

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Carlton Jones,	:	
Appellant-Appellant,	:	
v.	:	No. 12AP-785
Ohio Motor Vehicle Dealers Board,	:	(C.P.C. No. 12CVF-06-7847)
Appellee-Appellee.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on March 28, 2013

Duncan Simonette, Inc., Brian K. Duncan and Bryan D. Thomas, for appellant.

Michael DeWine, Attorney General, and *John E. Patterson*, for appellee.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Carlton Jones ("Jones") appeals from the decision and entry of the Franklin County Court of Common Pleas granting the motion of the Ohio Motor Vehicle Dealers Board ("Board") to dismiss his R.C. Chapter 119 appeal for lack of jurisdiction.

{¶ 2} The Board issued and mailed an adjudication order on March 22, 2012 revoking Jones' motor vehicle salesperson license. Jones had been found guilty in criminal court of the offense of falsification of an Ohio Certificate of Title. The adjudication order was mailed to the address provided by Jones on his application for a motor vehicle salespersons license. Under Ohio law, Jones had 15 days in which to file an appeal of the Board's action. R.C. 119.12. Jones did not appeal until June 14, 2012.

{¶ 3} The trial court found that the time limit for filing an appeal under R.C. 119.12 is jurisdictional, and therefore it dismissed the appeal as untimely.

{¶ 4} Jones appealed to this court and raises three assignments of error:

1. THE TRIAL COURT ERRED IN GRANTING APPELLEE'S MOTION TO DISMISS BECAUSE THE COURT HAD JURISDICTION OVER THE CLAIM AS APPELLEE FAILED TO STRICTLY COMPLY WITH OHIO REVISED CODE § 119.09 WHEN APPELLEE MAILED THE ADJUDICATION ORDER TO THE WRONG ADDRESS.

2. THE TRIAL COURT ERRED IN GRANTING APPELLEE'S MOTION TO DISMISS BECAUSE THE COURT HAD JURISDICTION OVER THE CLAIM AS APPELLEE FAILED TO STRICTLY COMPLY WITH OHIO REVISED CODE § 119.09 WHEN APPELLEE DID NOT CLEARLY AND UNAMBIGUOUSLY INDICATE WHERE THE ORIGINAL NOTICE OF APPEAL AND COPY OF THE NOTICE OF APPEAL WERE TO BE SENT AND WHERE APPELLANT COMPLIED WITH THE EXPRESS STATUTORY LANGUAGE BY FILING HIS NOTICE OF APPEAL WITHIN FIFTEEN (15) DAYS OF RECEIVING THE SAME.

3. THE TRIAL COURT ERRED IN GRANTING APPELLEE'S MOTION TO DISMISS BY GOING AGAINST OHIO COURT'S POLICY OF RESOLVING CASES ON THE MERITS RATHER THAN TECHNICAL OR PROCEDURAL DEFECTS.

{¶ 5} Jones argues on appeal that the Board failed to comply with R.C. 119.09 because it mailed the notice to the wrong address. He cites authority for the proposition that an administrative agency charged with serving a final adjudication order on an affected party must strictly comply with the requirements of R.C. 119.09 before the fifteen-day period commences. *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 53, 2007-Ohio-2877, ¶ 19.

{¶ 6} While the proposition is true, it does not support the argument that the Board failed to comply with the statutory requirements. Here, the Board mailed the final adjudication order to the address listed on Jones' application for a motor vehicle salesperson license. The return of service card shows that it was received and signed for on March 27, 2012. The signature on the card appears to match that of Jones' signature on his license application.

{¶ 7} Nevertheless, Jones asserts the Board mailed the order to the wrong address, and that the Board had the affirmative duty to research the address on file and obtain a current address for him. Jones cites no authority in support of this assertion. Nor was this court able to find any.

{¶ 8} In administrative appeals from orders of agencies, the Supreme Court of Ohio has consistently held that failure to comply with the time requirements for filing a notice of appeal deprives the common pleas court of jurisdiction and is fatal to the appeal. *Sun Refining & Marketing Co. v. Brennan*, 31 Ohio St.3d 306, 307 (1987) (also explaining that before the start date is triggered by mailing, the board must comply with the procedural requirements of R.C. 119.09, such as sending a copy of its decision to the party affected by certified mail, return receipt requested). If the notice of appeal is not timely filed with the board within the specified period, then the court lacks jurisdiction to hear the appeal. *Proctor v. Giles*, 61 Ohio St.2d 211, 214 (1980).

{¶ 9} Jones' notice of appeal was untimely filed, and we can find no error in the trial court's finding that the agency was not charged with tracking down a new address for Jones.

{¶ 10} In his second assignment of error, Jones asserts that the Board failed to comply strictly with the requirements of R.C. 119.09 for another reason.

{¶ 11} Jones cites an out-of-date version of the statute that required the final order of adjudication to indicate which party, the agency or the court, was to receive the original notice of appeal and which party was to receive a copy. The prior version of R.C. 119.12 provided in pertinent part:

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.

{¶ 12} R.C. 119.12 was amended in 2010 to eliminate some procedural hurdles and traps for the unwary. It now provides, in pertinent part:

Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and stating that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. * * * The notice of appeal shall also be filed by the appellant with the court. In filing a notice of appeal with the agency or court, the notice that is filed may be either the original notice or a copy of the original notice.

{¶ 13} Since the amended statute no longer requires an original notice of appeal to be filed with the agency and a copy with the court, the Board's final adjudication order properly notified Jones of the requirements for filing an appeal from the Board's order.

{¶ 14} In his final assignment of error, Jones argues that the court should decide the appeal on its merits rather than dismissing for technical or procedural defects. We are aware that Jones has never defended the license revocation on its merits. However, failing to file a notice of appeal within the 15-day time limit is a jurisdictional defect, not a mere procedural or technical oversight. Therefore, the trial court was without jurisdiction to hear the case on the merits.

{¶ 15} Based on the foregoing, Jones' three assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BROWN and DORRIAN, JJ., concur.
