

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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| Frambes 137, LLC, | : | |
| Appellant-Appellant, | : | |
| v. | : | No. 14AP-785 (C.P.C. No. 14CV-2971) |
| Franklin County Board of Revision et al., | : | (REGULAR CALENDAR) |
| Appellees-Appellees. | : | |

D E C I S I O N

Rendered on April 9, 2015

Graff & McGovern, LPA, Douglas E. Graff and Levi J. Tkach,
for appellant.

Ron O'Brien, Prosecuting Attorney and William J. Stehle, for
appellees.

APPEAL from the Franklin County Court of Common Pleas

HORTON, J.

{¶ 1} Appellant, Frambes 137, LLC ("Frambes"), appeals from a judgment of the Franklin County Court of Common Pleas granting the motion to dismiss of appellees, Franklin County Board of Revision ("board") and Franklin County Auditor ("auditor"). For the following reasons, we affirm.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} Frambes owns real property in Columbus, Ohio. In response to the auditor's change of tax classification for Frambes' property, Frambes filed a complaint with the board asserting that the property should be reclassified.

{¶ 3} The board held a hearing and, on February 21, 2014, issued and mailed a decision which provided:

You may appeal this decision by filing the proper notice of appeal with either the Ohio Board of Tax Appeals, (O.R.C.

5717.01), or with the Court of Common Pleas, (O.R.C. 5717.05). Such appeals must be filed within 30 days after the mailing of this notice.

{¶ 4} On March 18, 2014, Frambes filed a notice of appeal with the court of common pleas and instructed the clerk of courts to serve a copy of the notice of appeal on the board by certified mail. Frambes did not take any other action to file the notice of appeal with the board. On March 20, 2014, the clerk of courts mailed a copy of the notice of appeal to the board via certified mail, and the notice of appeal was served on the board on March 24, 2014.

{¶ 5} Pursuant to R.C. 5717.05, a party who wishes to appeal from a board decision must file a notice of appeal with the court and with the board within thirty (30) days after notice of the decision of the board is mailed.

{¶ 6} The board and auditor filed a motion to dismiss the case asserting that the court of common pleas lacked jurisdiction over the appeal because Frambes did not file a timely notice of appeal with the board. The court found that Frambes did not file its notice of appeal with the board, and that the board was not served with Frambes' appeal until March 24, 2014, thirty-one (31) days after the February 21, 2014 decision of the board was mailed. As such, the court concluded that it did not have jurisdiction to hear Frambes' appeal, and thus granted the motion to dismiss.

II. ASSIGNMENTS OF ERROR

{¶ 7} Frambes appeals, assigning the following errors:

[I.] The trial court erred when it did not order the matter remanded to the BOR with instructions to issue a final decision letter compliant with due process requirements.

[II.] The trial court erred by holding that it lacked jurisdiction over the appeal when the BOR failed to comply with fundamental principles of due process.

[III.] The trial court erred when it held that Appellant's use of certified mail did not constituted [sic] a valid form or [sic] service.

III. FIRST AND SECOND ASSIGNMENTS OF ERROR – NO VIOLATION OF DUE PROCESS

{¶ 8} Civ.R. 12(B)(1) permits dismissal where the trial court lacks jurisdiction over the subject matter of the litigation. The standard of review for a dismissal pursuant to Civ.R. 12(B)(1) is whether any cause of action cognizable by the forum has been raised in the complaint. *PNC Bank, Natl. Assn. v. Botts*, 10th Dist. No. 12AP-256, 2012-Ohio-5383, ¶ 21; *Milhoan v. E. Local School Dist. Bd. of Edn.*, 157 Ohio App.3d 716, 2004-Ohio-3243, ¶ 10 (4th Dist.); *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80 (1989). We review an appeal of a dismissal for lack of subject-matter jurisdiction under Civ.R. 12(B)(1) de novo. *Moore v. Franklin Cty. Children Servs.*, 10th Dist. No. 06AP-951, 2007-Ohio-4128, ¶ 15.

{¶ 9} We will address Frambes' first and second assignments of error together, as they are related. Frambes argues in its first assignment of error that the trial court erred when it did not remand the matter to the board with instructions to issue a final decision letter compliant with due process requirements. Frambes argues in its second assignment of error that the trial court erred by holding that it lacked jurisdiction over the appeal when the board failed to comply with fundamental principles of due process.

{¶ 10} On March 17, 2015, this court issued an opinion concerning the exact same issues and facts as are present in the instant case. *See N. Campus Rentals, L.L.C. v. Franklin Cty. Bd. of Revision*, 10th Dist. No. 14AP-465, 2015-Ohio-985. In *N. Campus Rentals, L.L.C.*, we held that "the language used in the board's decision was consistent with due process and fundamental fairness" and concluded that the lower court accordingly "lacked jurisdiction," as Frambes had filed its notice of appeal with the board on the 31st day following the mailing of the board's decision. *Id.* at ¶ 11.

{¶ 11} The court also concurred "with the trial court's sentiment that the board could better avoid any potential confusion by either providing more complete details of the appellate rights of the parties or providing only citations to the appropriate statutes." *Id.* at ¶ 11. Certainly adding a sentence that notifies the parties that, whether they file an appeal with the Board of Tax Appeals pursuant to R.C. 5717.01 or with the court of common pleas pursuant to R.C. 5717.05, they must also file a notice of appeal with the board within thirty (30) days which may alleviate the type of confusion present in the instant case. Thus, we adhere to this court's recent precedent.

{¶ 12} For the reasons articulated in *N. Campus Rentals, L.L.C.*, Frambes' first two assignments of error are overruled.

IV. THIRD ASSIGNMENT OF ERROR - MOOT

{¶ 13} Frambes argues in its third assignment of error that the trial court erred when it held that Frambes' use of certified mail did not constitute a valid form of service.

{¶ 14} In light of the fact that Frambes' notice of appeal was not filed or served in any fashion within the time prescribed by R.C. 5717.05, this court finds Frambes' third assignment of error to be rendered moot.

V. DISPOSITION

{¶ 15} Having overruled Frambes' first two assignments of error, thereby rendering Frambes' third assignment of error moot, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

DORRIAN and LUPER SCHUSTER, JJ., concur.
