

and Family Services (MCJFS), against which Toliver had filed a charge with the OCRC. It is clear that Toliver intended her filing in common pleas court to constitute an administrative appeal from an order of the OCRC, and the trial court treated it as an administrative appeal.

{¶ 2} On appeal to this court, Toliver has failed to comply with App. R. 16(A)(3), which requires appellate briefs to set forth one or more assignments of error presented for review. However, since the trial court dismissed Toliver's administrative appeal for failure to comply with the filing requirements of R.C. 4112.06(H), we assume that Toliver's assignment of error is based on the trial court's alleged error in dismissing the appeal.

{¶ 3} We conclude that the trial court did not err in dismissing Toliver's administrative appeal for failure to comply with the filing requirements contained in R.C. 4112.06(H). The statutory requirements are mandatory, and Toliver's failure to comply deprived the trial court of jurisdiction over the appeal. Accordingly, the judgment of the trial court is Affirmed.

I

{¶ 4} In March 2008, Toliver filed an affidavit with the OCRC, charging that MCJFS had unlawfully discriminated against her because of her disability. On April 28, 2008, Toliver and her attorney signed an agreement to mediate. MCJFS and its attorney also signed the agreement. On the same day, the parties then signed an "OCRC Conciliation Agreement." The Agreement refers to Toliver as the "Charging Party," and to MCJFS as the "Respondent." In pertinent part, the Agreement provides as follows:

{¶ 5} “Conciliation Agreement is a final order of the Commission. Respondent agrees not to discriminate under 4112 or to retaliate because charges are filed under that chapter.

{¶ 6} “The Charging party hereby waives, releases, and agrees not to sue Respondent for any claims arising under Ohio Revised Chapter 4112 that were the subject of the above referenced charge.”

{¶ 7} “Commission may investigate whether respondent is complying with the terms of the conciliation agreement, and may require inspections, written reports, examination of witnesses, review and copying of pertinent records.

{¶ 8} “Respondent agrees that upon its failure to fully comply with the provisions of the conciliation agreement, the commission may initiate further action, including filing complaint in common pleas court.

{¶ 9} “As evidence of a good faith effort to resolve the above-referenced charge, the parties agree:

{¶ 10} “(a) Charging party agrees to provide a written request for reinstatement to position of Account Clerk II effective May 19, 2008 with no restrictions with a narrative from her treating provider.

{¶ 11} “(b) Charging Party agrees to attempt to make an appointment with her physician, Dr. Mesgali for the carpal tunnel so that she will take a narrative from her physician to the physical examination at Med Works the week of May 12, 2008. Respondent will schedule the physical exam at Med Works and notify the Charging Party of date and time.

{¶ 12} “(c) Respondent agrees to reinstate Charging Party, if released by the physician’s exam with no restrictions with a lateral transfer of Account Clerk in the PSU Unit. Respondent agrees to review her work area in a reasonable amount of time for compliance with the prior assessment.

{¶ 13} “(d) Charging Party agrees to retract her grievance filed on this issue with the Union.

{¶ 14} “ * * * * ”

{¶ 15} “(f) Both Charging Party and Respondent mutually agree to release one another from any and all claims that either may have against the other as of the date of the signing of this Agreement, including EEOC case number 22A-2008-02981 C.”

{¶ 16} After the agreement was signed, Toliver attempted to retract it, contending that she was under the impression that the agreement was tentative. Toliver also claimed that Montgomery County had breached the agreement by approving her disability separation on April 15, 2008, and by not notifying her of the separation until after mediation had occurred.

{¶ 17} On May 22, 2008, OCRC entered a finding on its records that the parties had agreed to a conciliation agreement in resolution of the matter. This OCRC order was sent to Toliver and her attorney, and Toliver received the order, by regular mail, on May 23, 2008. The order states that the OCRC determination is a final order and is subject to judicial review. The order also refers the parties to R.C. 4112.06, and states that a petition for judicial review of a commission order must be filed within thirty days of the mailing of the order.

{¶ 18} Toliver did not file any documents with the Montgomery County Common

Pleas Court until July 9, 2008. At that time, Toliver filed a document designated as a “notice of appeal.” Toliver was acting *pro se*, not through an attorney. Toliver asked the trial court to allow her thirty days to properly file for judicial review. She also indicated that the OCRC office had received her request for judicial review on June 11, 2008.

{¶ 19} In August 2008, MCJFS filed a motion to dismiss the appeal, based on Toliver’s failure to comply with the filing requirements of R.C. 4112.06(H). Toliver subsequently filed another notice of appeal, and attached various documents from the administrative proceeding. Toliver also filed a “petition to stay the motion to dismiss,” contending that she had filed her notice of appeal within thirty days of her request for an extension of time to file the appeal. After reviewing the matter, the trial court granted the motion to dismiss, finding that compliance with the filing requirements in R.C. 4112.06(H) is jurisdictional.

{¶ 20} Toliver appeals from the judgment of the trial court dismissing her request for judicial review of the OCRC order.

II

{¶ 21} Toliver failed to comply with App. R. 16(A)(3), which requires appellate briefs to set forth one or more assignments of error presented for review. We have construed Toliver’s assigned error to be as follows:

{¶ 22} “THE TRIAL COURT ERRED IN DISMISSING THIS ACTION FOR FAILURE TO COMPLY WITH THE FILING REQUIREMENTS OF R.C. 4112.06(H).”

{¶ 23} Toliver contends that even if her notice of appeal was untimely, the trial court had personal jurisdiction over the parties and subject-matter jurisdiction over the case

under R.C. Chapter 2605. Toliver also contends that OCRC is responsible for her failure to timely file, because she sent a copy of her request for judicial review to OCRC within thirty days of the OCRC order. Toliver notes that OCRC did not respond to her request until after the time for filing an action in common pleas court had expired.

{¶ 24} Civil Rule 12(B)(1) provides for dismissal of actions due to lack of subject-matter jurisdiction. “Appellate review of a trial court's decision to dismiss a case pursuant to Civ. R. 12(B)(1) * * * is de novo.” *Crestmont Cleveland Partnership v. Ohio Dept. of Health* (2000), 139 Ohio App.3d 928, 936. In de novo review, “we apply the same standards as the trial court.” *GNFH, Inc. v. W. Am. Ins. Co.*, 172 Ohio App.3d 127, 2007-Ohio-2722, at ¶16.

{¶ 25} “To dismiss a complaint under Civ.R. 12(B)(1), we must determine whether a plaintiff has alleged any cause of action that the court has authority to decide.” *Crestmont*, 139 Ohio App.3d at 936 (citations omitted). Furthermore, when a trial court determines its own jurisdiction, the court “has authority to consider any pertinent evidentiary materials.” *Nemazee v. Mt. Sinai Medical Center* (1990), 56 Ohio St.3d 109, 111, n. 3.

{¶ 26} The statutory requirements for judicial review of OCRC orders are contained in R.C. 4112.06, which provides, in pertinent part, that:

{¶ 27} “If no proceeding to obtain judicial review is instituted by a complainant, or respondent within thirty days from the service of order of the commission pursuant to this section, the commission may obtain a decree of the court for the enforcement of such order upon showing that respondent is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.” R.C.

4112.06(H).

{¶ 28} In *Ramsdell v. Ohio Civ. Rights Comm.* (1990), 56 Ohio St.3d 24, the Ohio Supreme Court conceded that R.C. 4112.06(H) does not literally state that an action must be filed within thirty days of service of a commission order. However, the court concluded that the mandate to file within thirty days “necessarily follows from the practical operation of the statute.” *Id.* at 25. The court relied on the language in R.C. 4112.06(H), which allows the Commission to obtain a decree for enforcement of its orders if no party appeals within thirty days. Based on this fact, the court observed that:

{¶ 29} “During the thirty days following service of an order, either party is free to file a petition for review and the commission may neither block the action nor take affirmative action of its own. However, once the thirty-day period has passed, the commission is free to obtain judicial enforcement of its order. Consequently, if either party filed a petition for review more than thirty days after service of the order, the commission could simply nullify it by requesting a decree enforcing its order. By the terms of R.C. 4112.06(H), the commission's request would be granted and the parties would have no choice but to abide by the order.” *Id.* at 25.

{¶ 30} The Supreme Court of Ohio, therefore, concluded that the thirty-day time period in R.C. 4112.06(H) is mandatory. The plaintiff in *Ramsdell* had filed her notice of appeal in common pleas court within thirty days after receiving an OCRC order, but more than thirty days after the order was mailed. *Id.* The plaintiff initially contended that her appeal should be considered, because the thirty-day period in R.C. 4112.06(H) is not mandatory. However, the Supreme Court of Ohio disagreed, for the reasons noted.

{¶ 31} The court then considered the plaintiff's contention that three days should be

added to the permitted appeal time period, pursuant to Civ. R. 6(E). This section of the Rules of Civil Procedure allows three days to be added to the time period for taking a prescribed action, where service is made by mail. Under this theory, the plaintiff's notice of appeal would have been timely. However, the Supreme Court of Ohio again rejected the plaintiff's argument. First, the court stressed the fundamental principle "that when the right to appeal is conferred by statute, the appeal can be perfected only in the mode prescribed by statute." *Id.* at 27. The court then held that the Civil Rules cannot not be used to extend the jurisdiction of the courts. *Id.* at 27, citing Civ. R. 82. And finally, the Supreme Court of Ohio concluded that:

{¶ 32} "R.C. 4112.06(H) requires a party to file a petition for review within thirty days of the service of the order. The court of common pleas has jurisdiction to hear the appellant's claim only if the petition is filed within a thirty-day period. * * *

{¶ 33} "After the prescribed time has passed, the court lacks jurisdiction to hear the claim and the Civil Rules may not be applied to extend or reactivate jurisdiction." *Id.* at 28. Accord, *Karnofel v. State*, Mahoning App. No. 08 MA 120, 2009-Ohio-1016, at ¶14 (dismissing an appeal from an OCRC order, based on untimeliness).

{¶ 34} In the present case, OCRC's order was mailed on May 22, 2008, and Toliver did not file her notice of appeal or request for judicial review with the common pleas court until July 9, 2008. This was more than thirty days after the OCRC order was mailed. The trial court, therefore, did not err when it dismissed the appeal for lack of jurisdiction. Toliver's failure to comply with R.C. 4112.06(H) deprived the trial court of jurisdiction to hear the case.

{¶ 35} In her brief, Toliver alleges that she is entitled to file a civil action for

discriminatory practices under R.C. Chapter 4112, and that the statutory time limit for filing is six years. Toliver has also mentioned R.C. Chapter 2506 in passing, but makes no specific reference to rights under that chapter.

{¶ 36} R.C. 2506.01(A) provides for judicial review of orders of commissions and other divisions of political subdivisions. However, this statute does not apply, because OCRC is an agency of the State of Ohio, not an agency of a political subdivision of the State. Appeal from orders of state agencies is provided for in R.C. Chapter 119. However, the Supreme Court of Ohio has held that the Ohio Civil Rights Commission “is not an agency subject to R.C. Chapter 119 for purposes of judicial review.” *Plumbers & Steamfitters Joint Apprenticeship Committee v. Ohio Civil Rights Comm.* (1981), 66 Ohio St.2d 192, 194. Accordingly, Toliver’s remedy in this situation was to appeal under R.C. 4112.06 from the order the OCRC mailed on May 22, 2008. Toliver failed to timely appeal.

{¶ 37} Toliver is correct in contending that she may have been able to file a civil action pursuant to R.C. 4112.99. This statute provides that parties who violate R.C. Chapter 4112 are “subject to a civil action for damages, injunctive relief, or any other appropriate relief.” The statute of limitations for actions brought under R.C. 4112.99 is six years. See, e.g., *Cosgrove v. Williamsburg of Cincinnati Mgt. Co., Inc.*, 70 Ohio St.3d 281, 43, 1994-Ohio-295, syllabus.

{¶ 38} R.C. 4112.99 provides an independent remedy, and actions under the statute are not barred by the filing of an unlawful discriminatory practice charge with OCRC. *Smith v. Friendship Village of Dublin, Ohio, Inc.*, 92 Ohio St.3d 503, 2001-Ohio-1272, syllabus. Notably, Toliver did not file an independent action under R.C. 4112.99. The documents she filed with the trial court are entitled “Notice of Appeal,” and “Notice of Appeal and

Request for Judicial Review and Stay of the Final Commission Order DAYB6 (19875)03172008.” Toliver clearly asked the trial court for judicial review of the OCRC order, and did not attempt to file an independent action.¹ Due to Toliver’s untimely filing, the trial court lacked jurisdiction to review the OCRC order.

{¶ 39} Finally, we reject Toliver’s claim that OCRC is responsible for her untimely filing. The OCRC order indicated that Toliver had thirty days to file for judicial review, and even directed Toliver to the statute that contains filing requirements. In addition, Toliver was represented by an attorney at the time. However, even if Toliver did not have an attorney (and she currently does not), “ ‘a party proceeding pro se is held to the same procedural standards as other litigants that have retained counsel.’ ” *Richardson v. Indus. Comm.*, Montgomery App. No. 22797, 2009-Ohio-2548, at ¶26, quoting from *State ex rel. Fuller v. Mengel*, 100 Ohio St.3d 352, 2003-Ohio-6448, ¶10. Pro se litigants are also “presumed to have knowledge of the law and of correct legal procedure, and are held to the same standard as other litigants.” 2009-Ohio-2548, at ¶26 (citation omitted).

{¶ 40} Toliver’s sole assignment of error is overruled.

III

{¶ 41} Toliver’s sole assignment of error having been overruled, the judgment of the trial court is Affirmed.

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DONOVAN, P.J., and GRADY, J., concur.

¹An independent action may be barred by the release Toliver signed. However, this issue is not currently before us, and we express no opinion on the matter.

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