

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
CRAWFORD COUNTY**

G & D, INC.

CASE NUMBER 3-02-04

APPELLANT

v.

O P I N I O N

**OHIO STATE LIQUOR CONTROL
COMMISSION**

APPELLEE

**CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas
Court.**

JUDGMENT: Judgment affirmed.

DATE OF JUDGMENT ENTRY: August 28, 2002.

ATTORNEYS:

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For Appellant.**

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For Appellee.**

Walters, J.

{¶1} Appellant, G & D Inc., appeals a Crawford County Common Pleas Court decision dismissing its appeal of two orders of the Ohio State Liquor Control Commission ("commission"), whereby the commission suspended appellant's liquor license for thirty days. The basis for the trial court's decision was a lack of subject matter jurisdiction. Appellant argues that the commission had not complied with R.C. 119.09, because the notice of appeal rights contained within the commission's order did not specifically direct it to file its appeal with the Franklin County Common Pleas Court and that the legislature's limitation of such appeals to Franklin County is a facially unconstitutional violation of due process. We find that the proper filing procedure is provided by unequivocal language contained in R.C. 119.12 and that, because the right to appeal an administrative decision is neither inherent nor inalienable and must be conferred by statute, the legislature may condition the exercise of this right as it sees fit. Accordingly, we affirm the judgment of the trial court.

{¶2} Facts and procedural history relevant to issues raised on appeal are as follows. On September 23, 2000, appellant, dba Horseshoe Bar & Restaurant in

Crawford County, Ohio, was cited by the Department of Public Safety/Liquor for violations of R.C. 4301.22(B) and Ohio Adm.Code 4301:1-1-52 in case No. 95-01, and violations of R.C. 4301.22(B) and Ohio Adm.Code 4301:1-1-21 and 4301:1-1-52 in case No. 96-01. A hearing on both cases was held before the commission. On March 14, 2001, the commission sent appellant two orders whereby the commission ordered appellant's liquor license be suspended for a total of thirty days. The orders contained notice of appeal rights indicating that an appeal must be filed within twenty-one days in the "Court of Common Pleas with competent jurisdiction" and with the commission. Counsel for appellant averred that he contacted the commission and asked which county to file the appeal in, and a representative of the commission allegedly informed him to file in Crawford County, the county in which appellant's place of business is located.

{¶3} On April 3, 2001, appellant filed a notice of appeal in the Crawford County Common Pleas Court, including therein a request for a stay of the license suspension during the pendency of the proceedings. On April 4, 2001, appellant filed a copy of the notice of appeal with the commission. On April 6, 2001, appellant then filed a notice of appeal in the Franklin County Common Pleas Court with a request to stay the order of suspension. On April 9, 2001, the

Franklin County court suspended the orders of the commission during the pendency of the appeal. On April 10, 2001, the commission received a cover letter and notice of appeal from appellant indicating that it was sending a "copy" of an "amended" notice of appeal that had been filed with the Franklin County Common Pleas Court.

{¶4} On July 16, 2001, the commission filed a motion to dismiss appellant's appeal in the Franklin County court on the basis that it had failed to file its notice of appeal within twenty-one days of the commission's orders. On September 25, 2001, the Franklin County Common Pleas Court granted the commission's motion to dismiss based upon a lack of subject matter jurisdiction. On October 1, 2001, appellant filed a motion to stay during the pendency of the appeal, which was denied also on the basis that it lacked jurisdiction to order such. Appellant appealed the determination to the Tenth District Court of Appeals, which affirmed the lower court's dismissal.¹

{¶5} On October 16, 2001, the commission filed a motion to dismiss appellant's appeal in the Crawford County Common Pleas Court on the basis that

¹ *G & D, Inc. v. Ohio State Liquor Control Commission* (June 4, 2002), Franklin App. No. 01AP-1189, 2002-Ohio-2806.

appellant had failed to comply with the mandatory statutory requirements for timely perfecting appeals pursuant to R.C. 119.12. On January 28, 2002, the Crawford County Common Pleas Court granted the commission's motion to dismiss on the basis that the Franklin County court was the only court of competent jurisdiction. Appellant now appeals this judgment, asserting two assignments of error for our review:

Assignment of Error No. 1

{¶6} "R.C. 119.09 and due process requires a complete, correct and unambiguous notice of the method by which an administrative finding may be appealed."

{¶7} For its first assignment of error, appellant argues that the trial court erred in failing to find that the commission had not complied with R.C. 119.09, which provides that the commission's order must include "a statement of the time and method by which an appeal may be perfected." Appellant asserts that the notice of appeal rights contained within the commission's order did not specifically direct it to file the appeal with the Franklin County Common Pleas Court.

{¶8} The notice of appeal rights contained in the order of the commission provided: "Respondent is hereby notified this Order may be appealed pursuant to Ohio Revised Code Section 119.12 by filing a Notice of Appeal with the Ohio Liquor Control Commission, setting forth the Order appealed from and the grounds of the appeal. A copy of such Notice shall also be filed with the Court of Common Pleas with competent jurisdiction. Such Notices of Appeal must be filed within twenty-one (21) days after the mailing date of this order. The mailing date is shown on the lower, left corner of this order."

{¶9} R.C. 119.12 provides, in pertinent part: "Any party adversely affected by any order of an agency issued pursuant to an adjudication * * * revoking or suspending a license * * * may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident, *except that appeals from decisions of the liquor control commission, the state medical board, state chiropractic board, and board of nursing shall be to the court of common pleas of Franklin county.*"²

² Emphasis added.

{¶10} Appellant contends that the commission's notice of appeal rights contained in the order was inaccurate and incomplete so as to deny it due process. We disagree. As the Tenth District aptly concluded: "Admittedly, the order could have been more specific and indicated precisely that appellant could appeal only to the Franklin County Court of Common Pleas, rather than nonspecifically refer to 'the Court of Common Pleas with competent jurisdiction.' However, appellant cannot claim that the generality of such notice was misleading or ambiguous given the direct citation to R.C. 119.12, which explicitly indicates that the only court with proper jurisdiction to hear appeals from Liquor Control Commission orders is the Franklin County Court of Common Pleas. The commission's instructions do not direct appellant to appeal to any other court. There could be little confusion of the proper filing procedure given the unequivocal language contained in R.C. 119.12. Appellant fails to present any compelling argument as to why it was unable to follow the directions as set forth in the statute, and it cites no other authority for the proposition that the language used by the commission in the notice of appeal rights constitutes a denial of due process."³ Accordingly, appellant's first assignment of error is overruled.

³ *G & D, Inc. v. Ohio State Liquor Control Commission* (June 4, 2002), Franklin App. No. 01AP-1189,

Assignment of Error No. 2

{¶11} "The amendment to R.C. 119.12 (147 V H 402) stripping the common pleas courts of this state of jurisdiction to hear appeals from decisions of the liquor control commission is unconstitutional."

{¶12} In its second assignment of error, appellant argues that the legislature's amendment of R.C. 119.12 which limited Liquor Control Commission appeals to the Franklin County Common Pleas Court is a facially unconstitutional attempt to limit the public's access to the courts of this state and amounts to a deprivation of its due process rights. However, "[t]he right to appeal an administrative decision is neither inherent nor inalienable; to the contrary, it must be conferred by statute."⁴ "An appeal, the right to 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."⁵ Moreover, as we indicated in *Reames v. Transportation Research*

2002-Ohio-2806, ¶12.

⁴ *Midwest Fireworks Mfg. Co. v. Deerfield Twp. Bd. of Zoning Appeals* (2001), 91 Ohio St.3d 174, 177 (citation omitted); see, also, *Corn v. Bd. of Liquor Control* (1953), 160 Ohio St. 9, 11.

⁵ *Reames v. Transportation Research Center* (August 16, 1985), Logan App. No. 8-84-9, quoting *Zier .v Bureau of Unemployment Compensation* (1949), 151 Ohio St. 123, at paragraph one of syllabus.

Center, "[t]he legislature may condition the exercise of this right as it sees fit[:]"⁶ failure to comply with the dictates of R.C. 119.12 deprives a court of jurisdiction to hear the appeal.⁷ Therefore, the vesting of exclusive jurisdiction with the Franklin County Common Pleas Court is constitutional and does not deprive appellant of his due process rights.

{¶13} Additionally, appellant challenges the constitutionality of provisions for stay of Liquor Control Commission orders contained within R.C. 119.12. Although we note that at least one court has held that similar stay provisions within R.C. 119.12 are constitutional,⁸ because we held above that the trial court lacked jurisdiction to enter an order staying the order, much less proceed in the case in the first instance, it follows that the appellant's challenge is moot and therefore will not be addressed.⁹ Accordingly, appellant's second assignment of error is overruled.

⁶ *Reames, supra*, quoting *Townsend v. Bd. of Zoning Appeals* (1976), 49 Ohio App.2d 402, 404.

⁷ *Id.*; see, also, *Nibert v. Ohio Dept. of Rehab. & Corr.* (1998), 84 Ohio St.3d 100, 102, citing *In re Namey* (1995), 103 Ohio App.3d 322.

⁸ *Plotnick v. State Medical Board* (Sept. 27, 1984), Franklin App. No. Nos. 84AP-225, 84AP-362.

⁹ App.R. 12(A)(1)(c).

{¶14} Having found no error prejudicial to the appellant herein, in the particulars assigned and argued, the judgment of the Crawford County Common Pleas Court is hereby affirmed.

Judgment affirmed.

SHAW, P.J., and HADLEY, J., concur.