

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Patricia Crawford-Cole

Court of Appeals No. L-11-1177

Appellee

Trial Court No. CI0200605976

v.

Lucas County Department of
Job & Family Services

DECISION AND JUDGMENT

Appellant

Decided: August 3, 2012

* * * * *

Terry J. Lodge, for appellee.

Julia R. Bates, Lucas County Prosecuting Attorney, John A.
Borell and Karlene D. Henderson, Assistant Prosecuting
Attorneys, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This is an appeal from a judgment issued by the Lucas County Court of
Common Pleas in an administrative appeal from a decision of the Lucas County
Department of Job & Family Services (“LCDJFS”) which dismissed appellee’s initial

appeal which was filed beyond the 10-day time period to request an appeal. Because we conclude that the trial court properly found that appellee's due process rights had been violated, we affirm.

{¶ 2} This case is here for the second time on appeal, after our remand to the trial court to consider due process and notice issues relating to a 2007 decision issued to appellee by LCDJFS. *See Crawford-Cole v. Lucas Cty. Dept. of Job & Family Servs.*, 6th Dist. No. L-07-1188, 2010-Ohio-1594. On remand, the trial court determined that appellant, LCDJFS, failed to provide proper notice to appellee, Patricia Crawford-Cole, of her right to appeal its decision to revoke her daycare license. The court determined that, since the Ohio Administrative Code section containing the appellee's appeal rights was not enclosed with the letter revoking her license, the agency had "failed to properly provide Ms. Crawford-Cole with the information she needed to properly present her objections to the Department's actions" and violated the requirement of due process of law. Because of the due process violation, appellee's appeal of the department's decision should not have been dismissed for failure to file within the 10-day time limit, since she did not receive proper notice. The trial court then remanded to the agency for "additional proceedings."

{¶ 3} Appellant, LCDJFS, now appeals from the trial court's decision, arguing the following two assignments of error:

I. The trial court in its original dismissal and judgment entry properly found that Crawford-Cole failed to exhaust her administrative

remedies, thus the trial court did not have subject matter jurisdiction to entertain an appeal. The opinions from the higher court did not address or reverse this finding.

II. Due process does not require that appellate regulations be attached to a notice to an aggrieved party in a legal proceeding.

I.

{¶ 4} Appellant claims in its first assignment of error that the trial court did not have subject matter jurisdiction because the appellate court did not address or reverse the finding that appellee failed to exhaust her administrative remedies.

{¶ 5} This court has, in fact, previously addressed this issue. *See Crawford-Cole v. Lucas Cty. Dept. of Job & Family Servs.*, 6th Dist. No. L-07-1188, 2010-Ohio-1594, ¶ 12. In that case, we stated that the “failure to timely request a hearing does not preclude a court's consideration of whether an agency's procedures comply with due process.” *Id.*, citing *Chirila v. Ohio State Chiropractic Bd.*, 145 Ohio App.3d 589, 594, 763 N.E.2d 1192 (10th Dist.2001). As noted in *Chirila*, the due process rights guaranteed by the United States and Ohio Constitutions apply in administrative proceedings since “[t]he fundamental requirement of procedural due process is notice and hearing, that is, an opportunity to be heard.” *Chirila*, 145 Ohio App.3d at 593, 763 N.E.2d 1192, citing *LTV Steel Co. v. Indus. Comm.*, 140 Ohio App.3d 680, 688, 748 N.E.2d 1176 (10th Dist.2000). *See also Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47

L.Ed.2d 18, 33-34 (1976); *Korn v. Ohio State Med. Bd.*, 61 Ohio App.3d 677, 684, 573 N.E.2d 1100 (10th Dist.1988).

{¶ 6} Furthermore, the Supreme Court of Ohio recognized that appellee's due process claim remained valid. In a prior appeal of this case, the Supreme Court of Ohio determined that the 10-day time period of Ohio Adm.Code 5101:2-14-40 applies to appeals from county departments of job and family services decisions and that the 30-day time period for appeals under Chapter 119 only applies to state agencies. *See Crawford-Cole v. Lucas Cty. Dept. of Job & Family Servs.*, 121 Ohio St.3d 560, 2009-Ohio-1355, 906 N.E.2d 409. Since appellee's appeal was not filed within the 10-day time limit, her appeal was dismissed by appellant, making the initial finding that she had failed to exhaust her administrative remedy to be technically true.

{¶ 7} Nevertheless, after determining which time period for appeal was applicable, the Supreme Court of Ohio recognized that the remaining assignments of error might have validity, including whether appellee received proper notice of her right to appeal the agency's decision. *Id.* at ¶ 44. The Supreme Court of Ohio then remanded the case to this court and we ultimately remanded to the trial court for determination of appellee's violation of due process claims. Therefore, despite the initial ruling that appellant had failed to file her appeal within the 10-day time limit, both this court and the trial court had jurisdiction to consider the due process arguments, and whether her appeal should be reinstated.

{¶ 8} Accordingly, appellant's first assignment of error is not well-taken.

II.

{¶ 9} In its second assignment of error, appellant contends that the trial court erred in its determination that the failure to attach the copy of the administrative regulations containing the process and time frame for appeal constituted a violation of appellee's due process rights. We disagree.

{¶ 10} As determined by the Supreme Court of Ohio, R.C. 2506.01(A) governs appeals from final decisions by political subdivisions such as counties. *See Crawford-Cole v. Lucas Cty. Dept. of Job & Family Servs.*, 121 Ohio St.3d 560, 2009-Ohio-1355, 906 N.E.2d 409, ¶ 43. When reviewing an R.C. Chapter 2506 administrative appeal, a trial court considers the "whole record," including "any new or additional evidence admitted under R.C. 2506.03, and determines whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence." *Elam v. Cuyahoga Cty. Dept. of Emp. & Family Servs.*, 8th Dist. No. 95969, 2011-Ohio-3588, ¶ 10; *Manlou v. Cleveland Civ. Serv. Comm.*, 8th Dist. No. 83214, 2004-Ohio-1112, ¶ 6.

{¶ 11} An appellate court's review is generally more narrow in scope since it determines if the trial court abused its discretion in its review of the agency's decision. *See Lorain City School Dist. Bd. of Edn. v. State Emp. Relations Bd.*, 40 Ohio St.3d 257, 261, 533 N.E.2d 264 (1988); R.C. 2506.04. To constitute an abuse of discretion, the ruling must be unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 12} Issues relating to constitutionality and procedural due process arising from the agency's action, however, fall under a less deferential standard of review than the abuse-of-discretion standard. *Slorp v. Dept. of Adm. Serv.*, 10th Dist. No. 97APE08-1136, 1998 WL 212759 (Apr. 30, 1998). On such questions of law, the common pleas court does not exercise discretion and the court of appeals review is plenary. *Black v. State Bd. of Psychology*, 160 Ohio App.3d 91, 2005-Ohio-1449, 825 N.E.2d 1192, ¶ 5 (10th Dist.), citing *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.*, 63 Ohio St.3d 339, 587 N.E.2d 835 (1992), paragraph one of the syllabus.

{¶ 13} To comply with the requirements of procedural due process, administrative agencies must, at a minimum, provide notice and an opportunity for a hearing before depriving individuals of their protected liberty or property interests. *Kellough v. Ohio State Bd. of Edn.*, 10th Dist. No. 10AP-419, 2011-Ohio-431, ¶ 36, citing *Cleveland Bd. of Edn. v. Loudermill*, 470 U.S. 532, 542, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985); *Boddie v. Conn.*, 401 U.S. 371, 377-78, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971); *Ohio Assn. of Public School Employees, AFSCME, AFL-CIO v. Lakewood City School Dist. Bd. of Edn.*, 68 Ohio St.3d 175, 176, 624 N.E.2d 1043 (1994). “(D)ue process is flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972).

{¶ 14} Pursuant to R.C. 5104.011(G), administrative code regulations governing the certification and review of Type B daycare providers were promulgated under Ohio Adm.Code 5101:2-14. Under R.C. 5104.011(G)(2)(g), the rules include “[p]rocedures

for issuing, renewing, denying, refusing to renew, or revoking certificates.” In 2006, at the time applicable to the actions in this case, Ohio Adm.Code 5101:2-14-40(A) provided:

An applicant, certified professional type B or limited home provider, and professional or limited certified in-home aide shall be informed in writing of the right to request a county appeal review when questioning the actions of the county department of job and family services (CDJFS) [EFS in this case] with respect to their certification.

Former Ohio Adm.Code 5101:2-14-40(C) then stated, “The request for a county appeal review shall be submitted in writing to the CDJFS no later than ten calendar days after the mailing date of the CDJFS notification that there will be an adverse action taken on his/her application for certification or his/her certification.”¹

{¶ 15} In this case, the letter outlining appellant’s decision to revoke appellee’s day care license purported to attach a copy of Ohio Adm.Code 5101:2-14-40, the administrative code section applicable to an appeal. That attachment, which would have provided notice of the time period within which an appeal needed to be filed, was not

¹ This provision has been amended since this case was first heard. In 2008, the time to request a hearing from the department was changed to 15 days, instead of 10. Moreover, after a revision in 2010, R.C. 5104.011 now references Chapter 119 throughout, including a suggested avenue for appeal procedures. R.C. 5104.011(J)(5) provides: “The director [of job and family services] shall make a dispute resolution process available for the implementation of sanctions. The process may include an opportunity for appeal pursuant to Chapter 119 of the Revised Code.”

enclosed and the letter itself omitted any reference to the 10-day time period for an appeal of the department's decision to revoke appellee's daycare license.

{¶ 16} Since the time for appeal of the department's decision is of such short duration, at minimum, the letter should have included notice of the ability to appeal and opportunity to be heard, i.e., the time frame within which that appeal must be taken. Moreover, the mere reference to the administrative code section is inadequate, since it does not immediately convey the need for quick action to perfect an appeal.

{¶ 17} Even though no specific statutory requirement exists for such notice, the absence of that information, especially where the appeal time period is brief, violates the right to due process and unfairly diminishes the right to appeal. Therefore, we conclude that the trial court's assessment that appellee was not afforded due process was proper.

{¶ 18} Accordingly, appellant's second assignment of error is not well-taken.

{¶ 19} The judgment of the Lucas County Court of Common Pleas is affirmed. This case is remanded to the Lucas County Department of Jobs and Family Services for a hearing on appellee's appeal. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

Crawford-Cole v. Lucas Cty.
Dept. of Job & Family Servs.
C.A. No. L-11-1177

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
