

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

THOMAS LAVERY

C. A. No. 24760

Appellant

v.

CITY OF AKRON DEPARTMENT OF
PUBLIC SERVICE

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV 2008 11 7671

Appellee

DECISION AND JOURNAL ENTRY

Dated: December 31, 2009

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Thomas Lavery received a notice from the Akron Department of Public Service, ordering him to clean up debris on his property and mow the grass. Mr. Lavery appealed the notice, but a deputy service director denied his appeal. Mr. Lavery attempted to appeal the deputy service director's decision, but the common pleas court dismissed because Mr. Lavery did not perfect the appeal within thirty days, as required under Sections 2505.04 and 2505.07 of the Ohio Revised Code. Mr. Lavery has appealed the common pleas court's decision, arguing that the deputy service director's decision was incorrect and that the court incorrectly dismissed his administrative appeal. This Court affirms because the common pleas court correctly concluded that Mr. Lavery did not timely perfect his appeal.

ADMINISTRATIVE APPEAL

{¶2} Mr. Lavery’s second assignment of error is that the common pleas court incorrectly dismissed his administrative appeal. Section 2505.03 of the Ohio Revised Code provides that “the final order of any administrative officer, agency, board, department, tribunal, commission, or other instrumentality may be reviewed on appeal by a court of common pleas” An appeal from an administrative final order must be perfected within thirty days after entry of the order. R.C. 2505.07. In “an administrative-related appeal,” “[a]n appeal is perfected when a written notice of appeal is filed . . . with the administrative officer, agency, board, department, tribunal, commission, or other instrumentality involved.” R.C. 2505.04.

{¶3} “[T]he filing of a notice of appeal with the administrative [department] under R.C. 2505.04 is essential to vesting the common pleas court with jurisdiction over the administrative appeal. If an administrative appeal is not so perfected, the common pleas court lacks jurisdiction, and the appeal must be dismissed.” *Thrower v. City of Akron*, 9th Dist. No. 21061, 2002-Ohio-5943, at ¶17 (quoting *Skrzypek v. WOIO TV 19*, 9th Dist. No. 3228-M, 2002-Ohio-3033, at ¶12). “The language used in [R.C. 2505.04] clearly and succinctly requires that the notice of appeal be filed *with* the [department] appealed from, as opposed to the court appealed to.” *Chapman v. Hous. Appeals Bd.*, 9th Dist. No. 18166, 1997 WL 537651 at *3 (Aug. 13, 1997) (quoting *Guyslinger v. Chillicothe Bd. of Zoning Appeals*, 66 Ohio App. 3d 353, 357 (1990)). “Mere notification to the [department] that a notice of appeal has been filed” is not sufficient. *Thrower*, 2002-Ohio-5943, at ¶18. “The statute explicitly requires filing with the [department] itself.” *Id.*

{¶4} The deputy service director issued his decision on October 3, 2008. On November 3, 2008, Mr. Lavery filed a notice of appeal with the common pleas court. Mr.

Lavery has not disputed that he did not file his notice of appeal with the Akron service department. According to him, on November 14, 2008, the service department received a copy of the notice of appeal that he had filed with the common pleas court, but that was not within 30 days of the deputy service director's decision. Even if the service department had received the copy of the notice of appeal within 30 days, it would not have been sufficient to perfect Mr. Lavery's attempted appeal under Section 2505.04. *Chapman v. Hous. Appeals Bd.*, 9th Dist. No. 18166, 1997 WL 537651 at *3 (Aug. 13, 1997). The common pleas court, therefore, correctly concluded that his attempted appeal did not comply with Sections 2505.04 and 2505.07.

{¶5} Mr. Lavery has argued that the dismissal of his attempted appeal violated his due process rights. The right to appeal the decision of an administrative department, however, is conferred only by statute. *Midwest Fireworks Mfg. Co. v. Deerfield Twp. Bd. of Zoning Appeals*, 91 Ohio St. 3d 174, 177 (2001). Because it is a right that is conferred by statute, it “can be perfected only in the mode prescribed by statute.” *Zier v. Bureau of Unemp. Comp.*, 151 Ohio St. 123, paragraph one of the syllabus (1949). Furthermore, the deputy service director's written decision specifically told Mr. Lavery that, if he appealed, his appeal would have to be “perfected within 30 days as required by R. C. Chapter 2505.” Mr. Lavery's second assignment of error is overruled.

{¶6} Mr. Lavery's first assignment of error is that the deputy service director's decision was against the manifest weight of the evidence. Because the common pleas court did not have jurisdiction over Mr. Lavery's administrative appeal, it could not review the merits of the decision. Mr. Lavery's first assignment of error is overruled.

CONCLUSION

{¶7} Mr. Lavery did not perfect his administrative appeal within the time permitted by Section 2505.07 of the Ohio Revised Code. The decision of the Summit County Common Pleas Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

CLAIR E. DICKINSON
FOR THE COURT

WHITMORE, J.
BELFANCE, J.
CONCUR

APPEARANCES:

THOMAS LAVERY, pro se, appellant.

CHERI CUNNINGHAM, Director of Law, JOHN R. YORK and SEAN W. VOLLMAN,
Assistant Directors of Law, for appellee.