

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

North Campus Rentals, LLC,	:	
Appellant-Appellee,	:	No. 14AP-465
	:	(C.P.C. No. 14CV-2973)
v.	:	
	:	(REGULAR CALENDAR)
Franklin County Board of Revision et al.,	:	
Appellees-Appellants.	:	

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D E C I S I O N

Rendered on March 17, 2015

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

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

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APPEAL from the Franklin County Court of Common Pleas.

BROWN, P.J.

{¶ 1} Franklin County Board of Revision ("board") and Franklin County Auditor ("auditor"), appellants, appeal the judgment of the Franklin County Court of Common Pleas in which the court denied appellants' motion to dismiss and remanded the matter to the board.

{¶ 2} For purposes of this appeal, many of the underlying details of the case are not relevant. North Campus Rentals, LLC, appellee, owns real property in Columbus, Ohio. In response to the auditor's change of tax classification for the property, appellee 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} R.C. 5717.05 provides that a party who wishes to appeal from a board decision must file a notice of appeal with the court and with the board within 30 days after notice of the decision of the board is mailed. Thus, the parties had until March 23, 2014 to file a notice of appeal with the court and the board.

{¶ 5} On March 18, 2014, appellee filed a notice of appeal with the common pleas court and instructed the clerk of courts to serve a copy of the notice of appeal on the board by certified mail. However, appellee 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 certified mail was delivered to the board on March 24, 2014.

{¶ 6} Appellants filed a motion to dismiss the appeal on grounds that the court lacked jurisdiction over the appeal because appellee did not file a timely notice of appeal with the board. The common pleas court denied the motion to dismiss. The court found that, although appellee did not invoke the jurisdiction of the court because it failed to strictly adhere to the filing requirements of R.C. 5717.05 when it did not file a notice of appeal with the board, the board's appellate-rights notification in its February 21, 2014 decision was deficient and misleading. Therefore, the court remanded the matter to the board to issue another decision that complies with the statutes. Appellants appeal the judgment of the common pleas court, asserting the following three assignments of error:

[I.] THE TRIAL COURT ERRED IN FAILING TO DISMISS THE APPEAL OF NORTH CAMPUS RENTALS LLC.

[II.] THE TRIAL COURT ERRED IN FINDING THAT THE BOARD OF REVISION DECISION LETTERS WERE "INCOMPLETE, LEGALLY INCORRECT, AND..QUITE MISLEADING."

**[III.] THE TRIAL COURT ERRED IN REMANDING TO THE  
FRANKLIN COUNTY BOARD OF REVISION.**

{¶ 7} We will address appellants' first and second assignments of error together, as they are related. Appellants argue in their first assignment of error that the trial court erred when it failed to dismiss appellee's appeal for failing to comply with R.C. 5717.05. Appellants argue in their second assignment of error that the trial court erred when it found that the board's decision was incomplete, legally incorrect, and misleading.

{¶ 8} As indicated above, R.C. 5717.05 provides in pertinent part that an appeal from a board's decision "shall be taken by the filing of a notice of appeal with the court and with the board within thirty days after notice of the decision of the board is mailed." In the present case, the board mailed its decision on February 21, 2014. Pursuant to R.C. 5717.05, appellee had 30 days, until March 23, 2014, to file its notice of appeal with the court and the board. Appellee failed to file a notice of appeal with the board, although the clerk of courts mailed a copy of the notice of appeal to the board which received the certified mail on March 24, 2014. The trial court agreed that appellee did not adhere to the filing requirements of R.C. 5717.05, and appellee failed to invoke the jurisdiction of the court as prescribed by R.C. 5717.05.

{¶ 9} However, the court then found that the board improperly instructed appellee in its decision regarding the methods by which appellee could perfect its appeal. The court indicated that, although it is not the board's obligation to walk a property owner through the appeals process, fundamental fairness and due process demand that the board not intentionally, inadvertently or actively mislead a potential appellant. The court indicated that it was not enough for the board to make parenthetical references to R.C. 5717.01 and 5717.05 when the board failed to advise appellee of the significance of those statutes or notify appellee that it was required to file its appeal in accordance with either of those statutes. The court found that the board had provided explicit instructions that a potential appellant could perfect an appeal by filing it with the common pleas court, but those instructions were incomplete, legally incorrect, and misleading. The court suggested that the board could have taken a "minimalist" approach by simply referencing the applicable statutes which would have left the parties to determine the appellate process for themselves, or the board could have advised the parties exactly as the statute itself is

worded, which the court believed to be the better approach. The court concluded that, although the failure to properly file an appeal constitutes a fatal jurisdictional flaw, it would be manifestly unjust to dismiss the appeal on jurisdictional grounds when appellee complied with the filing directions supplied by the board.

{¶ 10} We find the common pleas court erred when it failed to dismiss appellee's appeal for lack of jurisdiction. " '[A]n appeal, the right of which is conferred by statute, can be perfected only in the mode prescribed by statute. The exercise of the right conferred is conditioned upon compliance with the accompanying mandatory requirements.' " *Holm v. Clark Cty. Auditor*, 168 Ohio App.3d 119, 2006-Ohio-3748, ¶ 4 (2d Dist.), quoting *Great N. Partnership v. Cuyahoga Cty. Bd. of Revision* (July 19, 1990), 8th Dist. No. 57277. " '[T]he filing of a notice of appeal with the board is jurisdictional, and not merely procedural.' " *Id.*, quoting *Great N. Partnership* (referring to requirements under R.C. 5717.05 to file the notice of appeal with the board of revision). Thus, when a party fails to perfect an appeal of a board of revision decision by failing to file a notice of appeal, pursuant to R.C. 5717.05, the trial court lacks jurisdiction to review the board's decision and the trial court must dismiss the matter for lack of jurisdiction. *Id.* at ¶ 7.

{¶ 11} However, despite the conceded jurisdictional defect, the common pleas court in the present case ultimately concluded that it was unfair to dismiss the matter for lack of jurisdiction because the information contained in the board's decision was incomplete, legally incorrect, and misleading. Even assuming *arguendo* that an appellate-rights notice in a board's decision that is incomplete, legally incorrect, and misleading can excuse the mandatory jurisdictional prerequisites under R.C. 5717.05, we find the appellate-rights language included in the board's decision in the present case was not so deficient so as to excuse appellee's compliance with R.C. 5717.05. The notice in the board's decision indicated the general appellate rights of the parties, notified the parties of the two tribunals to which they could appeal by filing a notice of appeal, and included citations to the appropriate statutes that outlined the appellate rights and procedures in more detail. It is arguable that the information included in the board's decision was incomplete because it did not detail every statutory appellate right and procedure, but there is no authority requiring the board to do so. Although we concur 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, we find the language used in the board's decision was consistent with due process and fundamental fairness. Therefore, the trial court lacked jurisdiction to hear appellee's untimely appeal, and erred when it denied appellants' motion to dismiss based upon the language in the appellate-rights notice in the board's decision. We sustain appellants' first and second assignments of error.

{¶ 12} Appellants argue in their third assignment of error that the trial court erred when it remanded the matter to the board. Because we have sustained appellants' first and second assignments of error, appellants' third assignment of error is rendered moot.

{¶ 13} Accordingly, we sustain appellants' first and second assignments of error, and find appellants' third assignment of error moot. The judgment of the Franklin County Court of Common Pleas is reversed, and we remand this matter to that court to issue an order granting appellants' motion to dismiss.

*Judgment reversed;  
cause remanded with instructions.*

TYACK and KLATT, JJ., concur.

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