[Cite as *Golden v. Cleveland*, 2008-Ohio-5999.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91169

PATRICIA COUTO GOLDEN

PLAINTIFF-APPELLANT

vs.

CITY OF CLEVELAND

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-630549

BEFORE: Cooney, P.J., Rocco, J., and Dyke, J.

RELEASED: November 20, 2008
JOURNALIZED:
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N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

COLLEEN CONWAY COONEY, P.J.:

{¶ 1} Plaintiff-appellant, Patricia Golden ("Golden"), appeals the trial court's dismissal of her administrative appeal for lack of subject matter jurisdiction. Finding no merit to the appeal, we affirm.

{¶ 2} In May 2007, Golden was issued a notice of liability for violating Cleveland Codified Ordinance Section 413.031 ("the ordinance"). The notice provided that on April 10, 2007, Golden's vehicle committed a red light violation on Chester Avenue in Cleveland. The violation was photographed by an automatic traffic enforcement camera.

{¶ 3} Golden requested a hearing with the Cleveland Parking Violations Bureau, Photo Safety Division ("Parking Violations Bureau"). The hearing examiner found Golden liable for the violation and imposed a $100 fine.

{¶ 4} Golden appealed the decision by filing a notice of appeal and a complaint for declaratory judgment and injunctive relief in the common pleas court against defendant-appellee, the City of Cleveland ("City"), in care of Mayor Frank Jackson ("Mayor"). She mailed a service copy of the notice of appeal to the City, in care of the Mayor, and to the Ohio Attorney General.[1]

{¶ 5} The notice of appeal indicated that Golden brought her complaint and appeal under R.C. 2506.01. She requested that the common pleas court reverse

[1]The Office of the Attorney General elected not to participate as a party in the lawsuit under R.C. 2721.12, noting that the constitutional challenge to the ordinance was

her fine and declare the ordinance unconstitutional and violative of R.C. 4510.036(B) and (C). She further requested that the trial court issue an injunction preventing the City from issuing any traffic citations pursuant to the ordinance.

{¶ 6} In response, the City moved to strike Golden's complaint for declaratory judgment and injunctive relief and to dismiss the appeal for a lack of subject matter jurisdiction. The City argued that a complaint for declaratory judgment and injunctive relief is an impermissible pleading in an administrative appeal and must be stricken. The City also argued that the common pleas court does not have subject matter jurisdiction over the appeal because Golden failed to file her notice of appeal with the Parking Violations Bureau, the administrative body which found Golden liable, as required by R.C. Chapter 2505. The trial court denied the City's motion to dismiss for lack of subject matter jurisdiction, but granted the City's motion to strike and dismissed Golden's complaint for declaratory judgment and injunctive relief.

{¶ 7} In January 2008, the City renewed its motion to dismiss for lack of subject matter jurisdiction. The City based its motion on two decisions from this court: *Wilt v. Turner*, Cuyahoga App. No. 89320, 2008-Ohio-141, and *Stalter v. Cleveland*, Cuyahoga App. No. 89323, 2008-Ohio-134. The trial court granted the City's renewed motion to dismiss, finding that service of the notice of appeal on the Mayor is insufficient to satisfy the jurisdictional requirements of R.C. 2505.04.

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not ripe.

{¶ 8} Golden now appeals, raising three assignments of error for our review. In the first assignment of error, she argues that the common pleas court erred when it dismissed her administrative appeal. She contends that service on the City, in care of the Mayor, was sufficient to perfect her appeal and confer subject matter jurisdiction. In the second assignment of error, she argues that the court erred in dismissing her administrative appeal because the City is a proper and necessary party pursuant to R.C. 2505.04. In the third assignment of error, she argues that the court based its dismissal on "an erroneous interpretation of *Stalter v. City of Cleveland*."

{¶ 9} We will discuss these assignments of error together as they are interrelated.

{¶ 10} In the instant case, Golden challenged her red light violation through the appeals process set forth in Cleveland Codified Ordinance Section 413.031(k), which provides in pertinent part:

> "Appeals. A notice of appeal shall be filed with the Hearing Officer within twenty-one (21) days from the date listed on the ticket. ***
>
> Appeals shall be heard by the Parking Violations Bureau through an administrative process established by the Clerk of the Cleveland Municipal Court. *** If a finding of liability is appealed, the record of the case shall include the order of the Parking Violations Bureau, the Ticket, other evidence submitted by the respondent or the City of Cleveland, and a transcript or record of the hearing, in a written or electronic form acceptable to the court to which the case is appealed."

{¶ 11} Golden then filed an administrative appeal in the common pleas court challenging the hearing officer's findings under R.C. 2506.01, which provides that:

> "every final order, adjudication, or decision of any officer, *** department, or other division of any political subdivision of the state may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located as provided in Chapter 2505. of the Revised Code, except as modified by this chapter."

{¶ 12} We note that to perfect an administrative appeal, R.C. 2505.04 provides as follows:

> "An appeal is perfected when a written notice of appeal is filed, *** in the case of an administrative-related appeal, with the administrative officer, agency, board, department, tribunal, commission, or other instrumentality involved."

{¶ 13} Furthermore, the notice of appeal must be filed within thirty days of the order and must be filed with the administrative body that issued the decision and with the common pleas court. See R.C. 2505.04; see, also, *Dudukovich v. Lorain Metropolitan Housing Authority* (1979), 58 Ohio St.2d 202, 203-204, 389 N.E.2d 1113; *Board of Zoning Appeals v. Moriyama* (Nov. 1, 2001), Cuyahoga App. No. 78477; *Krickler v. Brooklyn*, Cuyahoga App. No. 85007, 2005-Ohio-2326.

{¶ 14} Here, Golden argues that the City, in care of the Mayor, is the proper entity to be served with the notice of appeal under R.C. 2505.04 because the Parking Violations Bureau is under the administrative control of the Department of Public Safety, which is ultimately under the control of the Mayor. She also argues that since the City was "present" and participated in the action through the hearing examiner, the City remains a proper and necessary party to

the administrative appeal and is required to be named and served a notice of appeal.

{¶ 15} Golden also concedes that *Stalter* and *Wilt* describe the method of perfecting an administrative appeal with the common pleas court relative to an adverse finding under the ordinance. However, she argues that this court did not specifically hold that service of a notice of appeal on the City, in care of the Mayor, would be improper. Rather, she contends that *Stalter* must be read in tandem with *Wilt* for the proposition that more than one party can qualify to receive a notice of appeal in compliance with R.C. 2505.04. As a result, she contends that the trial court's interpretation of *Stalter* was erroneous. We disagree.

{¶ 16} In *Stalter*, the appellant received a violation for speeding, which was photographed by an automatic traffic enforcement camera. After a hearing with the Parking Violations Bureau, the hearing examiner found Stalter liable and imposed a $100 fine. Stalter subsequently filed a notice of appeal with the common pleas court pursuant to R.C. Chapter 2506. He served a copy of the notice of appeal on the City of Cleveland Law Department. In affirming the dismissal of Stalter's administrative appeal for lack of subject matter jurisdiction, this court found that: "in order to challenge the citation, Stalter was required to file the notice of appeal with the Cleveland Parking Violations

Bureau, Photo Safety Division or the Clerk of the Cleveland Municipal Court ***." Id. at ¶17.

{¶ 17} This court recognized in *Stalter* that Cleveland Codified Ordinance Section 413.031(k) "establishes that appeals are to be heard 'by the Parking Violations Bureau through an *administrative process* established by the Clerk of the Cleveland Municipal Court.' (Emphasis added.)" Id. at ¶16. Finding that the hearing before the Parking Violations Bureau is an administrative proceeding, we held that in order to achieve actual delivery upon the administrative body that issued the decision, the notice of appeal should be filed with the Parking Violations Bureau. Id.[2]

{¶ 18} We further found in *Stalter* that, because of the unique way in which the Parking Violations Bureau is structured, filing the notice of appeal with the Clerk of the Cleveland Municipal Court would also be sufficient to achieve actual delivery upon the administrative body that issued the decision. Id. at ¶16, citing *Wilt*.[3]

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[2]By analogy, in *Stalter*, we noted that this court had previously held that: "An appeal from a city board of zoning appeals to a court of common pleas may be perfected only by filing a notice of appeal with the board itself. Service of the notice of appeal on the city's law director, the board's representative, is not sufficient to satisfy the jurisdictional requirements of R.C. 2505.04." *Patrick Media Group, Inc. v. Cleveland Bd. of Zoning* (1988), 55 Ohio App. 3d 124, 562 N.E.2d 921, syllabus.

[3]In *Wilt*, this court found that service on Earle B. Turner (Clerk of the Cleveland Municipal Court) under R.C. 2505.04 was sufficient because the clerk was given the role of the administrative body for purposes of filing the notice of appeal pursuant to Cleveland Codified Ordinance Section 413.031(k).

{¶ 19} In the instant case, the hearing officer found Golden liable for a red light violation. She appealed the decision by sending a copy of the notice of appeal to the City, in care of the Mayor. Although she asked the Parking Violations Bureau to file a complete transcript in the trial court, she never filed the notice of appeal with the Parking Violations Bureau or the Clerk of the Municipal Court.

{¶ 20} As this court held in *Stalter*, in order for Golden to properly challenge the Parking Violations Bureau decision, she was required to file the notice of appeal with the administrative body that issued the decision, which is the Parking Violations Bureau or the Clerk of the Cleveland Municipal Court. See, also, *Wilt*. Therefore, sending a copy of the notice of appeal to the City, in care of the Mayor, was not sufficient to satisfy the jurisdictional requirements of R.C. 2505.04.

{¶ 21} Accordingly, we find that the trial court properly dismissed the case for lack of subject matter jurisdiction.

{¶ 22} Thus, the first, second, and third assignments of error are overruled.

{¶ 23} Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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COLLEEN CONWAY COONEY, PRESIDING JUDGE

KENNETH A. ROCCO, J., and
ANN DYKE, J., CONCUR