

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

River Room, Inc.,	:	
Appellant-Appellant,	:	
v.	:	No. 14AP-956 (C.P.C. No. 14CVF-11590)
Ohio Liquor Control Commission,	:	(ACCELERATED CALENDAR)
Appellee-Appellee.	:	

D E C I S I O N

Rendered on July 21, 2015

Saia & Piatt, Inc., and *Lisa A. Wafer*, for appellant.

Michael DeWine, Attorney General, and *Charles E. Febus*, for appellee.

APPEAL from the Franklin County Court of Common Pleas

SADLER, J.

{¶ 1} Appellant-appellant, River Room, Inc., appeals from a judgment of the Franklin County Court of Common Pleas in favor of appellee-appellee, Ohio Liquor Control Commission. For the reasons that follow, we affirm.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} Appellant operates a bar and restaurant in Loudenville, Ohio. Since 1998, appellant has held a D5 liquor permit issued by appellee. On August 28, 2013, appellee's investigators cited appellant for serving alcohol to an intoxicated patron in violation of R.C. 4301.22(B). On October 9, 2014, appellant entered a denial to the charge with a stipulation. On October 23, 2014, appellee held a hearing on the matter. Appellee found appellant in violation of R.C. 4301.22(B) and ordered the following: "Permit Holder has

the option to either pay a forfeiture in the amount of \$9,000.00, or the permit will be REVOKED." (Emphasis sic.) (Oct. 23, 2014 Order.)

{¶ 3} On November 10, 2014, appellant timely filed a notice of appeal to the Franklin County Court of Common Pleas pursuant to R.C. 119.12.

{¶ 4} On November 17, 2014, the trial court sua sponte dismissed the appeal for lack of subject-matter jurisdiction. The trial court found that the notice of appeal failed to include the required language in R.C. 119.12 that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The trial court concluded that, pursuant to our decision in *Foreman v. Lucas Cty. Court of Common Pleas*, 189 Ohio App.3d 678, 2010-Ohio-4731 (10th Dist.), the absence of the required statutory language in appellant's notice of appeal deprived it of jurisdiction to hear the appeal.

{¶ 5} Appellant timely filed a notice of appeal to this court on November 18, 2014.

II. ASSIGNMENT OF ERROR

{¶ 6} Appellant assigns the following error:

THE TRIAL COURT ERRED WHEN IT DISMISSED
APPELLANT'S APPEAL FOR LACK OF JURISDICTION.

III. STANDARD OF REVIEW

{¶ 7} Subject-matter jurisdiction refers to the statutory or constitutional power of a court to hear a case. *Nkanginieme v. Ohio Dept. of Medicaid*, 10th Dist. No. 14AP-596, 2015-Ohio-656, ¶ 15, citing *Groveport Madison Local School Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 137 Ohio St.3d 266, 2013-Ohio-4627, ¶ 25. In the context of administrative appeals, "[c]ourts of common pleas only have 'such powers of review of proceedings of administrative officers and agencies as may be provided by law.' " *Clifton Care Ctr. v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 12AP-709, 2013-Ohio-2742, ¶ 9, quoting Ohio Constitution, Article IV, Section 4. Thus, jurisdiction over an administrative appeal is improper "unless granted by R.C. 119.12 or other specific statutory authority." *Abt v. Ohio Expositions Comm.*, 110 Ohio App.3d 696, 699 (10th Dist.1996). A trial court's decision to dismiss an administrative appeal brought, pursuant to R.C. 119.12, for lack of subject-matter jurisdiction is a question of law reviewed by the appellate court de novo. *Nkanginieme* at ¶ 12, citing *Daniel v. Williams*, 10th Dist. No.

10AP-797, 2011-Ohio-1941, ¶ 9, citing *Ford v. Tandy Transp., Inc.*, 86 Ohio App.3d 364, 375 (4th Dist.1993).

IV. LEGAL ANALYSIS

{¶ 8} R.C. 119.12, as amended effective September 13, 2010, provides, in relevant part, as follows:

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 may, but need not, set forth the specific grounds of the party's appeal beyond the statement that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law.

(Emphasis added.)

{¶ 9} In *Foreman*, a former Lucas County employee appealed from an order of the State Personnel Board of Review, which affirmed the employee's discharge. The trial court dismissed the appeal for lack of subject-matter jurisdiction because the employee failed to include the required statement in her notice of appeal that "the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law." R.C. 119.12.

{¶ 10} The former employee appealed to this court, and we affirmed the judgment of the trial court. In our decision, we noted that recently amended R.C. 119.12 "expressly relaxes the requirements for a sufficient notice of appeal by eliminating the requirement that an appellant state specific grounds for appeal." *Id.* at ¶ 15. Nevertheless, in affirming the trial court's dismissal of the appeal, we stated:

The amended statute requires an appellant's notice of appeal to, at least, state "that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law," even while eliminating the requirement of any specificity "beyond [that] statement." *Foreman's* notice of appeal, by contrast, states only that she "bases her appeal on issues of fact and law." The recent amendments to R.C. 119.12 do not alter the necessity for strict adherence to the statutory requirements to invoke the trial court's jurisdiction over an administrative appeal. Thus, we conclude that, even

under the amended statute, Foreman's notice of appeal was insufficient under R.C. 119.12 and that the trial court lacked subject-matter jurisdiction to hear Foreman's appeal.

Id.

{¶ 11} In a subsequent decision from this court in *Siegler v. Ohio State Univ.*, 10th Dist. No. 10AP-421, 2011-Ohio-2485, we applied *Foreman* in affirming the trial court's dismissal of an R.C. 119.12 appeal filed by a former state employee who claimed that she was discharged in violation of Ohio's whistleblower statute. In *Siegler*, we held as follows:

[N]otably absent from appellant's notice of appeal is any indication or allegation that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. As a result, appellant failed to invoke the jurisdiction of the common pleas court. See *Foreman* at ¶ 15. Because the common pleas court lacked subject-matter jurisdiction to hear appellant's administrative appeal, it did not err in granting appellee's motion to dismiss.

Id. at ¶ 6.

{¶ 12} Here, as was the case in both *Foreman* and *Siegler*, appellant's notice of appeal to the Franklin County Court of Common Pleas fails to include the required statement that "the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law." R.C. 119.12. Appellant's November 10, 2014 "NOTICE OF APPEAL" states only that appellant "serves notice of its appeal of the October 23, 2014 Decision of the Ohio Liquor Control Commission, a copy of which is attached hereto for the Court's convenience." Pursuant to *Foreman* and *Siegler* where the notice of appeal does not contain the content required by R.C. 119.12, the trial court lacks subject-matter jurisdiction to hear the appeal.

{¶ 13} Appellant contends that the *Foreman* case is inapplicable because we decided it under a prior version of R.C. 119.12. This is incorrect. In *Foreman*, we noted that the General Assembly intended that the amendments to R.C. 119.12 apply retrospectively to all appeals filed before the effective date of those amendments but not earlier than May 7, 2009. *Id.* at ¶ 14. We further noted that "Foreman's administrative appeal to the court of common pleas was filed before the effective date of the recent

amendment to R.C. 119.12, but after May 7, 2009. Therefore, her appeal is subject to the amended procedural requirements." *Id.*

{¶ 14} There is no question that we decided *Foreman* under the current version of R.C. 119.12 and that our decisions in *Foreman* and *Siegler* control the outcome of this case. Although appellant asserts that adopting a substantial compliance approach to R.C. 119.12 will result in more appeals being decided on the merits, "this court consistently has required strict compliance with the statute" in order to invoke the jurisdiction of the common pleas court. *Legleiter v. State*, 10th Dist. No. 12AP-253, 2012-Ohio-5668, ¶ 17 (R.C. 119.12 allows an appellant to file the original or a copy of the original with either the agency or the common pleas court, but the two documents must be identical in order to invoke the jurisdiction of the common pleas court.).

{¶ 15} For the foregoing reasons, we find that appellant's notice of appeal is insufficient to invoke the jurisdiction of the trial court. Accordingly, we hold that the trial court did not err when it dismissed the appeal for lack of subject-matter jurisdiction. Appellant's sole assignment of error is overruled.

V. CONCLUSION

{¶ 16} Having overruled appellant's sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN, P.J., and LUPER SCHUSTER, J., concur.
