[Cite as *Kingsville Twp. Bd. of Trustees v. Kingsville Twp. Bd. of Zoning Appeals*, 2011-Ohio-6517.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

KINGSVILLE TOWNSHIP BOARD OF TRUSTEES, et al.,	:	**O P I N I O N**
Appellants,	:	
- vs -	:	**CASE NO. 2011-A-0015**
KINGSVILLE TOWNSHIP BOARD OF ZONING APPEALS,	:	
Appellee.	:	

Administrative Appeal from the Ashtabula County Court of Common Pleas, Case No. 2010 CV 775.

Judgment: Reversed and remanded.

Kenneth L. Piper and *Thomas C. Brown*, 185 Water Street, Geneva, OH 44041 (For Appellants).

Stuart W. Cordell and *Jon L. Lindberg*, Warren and Young, P.L.L., 134 West 46th Street, P.O. Box 2300, Ashtabula, OH 44005-2300 (For Appellee).

THOMAS R. WRIGHT, J.

{¶1} Appellants, Kingsville Township Board of Trustees and Jim Branch, Kingsville Township Zoning Inspector, appeal from a judgment of the Ashtabula County Court of Common Pleas, dismissing their administrative appeal due to failure to timely perfect.

{¶2} Kingsville Township residents Tom and Kathy Burris operate Hope Farm and maintain a house trailer on their property. The zoning inspector cited the Burrises for

having the mobile home on their property, believing it to be a violation of Section 574 of the Kingsville Township Zoning Resolution.

{¶3} The Burrises subsequently appealed to appellee, Kingsville Township Board of Zoning Appeals ("BZA"). Thereafter, the BZA held a hearing. On June 17, 2010, the BZA rendered a decision in favor of the Burrises.

{¶4} Because the trial court dismissed the administrative appeal due to failure to timely perfect, dates and events are pertinent. On July 14, 2010, appellants filed an administrative appeal of the June 17, 2010 decision with the Ashtabula County Court of Common Pleas. The attached certificate of service stated that counsel for appellants served the appeal upon the BZA via ordinary U.S. mail on July 14, 2010. In addition to counsel's ordinary mail service, on July 20, 2010, the clerk of courts served the BZA with the notice of appeal by certified mail. On August 6, 2010, Mary Stouffer, chairperson/clerk of the BZA, signed the certified mail receipt. The BZA did not approve and journalize the June 17, 2010 meeting minutes until August 23, 2010.

{¶5} The trial court dismissed appellants' appeal with prejudice, concluding that the administrative appeal was not properly perfected. Thereafter, appellants filed an appeal with this court and assert the following assignment of error:

{¶6} "The trial court erred to the prejudice of Appellants Kingsville Township Board of Trustees and Zoning Inspector Jim Branch in dismissal by finding no jurisdiction and overruling Appellants' Motion for Reconsideration."

{¶7} In their sole assignment of error, appellants argue the appeal was perfected and, therefore, the trial court erred in dismissing their appeal due to a lack of jurisdiction. Specifically, appellants maintain their notice of appeal was timely perfected because the

appeal time period did not begin to run until August 23, 2010, when the BZA approved and journalized the meeting minutes.

{¶8} R.C. 2505.04 provides that "[a]n appeal is perfected when a written notice of appeal is filed, *** in the case of an administrative-related appeal, with the administrative officer, agency, board, department, tribunal, commission, or other instrumentality involved." It is undisputed that R.C. 2505.04 requires the notice of appeal from the BZA's decision to be filed with the BZA within the thirty day appeal period set forth in R.C. 2505.07. The issue before this court is whether appellants satisfied the filing requirement within the meaning of the statute.

{¶9} Appellants assert the trial court erred by holding that the appeal was not properly perfected under R.C. 2505.04 because the written notice of appeal was not properly filed with the BZA.

{¶10} Approximately three months after the trial court dismissed appellants' administrative appeal, the Ohio Supreme Court decided *Welsh Dev. Co., Inc. v. Warren Cty. Regional Planning Comm.*, 128 Ohio St.3d 471, 2011-Ohio-1604. In *Welsh,* the Supreme Court considered whether "a service of summons by a clerk of courts upon an administrative agency, together with a copy of a notice of appeal filed in the common pleas court, is sufficient to perfect an administrative appeal pursuant to R.C. 2505.04 if the agency receives the notice within the time prescribed by R.C. 2505.07." Id. at ¶1.

{¶11} Answering that question in the affirmative, the *Welsh* Court held:

{¶12} "An administrative appeal is considered filed and perfected for purposes of R.C. 2505.04 if the clerk of courts serves upon the administrative agency a copy of the notice of the appeal filed in the court of common pleas and the administrative agency is served within the time period prescribed by R.C. 2505.07." Id. at syllabus.

{¶13} The *Welsh* Court further held:

{¶14} "We are not redefining the word 'filing' in holding that an administrative appeal may be perfected when a party files a notice of appeal with the clerk of courts accompanied by a praecipe for the clerk to serve the complaint and notice of the appeal on the administrative agency. Filing does not occur until there is actual receipt by the agency within the time prescribed by R.C. 2505.07. Filing and service are still distinct terms.

{¶15} "Practitioners should not be confused or think that filing under R.C. 2505.04 is accomplished only if the clerk of courts serves upon the administrative agency a copy of the notice of the appeal filed in the court of common pleas. The administrative agency must still receive the appropriate complaint and notice within 30 days after entry of the final administrative order. The appellant may use any method reasonably certain to accomplish delivery to the agency within the required 30 days, which is filing that satisfies the jurisdictional requirement for an administrative appeal." Id. at ¶39-40.

{¶16} Therefore, in order to perfect an administrative appeal, a written notice of appeal must be filed and received by the administrative agency within 30 days after entry of the final administrative order. *Welsh*, supra, at syllabus, ¶39-40. In the instant matter, appellants were required to file their notice of appeal within 30 days of the BZA's approval and journalization of the meeting minutes. *Green v. South Cent. Ambulance Dist.* (1997), 118 Ohio App.3d 24, 28-29; *Genesis Outdoor Advertising, Inc. v. Deerfield Twp. Bd. of Zoning Appeal*, 11th Dist. No. 2001-P-0137, 2002-Ohio-7272, at ¶9. Thus, the operative date is not June 17, 2010, when the BZA rendered its decision, but rather August 23, 2010, when the BZA approved and journalized the meeting minutes.

{¶17} Again, on July 14, 2010, appellants filed a notice of appeal of the June 17, 2010 decision with the court of common pleas. That appeal was premature because it was

filed prior to the August 23, 2010 approval and journalization of the meeting minutes. On July 20, 2010, the clerk of courts served the BZA with the notice of appeal by certified mail. On August 6, 2010, the chairperson/clerk of the BZA signed the certified mail receipt. Thus, the BZA received the notice of the appeal before the time for appeal began to run. *Welsh*, supra, at syllabus, ¶39-40; *Green*, supra, at 28-29; *Genesis*, supra, at ¶9.

{¶18} In addition, the July 14, 2010 ordinary U.S. mail service upon the BZA also suffices to perfect the appeal. This court has held that unless an ordinary mail envelope is returned as undeliverable, a presumption arises that proper service has been perfected. *Cappellino v. Marcheskie*, 11th Dist. No. 2008-T-0016, 2008-Ohio-5322, at ¶15. Also, in the ordinary course of the mail and in the absence of evidence to the contrary, a presumption arises that a notice of appeal sent by ordinary mail to a nearby destination six days prior to the expiration of the statutory time limit was timely filed and received. *Young v. Bd. of Review, Dept. of State Personnel* (1967), 9 Ohio App.2d 25, paragraphs one and two of the syllabus.

{¶19} The notice of appeal was timely filed and received by the BZA before the time for perfecting the appeal had run not only once but twice. Because the BZA received timely delivery of the notice of appeal, the appeal was timely filed and perfected. *Welsh*, supra, at syllabus. See, also, *Frantz v. Wooster, Ohio Planning Comm.,* 9th Dist. No. 10CA0014, 2011-Ohio-2197, at ¶8.

{¶20} The trial court determined appellants' administrative appeal was not properly perfected because appellants did not directly file the notice of appeal with the BZA. When the trial court made its decision to dismiss appellants' administrative appeal, it followed the law of this court. At that time, the law from this district held that an appellant was required to file a notice of appeal with the administrative board directly, and that the filing of a notice

of appeal with the common pleas court was not sufficient. *Andolsek v. Willoughby Hills Bd. of Zoning Appeals* (Dec. 10, 1993), 11th Dist. No. 93-L-050, 1993 Ohio App. LEXIS 5910, at *8-9; *G & M Tanglewood, Inc. v. Tanglewood Partners*, 11th Dist. No. 2001-G-2377, 2002-Ohio-7126, at ¶10-11. This court previously held that the issue was not whether the administrative board received a copy of the notice of appeal, but how that copy came to the administrative board. *Andolsek* at *8-9; *G & M* at ¶12.

{¶21} Since the trial court's decision, however, the Ohio Supreme Court decided *Welsh*, the precedent which must now be followed.

{¶22} For the foregoing reasons, appellants' sole assignment of error is well-taken. The judgment of the Ashtabula County Court of Common Pleas is reversed and the matter is remanded for further proceedings consistent with this opinion.

DIANE V. GRENDELL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.