

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

WILLIAM ROBINSON, IV,	:	O P I N I O N
Appellant,	:	
- VS -	:	CASE NO. 2014-P-0071
PORTAGE COUNTY SHERIFF'S	:	
OFFICE, DAVID W. DOAK, SHERIFF,	:	
Appellee.	:	

Administrative Appeal from the Portage County Court of Common Pleas, Case No. 2014 CV 0769.

Judgment: Reversed and remanded.

Andrew J. Wides, Robert A. Pecchio Co., L.P.A., 2305 East Aurora Road, Suite A-1, Twinsburg, OH 44087 (For Appellant).

Victor V. Vigluicci, Portage County Prosecutor, and *Pamela J. Holder*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Appellee).

DIANE V. GRENDELL, J.

{¶1} Appellant, William Robinson, IV, appeals from the Order and Journal Entry of the Portage County Court of Common Pleas, dismissing his administrative appeal from the denial of his application for a concealed handgun license as untimely filed. The issue to be determined in this case is whether a party who is given improper notice of his right to appeal from a determination on his application for a license to carry a concealed firearm may rely on that notice when filing an appeal that is untimely under

the statutory requirements. For the following reasons, we reverse the judgment of the lower court and remand for further proceedings consistent with this opinion.

{¶2} Robinson submitted to the Portage County Sheriff an application for a license to carry a concealed handgun, pursuant to R.C. 2923.125. The Sheriff denied that application in a Notice of Denial, dated September 8, 2014, stating that the denial was based on “medical/vision, per applicant information.” The Notice of Denial also included the following statement: “You may appeal this decision to [the] Portage County Common Pleas Court, or the Common Pleas Court of your residence, pursuant to ORC Section 119.12, by filing such an appeal within 14 days of receipt of this notice.”

{¶3} On September 25, 2014, Robinson filed a notice of an administrative appeal in the Portage County Court of Common Pleas, pursuant to R.C. 119.12.

{¶4} The Sheriff filed a Civ.R. 12(B) Motion to Dismiss on October 8, 2014, asserting that the court lacked subject matter jurisdiction, since Robinson, pursuant to R.C. 119.12, was required to file his notice of appeal within 15 days of the mailing of the notice of the agency’s order. Pursuant to the attached USPS tracking report, the Notice of Denial was mailed to Robinson via certified mail on September 9, 2014, and delivered on September 11, 2014. The Sheriff noted that Robinson’s appeal was filed one day after the statutory deadline, which was September 24, 2014.

{¶5} Robinson filed a Memorandum in Opposition on October 23, 2014, arguing that he complied with the deadline for filing his notice as provided in the Notice of Denial and thus, his appeal was not due to be filed until September 25, 2014, 14 days after he received the Notice of Denial. The Sheriff filed a response, maintaining that the appeal should be dismissed.

{¶6} On November 6, 2014, the trial court issued an Order and Journal Entry, determining that Robinson failed to comply with the statutory deadline for appeal contained in R.C. 119.12 and that the notice of appeal was untimely. It dismissed the appeal, finding it lacked jurisdiction.

{¶7} Robinson timely appeals and raises the following assignment of error:

{¶8} “The trial court committed prejudicial error against Plaintiff-Appellant when it granted Defendant-Appellee’s Motion to Dismiss because it relied on a statutory section in concluding that the Plaintiff’s administrative appeal was untimely, while ignoring the misleading and incorrect notice issued to Plaintiff.”

{¶9} Robinson argues that the trial court dismissed the appeal pursuant to the time period for appeal established in R.C. 119.12 instead of considering the timeframe provided in the Sheriff’s Notice. He argues that his appeal was timely filed under the Notice’s instructions, since it provided that he had 14 days after receipt of the notice, rather than the statutory period of 15 days after mailing.

{¶10} The Portage County Sheriff concedes that the language contained in the Notice is misleading and that a “procedural error has occurred.” He asserts that the failure to notify Robinson prevented the “time from actually starting to run,” and the matter should be remanded for the trial court to consider Robinson’s “notice of appeal as if it was timely filed.”

{¶11} The trial court’s ruling as to the administrative action here may be appealed by either party “as in the case of appeals in civil actions.” R.C. 119.12. “While the determination to be made by the court of common pleas is based on whether there is reliable, probative and substantial evidence to support the [Sheriff’s] finding, the standard of review to be applied by this court is whether the court of common pleas

abused its discretion in making that determination.” *In re Forster*, 161 Ohio App.3d 627, 2005-Ohio-3094, 831 N.E.2d 518, ¶ 7 (11th Dist.), citing *Kennedy v. Marion Corr. Inst.*, 69 Ohio St.3d 20, 21-22, 630 N.E.2d 324 (1994). “We conduct a plenary review of issues of law.” *Friedman v. McClelland*, 11th Dist. Geauga No. 2012-G-3096, 2013-Ohio-4288, ¶ 20.

{¶12} R.C. 119.12 provides: “Any party adversely affected by any order of an agency issued pursuant to an adjudication * * * denying the issuance * * * of a license * * * may appeal from the order of the agency to the court of common pleas of * * * the county in which the licensee is a resident.” “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.” *Id.*

{¶13} In the present case, Robinson did not file his notice of appeal of the Sheriff’s decision to deny his application for a concealed carry license to the Court of Common Pleas within 15 days of the mailing of the Notice of Denial. Since the Notice was mailed on September 9, 2014, under the statutory timeframe, the appeal was due to be filed on September 24, 2014.

{¶14} R.C. 119.09 requires an agency, after it enters a final order on its journal to “serve by certified mail, return receipt requested, upon the party affected thereby, a certified copy of the order and a statement of the time and method by which an appeal may be perfected.”

{¶15} The Notice of Denial in this case did contain a statement of the time and method by which the appeal may be perfected, but this statement was inaccurate. It informed Robinson that he could file his appeal “within 14 days of receipt of this notice,” which is not the appropriate period under R.C. 119.12. In *Friedman*, *supra*, this court

addressed a similar situation, in which the notice both stated that the notice of appeal could be filed “within 14 days of receipt of the notice” and misstated the location where the appeal could be pursued. 2013-Ohio-4288, at ¶ 27. In considering whether this improper advisement affected the timeliness requirement for pursuing an appeal, this court cited *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 2007-Ohio-2877, 868 N.E.2d 246.

{¶16} Pursuant to *Hughes*, “the procedural requirements of R.C. 119.09 are a condition precedent to the running of the 15-day appeal period.” *Id.* at ¶ 10. “[A]n administrative agency must strictly comply with the procedural requirements of R.C. 119.09 for serving the final order of adjudication upon the party affected by it before the 15-day appeal period prescribed in R.C. 119.12 commences.” *Id.* at ¶ 19. Furthermore, regarding “the content of the agency notice under R.C. 119.09, it must track the language of the statute, state the correct filing procedure, and cannot be misleading or ambiguous.” *Friedman* at ¶ 23, citing *Hughes* at ¶ 16. “Accordingly, the content of appellee’s order denying appellant’s handgun license application is a preliminary issue that must be analyzed before concluding whether appellant’s notice of appeal from that order was timely, and therefore, subject to the jurisdiction of the trial court.” *Id.*

{¶17} In *Friedman*, although one issue was the failure to provide notice of the location where the appeal may be filed, the notice also improperly informed the appellant of the filing date in the same manner as occurred here. As such, this court found that, since the appeal both incorrectly stated the time the appeal period would run and the improper location for filing the appeal, “appellee’s notice of denial was misleading, and therefore, not in compliance with the requirements of R.C. 119.12 as

set forth in R.C. 119.09. Since appellee failed to properly notify appellant of the proper method for filing an appeal, appellant's appeal period never started to run." *Id.* at ¶ 28.

{¶18} Here, the notice given to Robinson was misleading and did not state the correct filing procedure. As a direct result of this notice, Robinson did not file a "timely" appeal under the statutory requirements. It is clear, however, that he attempted to file a timely appeal, as his appeal did fall within the time requirement stated in the Notice of Denial. The Sheriff concedes that the appeal was improperly dismissed due to the foregoing. Under these circumstances, as this court did in *Friedman*, we reverse the trial court's finding that the Notice of Appeal was untimely and its dismissal of the appeal, and remand for further proceedings on the appeal.¹

{¶19} The sole assignment of error is with merit.

{¶20} For the foregoing reasons, the Order and Journal Entry of the Portage County Court of Common Pleas, is reversed and the matter is remanded for further proceedings consistent with this opinion. Costs to be taxed against appellee.

TIMOTHY P. CANNON, P.J.,

COLLEEN MARY O'TOOLE, J.,

concur.

1. The Sheriff emphasizes in his brief that no new Notice of Denial must be sent to Robinson. It does not appear that Robinson requests such a Notice in his brief, but, rather, merely argues that his appeal be allowed to proceed below as timely and on the merits. This is consistent with *Friedman* and is proper, given that mailing of a new Notice with correct instructions for filing an appeal is not necessary at this point in the proceedings, as the case can merely proceed below as the appeal was timely filed.