[Cite as *Huntsman v. Ohio State Bd. of Edn.*, 2009-Ohio-4282.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

BARD HUNTSMAN	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Appellant	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2008CA00220
OHIO STATE BOARD OF EDUCATION	:	
	:	
	:	
	:	
Appellee	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Stark County Court of Common Pleas Case No. 2008CA00650
JUDGMENT:	AFFIRMED IN PART; DISMISSED IN PART
DATE OF JUDGMENT ENTRY:	August 17, 2009

APPEARANCES:

For Appellant:

LARRY D. SHENISE
P.O. BOX 471
Tallmadge, OH 44278

For Appellee:

RICHARD CORDRAY
Ohio Attorney General

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Assistant Attorney General
30 E. Broad St., 16th Floor
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Delaney, J.

{¶1} Appellant Bard Huntsman appeals the July 22, 2008, decision of the Stark County Court of Common Pleas to affirm the decision of Appellee, Ohio State Board of Education to deny Appellant's application for renewal of his teaching certificate and to permanently bar Appellant from receiving his teaching certificate. Appellant also appeals the trial court's September 3, 2008, judgment entry denying Appellant's motion pursuant to Civ.R. 52, providing for the making of separate findings of fact and conclusions of law. For the reasons that follow, we affirm the September 3, 2008, judgment entry of the Stark County Court of Common Pleas and dismiss the remainder of Appellant's appeal for want of jurisdiction.

STATEMENT OF THE FACTS AND THE CASE

{¶2} On December 19, 1997, Appellant, then a junior high school science teacher and basketball coach with the Perry Local School District, was found guilty by a Stark County jury of one count of gross sexual imposition, a felony of the fourth degree; four counts of disseminating matter harmful to juveniles, felonies of the fourth degree; and one count of disseminating matter harmful to juveniles, a felony of the fifth degree. On December 22, 1997, the trial court entered the convictions, sentenced Appellant to a period of incarceration of 5 1/2 years, and ordered Huntsman to pay a fine of $5,000.00.

{¶3} On December 8, 1998, this Court vacated Appellant's convictions and remanded the matter to the Stark County Court of Common Pleas. *State v. Huntsman* (Dec. 7, 1998), Stark App. No. 98-CA-0012, unreported. Upon remand, on August 13, 1999, the Stark County Court of Common Pleas found Appellant guilty of two counts of contributing to the unruliness or delinquency of a child, in violation of R.C. 2919.14.

{¶4} On February 11, 1998, the Ohio Department of Education ("ODE") sent Appellant notice of Appellee's resolution of intent to suspend, revoke or limit and to automatically suspend Appellant's teaching certificate pursuant R.C. 3319.311. On April 9, 2002, a Hearing Officer with Appellee issued a report and recommendation, finding Appellant sexually abused two students, provided alcohol and sexually explicit books and movies to minors, allowed at least one student to view sexually-oriented websites on the school computer, and brutalized at least two students. The Hearing Officer concluded Appellant's conduct was criminal, immoral and unbecoming to the position of a teacher under R.C. 3319.31(B)(1), and recommended his permanent elementary teaching certificate be revoked.

{¶5} After a May, 2002 meeting, Appellee remanded the case to the Hearing Officer for an opinion on whether the recommendation should extend to Appellant's eight-year teaching certificate as well as his permanent certificate. On June 14, 2002, the Hearing Officer issued another report and recommendation, finding Appellant and his attorney were aware the State Board was taking action relative to both of his teaching certificates, and concluded Appellant's eight-year certificate should also be revoked.

{¶6} On July 9, 2002, Appellee adopted a Resolution revoking Appellant's 1993 eight-year elementary certificate and his permanent teaching certificate. On August 7, 2002, Appellant filed a Notice of Appeal pursuant to R.C. 119.12 in the Stark County Court of Common Pleas. Via Judgment Entry filed June 5, 2003, the trial court affirmed Appellee's decision to revoke Appellant's teaching certificates, finding said decision was supported by reliable, probative and substantial evidence and was in accordance with

law. Appellant filed a timely Notice of Appeal to this Court. We affirmed. *Huntsman v. State Bd. of Educ.,* Stark App. No.2003CA00249, 2004-Ohio-3258.

{¶7} In 2006, Appellant submitted an application to Appellee to renew his eight-year teaching certificate. On November 14, 2006, Appellee notified Appellant that the State Superintendent of Public Instruction ("Superintendent") would consider whether to accept the application upon Appellant's submittal of evidence pursuant to Ohio Admin. Code 3301-73-24. In December, 2006, Appellant submitted a letter and fifty-six pages of documents, including letters from family members, and Ohio Education Association membership card for 2006-2007, and fourteen documents introduced as exhibits in prior administrative and court proceedings. The Superintendent denied Appellant's application for license renewal.

{¶8} Appellant was entitled to a hearing to challenge the denial of the application. Appellant requested a hearing and it was held on April 5, 2007. One of the exhibits introduced by Appellee was the hearing record from the prior disciplinary action. The Hearing Officer found that, "Huntsman has failed to present any evidence of rehabilitation such that it would now be appropriate for him to be licensed or permitted to teach minor children . . . because the misconduct for which [Huntsman's] licenses were previously revoked was so egregious and inappropriate, [Huntsman] should not be eligible for licensure in Ohio, now or in the future."

{¶9} Based upon the Report and Recommendation of the Hearing Officer, Appellee passed a resolution on January 11, 2008, denying Appellant's application and further barring him from receiving licensure now or in the future.

{¶10} Appellant filed a notice of appeal of with the Stark County Court of Common Pleas pursuant to R.C. 119.12. The parties submitted briefs and the trial court held an oral hearing. No additional evidence was submitted to the trial court.

{¶11} On July 22, 2008, the trial court filed its judgment entry affirming the resolution of Appellee to deny Appellant's application for his teaching license and to permanently revoke his teaching license.

{¶12} In response to the judgment entry, Appellant filed a Civ.R. 52 motion for findings of fact and conclusions of law on July 29, 2008.

{¶13} On September 3, 2008, the trial court denied Appellant's motion for findings of fact and conclusions of law. The trial court determined that it did not take or consider any additional evidence on the matter and its review pursuant to R.C. 119.12 was confined to the record as certified by the administrative agency to determine whether Appellee's decision was supported by reliable, probative, and substantial evidence and was in accordance with law.

{¶14} Appellant filed his Notice of Appeal on September 25, 2008. Appellant stated in his Notice of Appeal that he was appealing the trial court's July 22, 2008 and September 3, 2008 judgment entries.

{¶15} Appellant raises five Assignments of Error:

{¶16} "I. THE TRIAL COURT ERRED AS A MATTER OF LAW AND ABUSED ITS DISCRETION TO THE PREJUDICE OF THE APPELLANT WHEN IT FAILED TO ISSUE ANY FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TIMELY REQUESTED BY THE APPELLANT PURSUANT TO RULE 52 OF THE OHIO RULES OF CIVIL PROCEDURE.

{¶17} "II. THE TRIAL COURT ERRED AS A MATTER OF LAW AND ABUSED ITS DISCRETION BY HOLDING THAT THE HEARING OFFICER'S FAILURE TO ISSUE FINDINGS OF FACT AND CONCLUSIONS OF LAW WAS HARMLESS ERROR.

{¶18} "III. THE TRIAL COURT ERRED AS A MATTER OF LAW IN FINDING THAT APPELLANT WAS NOT DENIED DUE PROCESS.

{¶19} "IV. THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT FOUND OHIO ADMINISTRATIVE CODE 3301-73-24 TO BE CONSTITUTIONAL.

{¶20} "V. THE TRIAL COURT [ERRED] AS A MATTER OF LAW IN FINDING THAT THERE WAS RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE PRESENTED TO SUPPORT THE OHIO STATE BOARD OF EDUCATION DECISION."

I.

{¶21} Appellant argues in his first Assignment of Error that the trial court erred in denying Appellant's motion for findings of fact and conclusions of law pursuant to Civ.R. 52. We disagree.

{¶22} Civ.R. 52 provides, in part:

{¶23} "When questions of fact are tried by the court without a jury, judgment may be general for the prevailing party unless one of the parties in writing or orally in open court requests otherwise before the journal entry of a final order, judgment, or decree has been approved by the court in writing and filed with the clerk of the court for journalization, or not later than seven days after the party filing the request has been given notice of the court's announcement of its decision, whichever is later, in which case, the court shall state in writing the conclusions of fact found separately from the conclusions of law. * * * "

{¶24} Appellant appealed the decision of the state agency pursuant to R.C. 119.12. In an administrative appeal taken under R.C. 119.12, the role of the trial court in an appeal is as follows:

{¶25} "The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law . . ."

{¶26} This Court has previously held that a trial court does not err in failing to make separate findings of fact and conclusions of law in an appeal from administrative adjudication pursuant to R.C. 119.12 when it hears no additional evidence. *Rashid v. Ohio Liquor Control Comm*. (1988), 50 Ohio App.3d 32, 552 N.E.2d 663. See also, *General Motors Corp. v. Joe O'Brien Chevrolet, Inc.* (1997), 118 Ohio App.3d 470, 693 N.E.2d 317 (Civ.R. 52 has no application to administrative proceedings unless the court is making factual determinations on the basis of additional evidence not before the administrative agency).

{¶27} In the present case, we find the trial court did not take additional evidence. Appellant did not petition the trial court for the admission of additional evidence, as the trial court stated in its July 22, 2008 judgment entry affirming the decision of Appellee. The July 22, 2008 judgment entry shows that the trial court reviewed the administrative record and based its decision on legal conclusions. It made no new findings from the

administrative record. As such, Civ.R. 52 was not applicable and the trial court properly denied the motion.

{¶28} Appellant's first Assignment of Error is overruled.

II, III, IV, V

{¶29} Appellant argues in his remaining Assignments of Error that the trial court erred in affirming the decision of Appellee in a judgment entry filed July 22, 2008. In light of our disposition of Appellant's first Assignment of Error, we must determine whether we have jurisdiction to review the remainder of Appellant's appeal as it relates to the July 22, 2008 judgment entry.

{¶30} As noted in the Statement of the Facts and the Case, Appellant filed his notice of appeal from the trial court's July 22, 2008 judgment entry on September 25, 2008. Ohio Appellate Rule 4 reads:

{¶31} "**(A) Time for appeal**

{¶32} "A party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed or, in a civil case, service of the notice of judgment and its entry if service is not made on the party within the three day period in Rule 58(B) of the Ohio Rules of Civil Procedure.

{¶33} "**(B) Exceptions**

{¶34} "* * *

{¶35} "*(2) Civil or juvenile post-judgment motion.* In a civil case or juvenile proceeding, if a party files a timely motion for judgment under Civ.R. 50(B), a new trial under Civ.R. 59(B), vacating or modifying a judgment by an objection to a magistrate's decision under Civ.R. 53(E)(4)(c) or Rule 40(E)(4)(c) of the Ohio Rules of Juvenile

Procedure, or findings of fact and conclusions of law under Civ.R. 52, the time for filing a notice of appeal begins to run as to all parties when the order disposing of the motion is entered."

{¶36} We found in Appellant's first Assignment of Error that Civ.R. 52 was not applicable to the present case. Therefore, Civ.R. 52 could not be used pursuant to App.R. 4(B) to toll the time in which Appellant was required to file a notice of appeal of the July 22, 2008 judgment entry under App.R. 4(A). See, *Henderson v. Brost Foundry Co.*, 74 Ohio App.3d 78, 598 N.E.2d 62 (running of time for filing appeal is suspended by motion for findings of fact and conclusions of law only if motion is authorized by civil rule. If a trial court is under no duty to issue findings of fact and conclusions of law, the motion is not one authorized under Civ.R. 52).

{¶37} The trial court's judgment entry was filed on July 22, 2008. Accordingly, the deadline for Appellant to file the notice of appeal was on August 21, 2008. Appellant untimely filed his appeal of the July 22, 2008 judgment entry on September 25, 2008.

{¶38} Accordingly, the remainder of Appellant's appeal is dismissed for want of jurisdiction.

By: Delaney, J.

Gwin, P.J. and

Wise, J. concur.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. JOHN W. WISE

PAD:kgb

[Cite as *Huntsman v. Ohio State Bd. of Edn.*, 2009-Ohio-4282.]

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

BARD HUNTSMAN	:	
	:	
Appellant	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
OHIO STATE BOARD OF EDUCATION	:	
	:	
	:	Case No. 2008CA00220
Appellee	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Stark County Court of Common Pleas is affirmed in part and dismissed in part. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. JOHN W. WISE