[Cite as *Cyr v. State Med. Bd. of Ohio*, 2022-Ohio-25.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Melissa M. Cyr, D.O.,	:	
Plaintiff-Appellant,	:	No. 21AP-273 (C.P.C. No. 21CV-2319)
v.	:	(REGULAR CALENDAR)
State Medical Board of Ohio,	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on January 6, 2022

On brief: *Dinsmore & Shohl, LLP, Daniel S. Zinsmaster,* and *Gregory A. Tapocsi,* for appellant. **Argued:** *Gregory A. Tapocsi.*

On brief: *Dave Yost*, *Attorney General*, and *James T. Wakley*, for appellee. **Argued:** *James T. Wakley*.

APPEAL from the Franklin County Court of Common Pleas

BEATTY BLUNT, J.

{¶ 1} Plaintiff-appellant, Melissa M. Cyr, D.O. ("Dr. Cyr" or "appellant"), appeals from a decision and judgment entry of the Franklin County Court of Common Pleas granting the motion to dismiss of defendant-appellee, State Medical Board of Ohio ("the Board" or "appellee"), and dismissing appellant's administrative appeal filed pursuant to R.C. 119.12 for lack of subject-matter jurisdiction. For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} The pertinent facts and brief procedural history of this case are largely undisputed. Dr. Cyr, an osteopathic physician, sought judicial review of the administrative action of the Board wherein her license was revoked, and she was fined $3,000. *See*

February 10, 2021 Findings, Order, and Journal Entry; Apr. 16, 2021 Motion to Dismiss at 1. Prior to the issuance of the February 10, 2021 Order, the Board issued a Notice of Opportunity for Hearing dated July 8, 2020 to Dr. Cyr at her address of record. (Apr. 26, 2021 Memo Contra at 1.) It is undisputed that no request for hearing was made by Dr. Cyr to the Board prior to its review on February 10, 2021. *Id*.

{¶ 3} It is likewise undisputed that the February 10, 2021 order was mailed to Dr. Cyr on February 11, 2021 via certified mail, return receipt requested, and that the return receipt indicates the order was received on February 13, 2021. (Mot. to Dismiss at 2.) Dr. Cyr admits she received the February 10, 2021 order. (Memo Contra at 1.)

{¶ 4} On February 26, 2021, Dr. Cyr filed a notice of appeal of the February 10, 2021 order with the Board. (Mot. to Dismiss at 2.) There is no question that she did not file a notice of appeal with the trial court until April 14, 2021. *Id*.; Memo Contra at 1.

{¶ 5} On April 16, 2021, the Board filed a motion to dismiss Dr. Cyr's administrative appeal on grounds that the trial court lacked jurisdiction over the administrative appeal. On May 20, 2021, the trial court granted the Board's motion to dismiss, finding that it lacked subject-matter jurisdiction over the R.C. 119.12 appeal. (Jan. 29, 2020 Decision & Entry.)

{¶ 6} Dr. Cyr now timely appeals.

II. Assignment of Error

{¶ 7} Appellant assigns one assignment of error for our review:

> The Common Pleas Court erred by not conducting a hearing to address the State Medical Board's alleged failure to serve its R.C. 119.07 Notice of Opportunity for Hearing and thereby wrongfully dismissed Dr. Cyr's appeal on grounds that she did not timely file a Notice of Appeal of the Board's final adjudication in accordance with R.C. 119.12.

III. Law and Analysis

A. Standard of Review

{¶ 8} A trial court's decision to dismiss an administrative appeal brought pursuant to R.C. 119.12 for lack of subject-matter jurisdiction is a question of law reviewed by the appellate court de novo. *Nkanginieme v. Ohio Dept. of Medicaid*, 10th Dist. No. 14AP-596, 2015-Ohio-656, ¶ 12, citing *Daniel v. Williams*, 10th Dist. No. 10AP-797, 2011-Ohio-1941, ¶ 9, citing *Ford v. Tandy Transp., Inc.*, 86 Ohio App.3d 364, 375 (4th Dist.1993). Subject-

matter jurisdiction refers to the statutory or constitutional power of a court to hear a case. *Nkanginieme* at ¶ 15, citing *Groveport Madison Local School Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 137 Ohio St.3d 266, 2013-Ohio-4627, ¶ 25. In the context of administrative appeals, "[c]ourts of common pleas only have 'such powers of review of proceedings of administrative officers and agencies as may be provided by law.' " *Clifton Care Ctr. v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 12AP-709, 2013-Ohio-2742, ¶ 9, quoting Ohio Constitution, Article IV, Section 4(B). Thus, jurisdiction over an administrative appeal is improper "unless granted by R.C. 119.12 or other specific statutory authority." *Abt v. Ohio Expositions Comm.*, 110 Ohio App.3d 696, 699 (10th Dist.1996).

B. Law and Analysis

{¶ 9} R.C. 119.12 provides, in relevant part, as follows:

> Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and stating that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. * * * The notice of appeal shall also be filed by the appellant with the court. In filing a notice of appeal with the agency or court, the notice that is filed may be either the original notice or a copy of the original notice. Unless 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.

(Emphasis added.) R.C. 119.12(D).

{¶ 10} "In administrative appeals from orders of agencies, the Supreme Court of Ohio has consistently held that failure to comply with the time requirements for filing a notice of appeal deprives the common pleas court of jurisdiction and is fatal to the appeal." *Jones v. Ohio Motor Vehicle Dealers Bd.*, 10th Dist. No. 12AP-785, 2013-Ohio-1212, ¶ 8, citing *Sun Refining & Marketing Co. v. Brennan*, 31 Ohio St.3d 306, 307 (1987) (further citations omitted). Failure to meet the filing deadline set forth in R.C. 119.12 "will result in dismissal of the untimely appeal, as it precludes jurisdiction in the trial court." *Austin v. Ohio FAIR Plan Underwriting Assn.*, 10th Dist. No. 10AP-895, 2011-Ohio-2050, ¶ 6, citing *Thompson & Ward Leasing Co., Inc. v. Ohio State Bur. of Motor Vehicles*, 10th Dist. No. 08AP-41, 2008-Ohio-3101, ¶ 10; *see also L & F Tavern, Inc. v. Ohio Liquor Control Comm.*, 10th Dist. No. 09AP-873, 2010-Ohio-1025, ¶ 16 (stating "[t]here is no question that a party

must comply strictly with the filing requirements prescribed in R.C. 119.12 and that these requirements are jurisdictional. Both the Supreme Court and this court have stated repeatedly that failure to comply with these requirements deprives the trial court of jurisdiction."). (Internal citations omitted.)

{¶ 11} The trial court did not err in dismissing appellant's R.C. 119.12 appeal for lack of jurisdiction. Quite simply, appellant's failure to file a timely notice of appeal with both the Board and the trial court is fatal to her administrative appeal, including the issue of whether or not she was served with the initial notice of opportunity for hearing. *See Jones, Austin,* and *L & F Tavern, supra.*

{¶ 12} In her brief, appellant has cited to numerous cases in support of her proposition that the trial court was required to conduct an evidentiary hearing to determine whether appellant had rebutted the presumption of valid service of the notice of opportunity for hearing, notwithstanding appellant's failure to file a notice of an appeal of the Board's final adjudication order with the trial court. Yet, with one exception, all of the cases cited by appellant are cases concerning service of process in civil lawsuits, *not* service of notices of opportunity for hearing in the context of administrative appeals brought pursuant to R.C. 119.12. All of these cases concerning civil lawsuits, therefore, are wholly inapposite to the instant matter.

{¶ 13} Furthermore, the sole case cited that does involve whether a plaintiff in an R.C. 119.12 appeal was properly served with a notice of opportunity for hearing is a case in which the plaintiff filed timely notices of appeal of the final adjudication order with both the administrative agency and the trial court. In *Chia v. Ohio Bd. of Nursing*, 10th Dist. No. 04AP-14, 2004-Ohio-4709, a nurse sought judicial review in the Franklin County Court of Common Pleas of the Ohio Board of Nursing's decision permanently revoking her license subsequent to her pleading no contest to a criminal charge arising from the nurse taking a patient's Percodan tablet for her own use. *Chia* at ¶ 2-3. Although the appellant in that case asserted she did not receive proper notice of the Board of Nursing's intent to sanction her license and advise her of an opportunity for hearing, this court affirmed the trial court's decision finding that the nursing board's decision to permanently revoke her license was supported by reliable, probative, and substantial evidence and was in accordance with law. *Id.* at ¶ 12.

{¶ 14} In *Chia*, we specifically found the appellant had failed to rebut the presumption of proper service of the notice of opportunity for hearing, and that even if she had rebutted the presumption, she would not have been entitled to a hearing in any event because she failed to contact the nursing board in a timely fashion after she became aware of the nursing board's action. *Id*. at ¶ 9-10. Importantly, nowhere in our decision in *Chia* did we hold, find, or otherwise assert that the trial court should have conducted a hearing in order to determine whether the appellant had sufficiently rebutted the presumption of service of the notice. *See generally Chia*. Thus, in this case, none of the cases cited by appellant in her brief aid her position that the trial court was required to conduct a hearing on the issue of proper service of the notice of opportunity for hearing in this case.

{¶ 15} Appellant's reliance on the trial court decisions of *Sandhu* and *Griffith* is equally unavailing. First, as argued by the Board, neither the trial court nor this court is bound to follow those trial court decisions. *See In re Lebanon Health Care Ctr*., 10th Dist. No. 86AP-168, (Aug. 26, 1986) (finding "[a] decision of one branch of a common pleas court is not binding upon any other branch of the same court"). Second, and more importantly, each of these cases is wholly distinguishable from the instant matter. In both *Sandhu* and *Griffith*, appellants claimed they were not properly served with either the notice of opportunity for hearing *or* the final adjudication orders due to interception of them by staff in their respective offices. *See Sandhu v. State Med. Bd. of Ohio*, Franklin C.P. No. 07-CVF-17446, (Dec. 2, 2008); *Duane L. Griffith, M.D., State Med. Bd. of Ohio*, Franklin C.P. No. 13CV-012030 (Aug. 25, 2015). That is not the case before us now.

{¶ 16} Unlike the appellants in *Sandhu* and *Griffith*, Dr. Cyr does not claim she was not properly served with the final adjudication order. Indeed, she admits she received the final adjudication order, and it is undisputed that she timely filed a notice of appeal with the Board. What she failed to do, however, was timely file a notice of appeal with the trial court as required by R.C. 119.12 so as to properly invoke the jurisdiction of that court. Had Dr. Cyr properly invoked the jurisdiction of the trial court, the trial court would certainly have been free to address her claim of lack of service of the notice of opportunity for

hearing.[1] Without such proper invocation of the trial court's jurisdiction, however, the trial court had neither the discretion nor the power to reach that issue.

{¶ 17} In summation, the failure to timely file notices of appeal with both the Board and the trial court is fatal to appellant's administrative appeal brought pursuant to R.C. 119.12. Therefore, the trial court did not err in dismissing the appeal for lack of subject-matter jurisdiction.

{¶ 18} Accordingly, appellant's sole assignment of error is overruled.

IV. Disposition

{¶ 19} For the foregoing reasons, we overrule appellant's sole assignment of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

MENTEL and NELSON, JJ., concur.

NELSON, J., retired, of the Tenth Appellate District, assigned to active duty under the authority of the Ohio Constitution, Article IV, Section 6(C).

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[1] The record is clear that prior to the Board's revocation of Dr. Cyr's license and imposition of the fine on February 10, 2021, various representatives of the Board had made "multiple attempts to contact her regarding her continuing medical education credit hours" yet she did not respond. *See* May 11, 2021 Record of Proceedings at E3286-V62. Indeed, the Board specifically found Dr. Cyr "had failed to respond to interrogatories as well as a certified letter, two emails, and four telephone messages from Board staff", all directed to the physical address, email address, and telephone number previously provided by Dr. Cyr. *Id*. at 1, 3-4. Although Dr. Cyr attested she "had not been aware of any administrative proceedings involving the Ohio Board" prior to learning her license had been revoked on or about February 13, 2021, she has provided no explanation as to how all of the Board's varied communications failed to reach her at the contacts she had provided. (Ex. A, Dr. Cyr Aff. at ¶ 7, attached to Apr. 26, 2021 Memo Contra.)