

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Deaconess Hospital,	:	
Appellant-Appellant,	:	
v.	:	No. 11AP-259
	:	(C.P.C. No. 10CVF-12-18112)
Ohio Department of Job & Family	:	
Services et al.,	:	(REGULAR CALENDAR)
Appellees-Appellees.	:	

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D E C I S I O N

Rendered on January 12, 2012

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*Frost Brown Todd LLC, Thomas D. Anthony, Javan A. Kline, and Neil U. Desai*, for appellant.

*Michael DeWine*, Attorney General, and *Rebecca L. Thomas*, for appellees.

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APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶1} Appellant, Deaconess Hospital ("Deaconess"), appeals the judgment rendered by the Franklin County Court of Common Pleas dismissing its administrative appeal based upon jurisdictional grounds. For the reasons that follow, we affirm.

{¶2} In July 2009, the Ohio General Assembly created a hospital assessment fund in order to pay for the costs of the medicaid program. R.C. 5112.45. Funding was to come from assessments imposed upon hospitals. *Id.*; see also R.C. 5112.41. Calculation of these assessments was to be handled by the Ohio Department of Jobs and

Family Services ("ODJFS"). Specifically, ODJFS was to make a preliminary determination of a hospital's assessment and inform it of such via certified mail. R.C. 5112.42(A). This preliminary determination would become ODJFS's final determination of the assessment unless the hospital requested reconsideration from ODJFS. R.C. 5112.42(B). Similarly, the results upon reconsideration would become ODJFS's final determination for purposes of any further challenge to the common pleas court. *Id.*

{¶3} In the instant matter, ODJFS informed Deaconess of its preliminary determination as to Deaconess's assessment. Deaconess sought reconsideration. On November 12, 2010, ODJFS denied Deaconess's request for reconsideration, which was ODJFS's final determination. On December 10, 2010, Deaconess sought review from the common pleas court. On December 20, 2010, ODJFS received a copy of Deaconess's notice of appeal from the clerk of courts. ODJFS then filed a motion to dismiss and argued that the common pleas court lacked jurisdiction. The common pleas court granted ODJFS's motion. This appeal followed, and presents the following assignment of error:

THE TRIAL COURT ERRED BY GRANTING [DEFENDANT-APPELLEE'S] MOTION TO DISMISS ON THE GROUNDS THAT [APPELLANT] FAILED TO PERFECT [ITS] APPEAL AND, AS A RESULT, THAT THE APPEAL WAS UNTIMELY.

{¶4} Issues pertaining to statutory construction are reviewed de novo. *Ceccarelli v. Levin*, 127 Ohio St.3d 231, 2010-Ohio-5681, ¶8, citing *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, ¶8. When construing a statute, a court's objective is to determine and give effect to the legislative intent. *State ex rel. Solomon v. Police & Firemen's Disability & Pension Fund Bd. of Trustees*, 72 Ohio St.3d 62, 65, 1995-Ohio-172, citing *State v. S.R.* (1992), 63 Ohio St.3d 590, 594-95. In determining legislative intent, a court must first consider the words used in a statute. *State v. Maxwell*, 95 Ohio St.3d 254, 256,

2002-Ohio-2121, citing *Provident Bank v. Wood* (1973), 36 Ohio St.2d 101, 105. Clear and unambiguous statutes must be applied as written and must not be subject to further statutory construction. *State v. Werner* (1996), 112 Ohio App.3d 100, 103, citing *State ex rel. Herman v. Klopfleisch* (1995), 72 Ohio St.3d 581, 584.

{¶5} Our analysis concerns R.C. 5112.42(C), which provides:

The department shall mail to each hospital a written notice of the final determination of its assessment for the assessment program year. A hospital may appeal the final determination to the court of common pleas of Franklin [C]ounty. While a judicial appeal is pending, the hospital shall pay, in accordance with section 5112.43 of the Revised Code, any amount of its assessment that is not in dispute.

{¶6} In its sole assignment of error, Deaconess argues that it complied with its statutory requirements by appealing to the Franklin County Court of Common Pleas. As a result, Deaconess contends that the common pleas court erred in concluding that it lacked jurisdiction to hear the appeal.

{¶7} On the other side, ODJFS concedes that R.C. 5112.42(C) authorizes administrative appeals to the Franklin County Court of Common Pleas. ODJFS argues, however, that R.C. 5112.42(C) provides no guidance on the procedure for filing such appeals.<sup>1</sup> According to ODJFS, R.C. Chapter 2505 governs the procedure and fills in the gaps left by R.C. 5112.42(C) regarding, inter alia, notices of appeals and the timeliness of appeals. Further, it argues that the common pleas court properly dismissed this matter because Deaconess failed to meet the statutory requirements of R.C. 2505.04 and 2505.07.

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<sup>1</sup> ODJFS concedes that R.C. 5112.42(C) establishes what a hospital must pay during the pendency of the appeal.

{¶8} Deaconess's response is simply that: (1) no notice of appeal is required because none is specified in R.C. 5112.42(C); and (2) appeals can be filed indefinitely because no time limit is specified in R.C. 5112.42(C).

{¶9} Courts must construe statutes to avoid unreasonable or absurd results. *State ex rel. Striker v. Cline*, 130 Ohio St.3d 214, 2011-Ohio-5350, ¶25, citing *Volbers-Klarich v. Middletown Mgt., Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, ¶26. To accept Deaconess's position would vitiate the most basic, fundamental principles of appellate law. Indeed, under Deaconess's position, appeals could be filed years after final determinations with no notice to ODJFS.

{¶10} "[W]hen the right to appeal is conferred by statute, an appeal can be perfected only in the manner prescribed by the applicable statute." (Internal citations omitted.) *Welsh Dev. Co., Inc. v. Warren Cty. Regional Planning Comm.*, 128 Ohio St.3d 471, 2011-Ohio-1604, ¶14.

{¶11} As is clear, R.C. 5112.42(C) confers upon a hospital the right to appeal ODJFS's final determination of an assessment. As is equally clear, however, the statute leaves unanswered the issue of how to appeal. That is, it cannot be said that R.C. 5112.42(C) is clear as to the manner in which an appeal is perfected. Further analysis is therefore required.

{¶12} It is settled that co-existing statutes relating to the same general subject matter must be read in *pari materia*. *State v. Cook*, 128 Ohio St.3d 120, 2010-Ohio-6305, ¶45, quoting *United Tel. Co. of Ohio v. Limbach*, 71 Ohio St.3d 369, 372, 1994-Ohio-209, quoting *Johnson's Mkts., Inc. v. New Carlisle Dept. of Health* (1991), 58 Ohio St.3d 28, 35. When possible, courts must harmonize such statutes and construe them in a manner

to give proper force and effect to each. *Id.*; see also *State ex rel. Dublin Securities, Inc. v. Ohio Div. of Securities*, 68 Ohio St.3d 426, 430, 1994-Ohio-340, citing *State v. Chippendale* (1990), 52 Ohio St.3d 118; see also R.C. 1.51.

{¶13} R.C. Chapter 2505 governs the procedure for administrative appeals unless another statute applies and provides otherwise. See R.C. 2505.03(B); see also *McCann v. Lakewood* (1994), 95 Ohio App.3d 226, 232. Thus, R.C. Chapter 2505 establishes a catchall series of procedural rules regarding the manner for filing administrative appeals in the absence of other applicable statutes. As we previously found, R.C. 5112.42(C) authorizes appeals but leaves unanswered the manner for filing such appeals. In harmonizing these statutes, we find that R.C. Chapter 2505 governs the manner for filing appeals under R.C. 5112.42(C). The Supreme Court of Ohio recently reached the same finding in similar circumstances. *Welsh* at ¶15. ("R.C. 2505.04 governs the manner in which an administrative appeal is perfected."). As a result, Deaconess was required to meet the statutory requirements set forth in R.C. Chapter 2505.

{¶14} Having found that R.C. Chapter 2505 applies to the instant matter, we must now turn to the statutory requirements set forth therein. Under R.C. 2505.04:

An appeal is perfected when a written notice of appeal is filed, in the case of an appeal of a final order, judgment, or decree of a court, in accordance with the Rules of Appellate Procedure or the Rules of Practice of the Supreme Court, or, in the case of an administrative-related appeal, with the administrative officer, agency, board, department, tribunal, commission, or other instrumentality involved. If a leave to appeal from a court first must be obtained, a notice of appeal also shall be filed in the appellate court. 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.

Further, R.C. 2505.07 prescribes the time period for perfecting an appeal and 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.

{¶15} The requirements of R.C. 2505.04 and 2505.07 are jurisdictional rather than merely procedural. *Roberts v. Pleasant Local School Dist. Bd. of Edn.*, 3d Dist. No. 9-11-04, 2011-Ohio-4560, ¶13.

{¶16} Based upon the record before us, it is undisputed that Deaconess did not meet the statutory requirements set forth in R.C. Chapter 2505. Indeed, ODJFS did not receive a copy of Deaconess's notice of appeal within 30 days of the final determination of Deaconess's assessment. Thus, Deaconess did not properly invoke the jurisdiction of the common pleas court. See *Harris v. Akron*, 9th Dist. No. 25689, 2011-Ohio-6735, ¶5-6. The court of common pleas did not err in reaching this same conclusion and dismissing Deaconess's appeal.

{¶17} Based upon the foregoing, we overrule Deaconess's sole assignment of error and affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BROWN, P.J., and TYACK, J., concur.

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