[Cite as *In re Jones-Smith*, 2009-Ohio-6470.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93276

IN RE: VALICIA JONES-SMITH

APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-669401

BEFORE: Celebrezze, J., Kilbane, P.J., and Dyke, J.

RELEASED: December 10, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) 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(C) 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(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Appellant, Valicia Jones-Smith ("appellant"), appeals the trial court's denial of her motion for relief from judgment. For the following reasons, we reverse and remand.

{¶ 2} On August 4, 2008, the Child Care Division of the Cuyahoga County Department of Employment and Family Services ("DEFS") upheld the revocation of appellant's Type B child care certification. Appellant filed a notice of appeal from this DEFS decision in the common pleas court on September 3, 2008. The notice of appeal contained a certificate of service stating that a copy was sent via regular U.S. Mail to "Marilyn P. Williams, Manager, Employment and Family Service, 1641 Payne Avenue, Cleveland, Ohio 44114," but the notice of appeal was not filed directly with DEFS.

{¶ 3} On December 2, 2008, the trial court found that appellant did not comply with the statutory requirements for perfecting an appeal from an administrative agency's decision and issued a journal entry providing appellant 14 days to correct any errors. This entry further indicated that failure to correct the errors could result in a dismissal. On December 23, 2008, after appellant had taken no action with regard to the notice of appeal, the trial court issued a journal entry dismissing the appeal.

{¶ 4} On March 13, 2009, appellant filed a motion for relief from judgment and a request for an evidentiary hearing arguing that the dismissal should be

vacated. In support of this argument, appellant claimed that her attorney had moved from one office space to another in December 2008 and had her mail forwarded. Appellant asserted that, as a result of this move, her counsel did not receive the notice advising appellant to correct her notice of appeal until December 24, 2008; appellant provided documentary evidence to this effect.

{¶ 5} DEFS filed its response to appellant's motion for relief from judgment on April 3, 2009 and argued that appellant failed to file her notice of appeal with DEFS as required by statute. According to DEFS, this noncompliance deprived the trial court of any jurisdiction to grant appellant's motion for relief from judgment. Agreeing with DEFS, the trial court issued a journal entry on April 9, 2009 denying the motion for relief from judgment and request for an evidentiary hearing. Relying on R.C. 2505.04 and 2505.07 and *Guysinger v. Chillicothe Bd. of Zoning Appeals* (1990), 66 Ohio App.3d 353, 357, 584 N.E.2d 48, the journal entry stated that appellant was required to file a notice of appeal with DEFS, and "failure to file a notice of appeal with the agency shall divest the trial court of jurisdiction and prevent an appellant's claim from proceeding."

{¶ 6} This appeal followed, where appellant argues that the trial court abused its discretion when denying her motion for relief from judgment.

Law and Argument

{¶ 7} The trial court dismissed appellant's case because she failed to file the notice of appeal with DEFS within 30 days of the decision revoking her Type B child care certification. Appellant is now arguing that she was appealing under

R.C. 119.12, and thus, she was not required to file the notice of appeal with the agency. This argument lacks merit for two reasons.

{¶ 8} First, the Ohio Supreme Court has held that R.C. 119.12 does not apply to proceedings related to the revocation of Type B child care certifications. In holding that the procedural requirements of R.C. 119.12 only apply to state agencies, the Court held that, "[h]ad the General Assembly intended for the notice and hearing requirements set forth in R.C. 119.06 to 119.13 to apply to the revocation of a type B day-care certificate, it could have specified that in the statute, just as it did with respect to type A and other day-care facilities." *Crawford-Cole v. Lucas Cty. Dept. of Job & Family Servs.*, 121 Ohio St.3d 560, 2009-Ohio-1355, 906 N.E.2d 409, ¶31.

{¶ 9} Additionally, relying on R.C. 119.12 would mandate that appellant's case be dismissed. Appellant correctly argues that when filing a notice of appeal pursuant to R.C. 119.12, an appellant may file the original notice of appeal with the common pleas court and simply serve a copy on the agency. *Playmate School & Child Care Ctr. v. Ohio Dept. of Job & Family Serv.*, Licking App. No. 2005-CA-55, 2005-Ohio-5937, ¶9-10.

{¶ 10} What appellant neglects to recognize is the more stringent timeline delineated in R.C. 119.12. Specifically, R.C. 119.12 states that "[u]nless otherwise provided by law relating to a particular agency, notices of appeal shall be filed within fifteen days after the mailing of the notice of the agency's order as provided in this section." Had appellant filed her notice of appeal pursuant to

R.C. 119.12, such notice must have been filed within 15 days of the agency decision from which she was appealing. DEFS issued its final decision revoking appellant's Type B child care certification on August 4, 2008, and appellant's notice of appeal was filed on September 3, 2008. This is clearly outside the 15-day window required by R.C. 119.12. Accordingly, appellant's reliance on R.C. 119.12 is misguided.

{¶ 11} After determining that R.C. 119.12 was not the appropriate avenue for appealing the revocation of Type B child care certifications, the Court in *Crawford-Cole*, supra, addressed what statute should be utilized when appealing county agency decisions. The Court held that "a separate statute in the Revised Code expressly governs appeals from final decisions by political subdivisions such as counties. R.C. 2506.01(A) states that 'every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, 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.'" (Emphasis in original.) *Crawford-Cole*, supra, at ¶43. Accordingly, appellant was required to comply with the procedures set forth in R.C. Chapter 2505 when appealing the revocation of her Type B child care certification.

{¶ 12} The relevant section of R.C. Chapter 2505 is R.C. 2505.04. This section sets forth the procedure for perfecting an appeal and provides that, when appealing the decision of an administrative agency, an individual must file a

written notice of appeal with the administrative agency. R.C. 2505.04. Appellant argues that she complied with this requirement by mailing a copy of the notice of appeal to DEFS and filing the original notice with the trial court.[1] We agree.

{¶ 13} This court considered a similar issue in *Hanson v. Shaker Hts.*, 152 Ohio App.3d 1, 2003-Ohio-749, 786 N.E.2d 487. In *Hanson*, this court held that "[t]he appellees' argument, stripped of its gloss, essentially proposes that jurisdiction is lacking if the notice of appeal delivered to an administrative body bears a file stamp from the court of common pleas. Not only is such a requirement absent from R.C. 2505.04, the notion is so far inconsistent with principles of due process that it cannot be engrafted onto the statute." Id. at ¶10.

{¶ 14} Pursuant to *Hanson*, the trial court did, in fact, have jurisdiction to grant or deny appellant's motion for relief from judgment. In order to perfect her appeal from the DEFS decision, appellant was required to file a copy of her notice of appeal with the administrative agency. We presume that service was effective when the certificate of service was entered on the record and the envelope was not returned for failure of delivery. *Carter v. Miles* (Feb. 3, 2000), Cuyahoga App. No. 76590, at *3. Because appellant served DEFS with a copy of the notice of appeal by regular U.S. mail, she complied with the requirements of R.C.

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[1] It should be noted that DEFS claims it did not receive notice of the appeal until appellant filed her motion for relief from judgment. We find this argument unpersuasive because the notice of appeal contained a certificate of service stating that the notice "was sent via ordinary mail to Marilyn P. Williams, Manager, Employment and

2505.04 when perfecting her appeal from the DEFS decision that revoked her Type B child care certificate.

{¶ 15} Based on the foregoing, appellant complied with all procedural requirements when filing her notice of appeal in the present matter. Despite the trial court's finding to the contrary, it did have jurisdiction to rule on appellant's Civ.R. 60(B) motion for relief from judgment. Accordingly, we reverse and remand to the trial court for proceedings consistent with this opinion.

It is ordered that appellant recover of said appellee 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.

FRANK D. CELEBREZZE, JR., JUDGE

ANN DYKE, J., CONCURS;
MARY EILEEN KILBANE, P.J., DISSENTS (WITH SEPARATE OPINION)

MARY EILEEN KILBANE, P.J., DISSENTING:

Family Service, 1641 Payne Avenue, Cleveland, Ohio 44114[.]"

{¶ 16} I respectfully dissent. I disagree with the majority, who reached the conclusion that appellant properly perfected her appeal from the decision of the Department of Employment and Family Services ("DEFS").

{¶ 17} R.C. 2505.04 provides:

> **"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."**

{¶ 18} At page five of its decision, the majority relies on *Hanson v. City of Shaker Hts.*, 152 Ohio App.3d 1, 2003-Ohio-749, 786 N.E.2d 487, for the proposition that common pleas courts retain jurisdiction over administrative appeals where the appeal is first filed in common pleas court before being filed with the agency. While this is factually correct and rightly decided, it is entirely distinguishable on its facts from the present case, where both parties admit that no appeal was ever filed directly with the DEFS, as R.C. 2505.04 requires.

{¶ 19} Instead, appellant states that her appeal was perfected when she mailed a copy of the notice of appeal with an attached certificate of service. While DEFS, for its part, claims that it never received the notice, even if notice was received, the fact remains that service was not perfected per the

terms of the statute, which mandates a written appeal directly with the agency, not that a copy of the notice of appeal to common pleas court be mailed to it.

{¶ 20} Therefore, regardless of when the appeal was taken in common pleas court, or even if DEFS was served with a copy of the appeal, no notice of appeal was ever filed directly with DEFS.

{¶ 21} The appeal was never perfected pursuant to R.C. 2505.04, the trial court never obtained jurisdiction to rule on the merits of the appeal. The trial court properly dismissed the appeal under the rationale of *Guysinger v. Chillicothe Bd. of Zoning Appeals* (1990), 66 Ohio App.3d 353, 357, 584 N.E.2d 48. I would therefore affirm the decision of the trial court.