); *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241 (1978), paragraph one of the syllabus. "[W]hether a contract is ambiguous is a decision that is made as a matter of law." *Southers v. Souters*, 10th Dist. No. 11AP-113, 2011-Ohio-6233, ¶ 7. "Ambiguity exists only when a provision at issue is susceptible of more than one reasonable interpretation." *Lager v. Miller-Gonzales*, 120 Ohio St.3d 47, 2008-Ohio-4838, ¶ 16.

{¶ 21} The terms of Paragraph 5 in themselves are unambiguous. Absent the "except" clause, the remainder of the sentence, as ODRC contends, unambiguously allows ODRC to terminate the agreement for "any reason" on 30 days notice. Application of the "except" clause is less clear due to the language of former Ohio Adm.Code 5120:1-3-02. If an ambiguity exists in the terms of Paragraph 5 at issue, it lies in the administrative rule in effect at the time of the magistrate's hearing. If the "except" clause does not apply, then the trial court correctly concluded the pertinent portion of the agreement is unambiguous.

{¶ 22} The magistrate's findings of fact at first blush seem to implicate the "except" clause. The magistrate found ODRC conducted an inspection of plaintiff's facility on May 25, 2010, where it determined plaintiff failed to comply with the licensing standards of the division of parole and community services. According to the magistrate, ODRC, by letter dated May 26, notified plaintiff of the compliance deficiencies and advised plaintiff it needed to correct those deficiencies by June 25 to maintain licensure. The magistrate determined plaintiff attempted to correct the deficiencies identified in the letter. ODRC conducted another inspection on June 23, 2010, but plaintiff remained non-compliant with licensing standards.

{¶ 23} The magistrate further concluded ODRC, hand-delivered a letter dated July 14, 2010 to plaintiff's interim executive director. The letter "terminated the Contract because ODRC had concluded that [plaintiff] was not in compliance with BCS [Bureau of Community Standards] licensing standards and could not serve ODRC clients." (Magistrate's Decision, Finding of Fact 12.) Plaintiff responded with a July 19, 2010 letter notifying ODRC that plaintiff was appealing ODRC's termination of the contract pursuant to Ohio Adm.Code 5120:1-3-02. ODRC denied the appeal.

{¶ 24} Although the magistrate's factual findings suggest ODRC terminated its contract with plaintiff under Ohio Adm.Code 5120:1-3-02, or the "except" clause, the magistrate decided the rule "does not, as argued by [plaintiff], provide [plaintiff] with an administrative appeal from ODRC's decision to terminate the Contract." (Magistrate's Conclusion of Law, 6.) Rather, the magistrate determined "[t]he regulation provides [plaintiff] with an administrative appeal only from an adverse decision by ODRC affecting [plaintiff's] license." (Magistrate's Conclusion of Law, 6.) All parties agree ODRC took no action to impair or revoke plaintiff's license. Accordingly, the magistrate concluded "ODRC was entitled to terminate the Contract 'for any reason' by providing [plaintiff] with written notice no less than thirty days in advance of termination." (Magistrate's Conclusion of Law, 6.)

{¶ 25} The trial court agreed, finding the magistrate's determination to be "sound." (Decision and Entry, 14.) In doing so, the trial court noted plaintiff "agrees that O.A.C. §5120:1-3-02 applies only to licensing issues but argues that the nature and location of the contract language – '[e]xcept as provided in OAC 5120:1-3-02' – dictates that the provision has meaning and applies to the termination of the halfway house contract." (Decision & Entry, 7.) Because nothing in the matter before the court involved licensure, the court applied the "any reason" clause and concluded "[t]he dispute in this case revolves around a contractual issue, not one of compliance," so that "[t]he reason behind ODRC's termination of the cont[r]act, based on the terms of the contract, is irrelevant." (Decision & Entry, 14.)

{¶ 26} Even before it was amended, the rule, albeit not as clearly, supports the court's conclusion that the rule applies to licensure. The title of the rule itself is plain as governing "Licensing Requirements for a Halfway House or Community Residential



Center as a Licensed Facility." The more persuasive factor, however, is the language of Ohio Adm.Code 5120:1-3-02(D)(2). It provides that, "[i]n addition to the appeal rights granted" in section R.C. 119.12, "the division of parole and community services will allow licensed halfway house and community residential center managers to administratively appeal adverse decisions." R.C. 119.12, as pertinent here, specifies that an adversely affected party may appeal from "any order of any agency issued pursuant to an adjudication \* \* \* revoking or suspending a license." The rule's reference to R.C. 119.12 as an additional remedy interrelated to that set forth in section (D)(2) indicates the rule governs license revocations. Indeed, all parties so agree.

{¶ 27} Because the rule deals only with licensing issues and plaintiff's license was not affected, the "except" clause does not apply here. Rather, the "any reason" clause applies and permitted ODRC to terminate the agreement between the parties for any reason. Accordingly, the trial court properly concluded the contract language, as it applies to these facts not affecting plaintiff's license, is unambiguous.

{¶ 28} Moreover, because the rule applies only to licensure issues, the appeal process of the former rule does not apply here. Even if it did, plaintiff failed to avail itself of the remedy the rule allows. According to the rule, "[t]he licensed facility has the right of a fair hearing during the thirty-day period following notification at which time evidence can be submitted to rebut, clarify, or correct particulars outlined in such notification." Ohio Adm.Code 5120:1-3-02(D)(2)(b). Plaintiff did not appeal in the 30 days following notification of deficiencies.

{¶ 29} Plaintiff's second assignment of error is overruled.

### *C. Preliminary Injunction*

{¶ 30} Plaintiff contends that, contrary to the magistrate's decision, it complied with the pertinent standards, so that ODRC wrongfully terminated its contract with plaintiff. With that premise, plaintiff contends it likely would succeed on the merits of its claim, making a preliminary injunction imperative to protect its rights until those rights may be adjudicated fully.

{¶ 31} In determining whether a preliminary injunction is warranted, a trial court generally looks to four factors: (1) whether the evidence presents a substantial likelihood that plaintiff will prevail on the merits, (2) whether denying the injunction will cause

plaintiff to suffer irreparable injury, (3) whether granting the injunction will cause third parties to suffer unjustifiable harm, and (4) whether the injunction will serve the public interest. *Vanguard Transp. Sys., Inc. v. Edwards Transfer Storage Co.*, 109 Ohio App.3d 786, 790 (10th Dist.1996).

{¶ 32} Unlike ODRC's motion to dismiss, which was confined to the face of the complaint, plaintiff's fourth assignment of error embraces all the evidence before the magistrate. In response to plaintiff's assignment of error, ODRC asserts the evidence before the magistrate reflects that ODRC's decision to terminate the agreement complied with the "any reason" clause of Paragraph 5 of the agreement, eliminating plaintiff's probability of success on the merits and in turn supporting the trial court's determination that a preliminary injunction was not warranted.

{¶ 33} Apart from granting the ability to terminate for "any reason," Paragraph 5 required ODRC to give plaintiff 30 days notification. The magistrate determined ODRC hand-delivered a July 14, 2010 letter to plaintiff, advising the contract would be terminated effective August 14, 2010. Plaintiff acknowledged it received the letter, and John Kirk, then interim executive director for plaintiff, established when plaintiff received it. He testified he met with the director of ODRC on Friday, July 16, "the next day or the day after we got the letter." (Tr. 96.) Plaintiff then received the letter on July 15, or 30 days before August 14.

{¶ 34} Although plaintiff does not contest specifically the 30-day period, it contends a hand-delivered letter fails to comply with the terms of Paragraph 5 that require certified mail notification. Plaintiff's argument is unpersuasive. The purpose of certified mail notification is to eliminate issues of delivery. Hand delivery is equally, if not more, capable of ensuring actual delivery. *See, e.g., Rite Rug Co., Inc. v. Wilson*, 106 Ohio App.3d 59, 65 (10th Dist.1995), citing *Akron-Canton Regional Airport Auth. v. Swinehart*, 62 Ohio St.2d 403, 405-06 (1980) (stating "[c]ertified mail service does not require actual service upon the party receiving notice so long as the circumstances are such that successful notification could be reasonably anticipated"). Although a hand-delivered letter may lack the written record of delivery that certified mail provides, plaintiff does not dispute it received the letter. Accordingly, under the facts of this case, hand delivery is sufficient to comply with the terms of Paragraph 5. *Cf. Ernst v. Ohio*

*Dept. of Adm. Servs.*, 69 Ohio App.3d 330, 340-41 (10th Dist.1990) (noting that although "[b]oth the contract and R.C. 153.17" required the state to "notify the contractor in writing" before terminating the contract, because the contractor had "actual knowledge" of the state's intent to terminate the contract, the state's "technical noncompliance with R.C. 153.17 did not violate any of [contractor's] due process rights"). Because the evidence before the magistrate supports the trial court's conclusion that ODRC properly terminated the contract under the "any reason" clause with the required notification, plaintiff failed to establish its probability of success on the merits.

{¶ 35} In terms of irreparable harm, the trial court noted plaintiff's argument rested on its contention that plaintiff relied almost entirely on ODRC for placements. As the trial court noted, plaintiff remained a licensed facility capable of serving other clients, even after ODRC terminated the contract. Moreover, plaintiff points to nothing in the agreement that required ODRC to provide plaintiff with clients even if the agreement remained effective. The trial court did not err in finding plaintiff failed to prove irreparable harm.

{¶ 36} Under the "harm to third parties" prong of the preliminary injunction analysis, plaintiff failed to demonstrate that any client housed at its facility was unable to find adequate alternative facilities after ODRC terminated its agreement with plaintiff. For the same reason, the public interest is not implicated here. To the contrary, the trial court noted, as it could with the evidence presented, that the public's interest may have been well-served when the plaintiff's clients were removed to a higher-quality facility.

{¶ 37} In the end, any harm resulting from the terminated contract accrues to plaintiff, and in light of the diminished probability that plaintiff will prevail on the merits of its claim against ODRC, the trial court did not abuse its discretion in denying ODRC's request for preliminary injunction.

{¶ 38} Plaintiff's fourth assignment of error is overruled.

### **V. Third Assignment of Error—ODRC's Motion to Dismiss**

{¶ 39} Plaintiff's third assignment of error asserts the trial court erred in granting ODRC's motion to dismiss pursuant to Civ.R. 12(B)(6).

{¶ 40} Appellate review of a trial court's decision to dismiss a case, under Civ.R. 12(B)(6), is de novo. *Singleton v. Adjutant Gen. of Ohio*, 10th Dist. No. 02AP-971, 2003-

Ohio-1838, ¶ 16. For a court to dismiss a case pursuant to Civ.R. 12(B)(6), "it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery." *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242 (1975), syllabus. The court must presume all factual allegations in the complaint are true and draw all reasonable inferences in favor of the nonmoving party. *Bridges v. Natl. Engineering & Contracting Co.*, 49 Ohio St.3d 108, 112 (1990).

{¶ 41} After discussing and overruling plaintiff's objections to the magistrate's decision, the trial court addressed ODRC's motion to dismiss. Although noting ODRC filed its motion pursuant to both Civ.R. 12(B)(1) and 12(B)(6), the court, because ODRC failed to support its arguments under Civ.R. 12(B)(1), confined its analysis to Civ.R. 12(B)(6). In doing so, the trial court appropriately addressed the standard applied in Civ.R. 12(B)(6) motions, noting "it must appear beyond doubt from the face of the complaint that the plaintiff can prove no set of facts entitling him/her to relief." (Decision & Entry, 16.) Nonetheless, the court stated that "ODRC terminated the contract after hand-delivering to CREA's Interim Executive Director a letter dated July 14, 2010, wherein it provided CREA with the requisite thirty day notice of its decision to terminate the contract." (Decision & Entry, 18-19.)

{¶ 42} The face of plaintiff's complaint lacks the specifics the trial court relied on in granting ODRC's motion to dismiss. With respect to termination, the complaint alleges only that "[o]n July 14, 2010, ODRC wrote to Plaintiff cancelling the agreement, effective August 14, 2010." (Complaint, ¶ 7.) The complaint does not allege ODRC delivered the notice of termination, whether by certified mail or hand delivery; nor does plaintiff's complaint allege plaintiff received the termination notice or, if so, when. Accordingly, the complaint does not support the trial court's determination that ODRC terminated its contract with plaintiff in accord with the provisions of the "any reason" clause of the parties' agreement. Although ODRC suggests other bases under which the trial court might grant the motion to dismiss, the trial court addressed none of them, and we decline to do so in the first instance.

{¶ 43} Accordingly, plaintiff's third assignment of error is sustained.

**VI. Disposition**

{¶ 44} Having overruled plaintiff's first, second, and fourth assignments of error, but having sustained plaintiff's third assignment of error, we affirm in part and reverse in part the judgment of the common pleas court and remand for further proceedings consistent with this decision.

*Judgment affirmed in part and  
reversed in part; case remanded.*

CONNOR and DORRIAN, JJ., concur.

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