[Cite as *Watkins v. Ohio Bd. of Edn.*, 2023-Ohio-2595.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Stanley Watkins,	:	
Appellant-Appellant,	:	
		No. 22AP-694
v.	:	(C.P.C. No. 22CV-3974)
Ohio Board of Education et al.,	:	(REGULAR CALENDAR)
Appellees-Appellees.	:	

D E C I S I O N

Rendered on July 27, 2023

On brief: *Stanley Watkins*, pro se. **Argued:** *Stanley Watkins*.

On brief: *Dave Yost*, Attorney General, and *Ashley A. Barbone*, and *Zoe A. Saadey*, for appellees. **Argued:** *Ashley A. Barbone*.

APPEAL from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Appellant, Stanley Watkins, pro se, appeals from a decision and entry of the Franklin County Court of Common Pleas affirming the order of appellee State of Ohio Board of Education ("Board") which determined appellant had engaged in conduct unbecoming to the teaching profession, in violation of R.C. 3319.31(B)(1), and permanently denied appellant's applications for a four-year alternative resident educator intervention specialist teaching license, and a one-year extension of a four-year alternative resident educator intervention specialist teaching license, and ordered appellant be permanently ineligible to apply for any license, permit, or certificate issued by the Board. For the following reasons, we affirm the common pleas court judgment.

I. Facts and Procedural History

{¶ 2} Appellant was employed by Columbus City Schools ("CCS") as a substitute teacher during the 2013-2014 and 2014-2015 school years. After obtaining a four-year alternative resident educator intervention specialist license, he was hired by CCS in August 2015 as a special education multiple disability teacher at Fairwood Alternative Elementary School ("Fairwood"), working in a kindergarten classroom with seven or eight students. The students ranged in age from five to eight years old. Most had significant physical and/or cognitive challenges and functioned at the level of two to three year olds; many were non-verbal. Appellant was assisted in the classroom by two full-time multiple disability instructional assistants. As a first-year teacher, appellant participated in the CCS Peer Assistance Review ("PAR") program; an experienced CCS teacher served as appellant's PAR consultant.

{¶ 3} Shortly after the 2015-2016 school year began, the instructional assistants and the PAR consultant voiced their concerns to Fairwood school administrators about appellant's performance as a teacher, particularly regarding appellant's inadequate and unsafe classroom management and his falling asleep in the classroom. Following investigation of the matter and an 11-day hearing before the CCS Board of Education, CCS terminated appellant's employment. Appellant exhausted his appellate remedies in January 2019.

{¶ 4} In February 2019, appellant applied for renewal of his four-year alternative resident educator intervention specialist license. In July 2019, he applied for a one-year extension to the four-year alternative resident educator intervention specialist license.

{¶ 5} On November 1, 2019, the Board notified appellant of its intention to determine whether to deny or permanently deny his pending applications. The Board specifically alleged two counts against appellant:

> [Count 1] On or about August 26, 2015-October 28, 2015 you engaged in conduct unbecoming to the teaching profession when you fell asleep and failed to appropriately supervise students in your multiple disability kindergarten classroom. Your conduct includes, but is not limited to, the following:
>
> a. On or about September 28, 2015, when you were asleep during class, a student fell and hit their head.

> b. On or about October 6, 2015, you fell asleep during class.
>
> [Count 2] On or about August 26, 2015-October 28, 2015, you engaged in conduct unbecoming to the teaching profession when you failed to provide appropriate supervision of students in your multiple disability kindergarten classroom. Your conduct includes, but is not limited to, the following:
>
> a. While working on your computer, several students left your classroom without adult supervision.
>
> b. You often failed to appropriately address student injuries.
>
> c. When disciplining students, you often called students "bad boy" or "bad girl."
>
> d. When disciplining students, you often withheld food and/or drink as a form of discipline.

(Record of Proceedings TTT, Ex. 2.)

{¶ 6} On November 12, 2019, appellant requested an evidentiary hearing on the matter be scheduled after June 1, 2020. On May 11, 2021, the Board issued an amended notice of opportunity for hearing, which included the same allegations set forth in the November 1, 2019 notice. The amended notice apprised appellant that his conduct as alleged in Counts 1 and 2 was unbecoming to the teaching profession in violation of R.C. 3319.31(B)(1). The Board also apprised appellant that it would honor his prior request for a hearing and that it was not necessary for him to send a second request for a hearing.

{¶ 7} A hearing officer held a two-day hearing in September 2021. At that hearing, appellee Ohio Department of Education ("ODE") offered numerous exhibits and presented several witnesses, including the two Fairwood instructional assistants, the Fairwood PAR consultant, and the principal of Fairwood during the 2015-2016 school year. Appellant, appearing pro se, cross-examined ODE's witnesses, but did not testify and did not present witnesses or exhibits on his own behalf, with the exception of Joint exhibit 1, which included

several stipulations by the parties.[1] Following the presentation of evidence, and at the hearing officer's direction, the parties filed closing briefs. In his reply to ODE's closing brief, appellant raised arguments and attached three exhibits that were not offered or admitted at the hearing.[2] Upon ODE's motion, the hearing officer struck the offending portions of the reply brief and the three exhibits from the administrative record.

{¶ 8} On January 17, 2022, the hearing officer issued a 90-page report and recommendation concluding appellant engaged in conduct unbecoming to the teaching profession in violation of R.C. 3319.31(B)(1). The hearing officer recommended the Board permanently deny appellant's applications and that appellant be permanently ineligible to apply for any license, permit, or certificate issued by the Board.

{¶ 9} Appellant filed objections to the report and recommendation. In his objections, appellant asserted arguments supported by two exhibits that were not offered or admitted at the hearing.[3] Upon ODE's motion, the hearing officer struck the offending arguments and exhibits from the administrative record.

{¶ 10} At its May 10, 2022 meeting, the Board issued an order in which it accepted the hearing officer's report and recommendation, permanently denied appellant's pending applications, and ordered appellant be permanently ineligible to apply for any license, permit, or certificate issued by the Board.

{¶ 11} Appellant filed a timely notice of appeal to the Franklin County Court of Common Pleas pursuant to R.C. 119.12. Concurrent with his notice of appeal, appellant filed a complaint for declaratory judgment and injunctive relief. Appellant attached several exhibits to the complaint.[4] ODE and the Board (collectively "appellees") filed a motion to strike the complaint and exhibits, or alternatively, to dismiss the complaint. The common pleas court granted the motion to strike and dismissed the complaint.

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[1] Joint exhibit 1 included stipulations regarding both procedural and factual matters. The stipulated procedural matters involved appellant's pending applications, the November 1, 2019 notice of opportunity for hearing, appellant's November 12, 2019 request for a hearing, the May 11, 2021 amended notice of opportunity for hearing, and the September 2021 hearing dates. The stipulated factual matters encompassed appellant's assignment as an intervention specialist in the multiple disability kindergarten classroom, the composition of appellant's students, the presence of two instructional aides in the classroom, appellant's participation in the PAR program, appellant's falling asleep during class on October 6, 2015, and a March 8, 2016 medical diagnosis of appellant's sleep apnea.

[2] One of the exhibits is a January 23, 2019 email from ODE to appellant. The email will be discussed in greater detail later in this decision.

[3] One of the exhibits is the January 23, 2019 email referenced in footnote 2.

[4] One of the exhibits is the January 23, 2019 email referenced in footnote 2.

{¶ 12} In his merit brief before the common pleas court, appellant raised several arguments, including one based on an exhibit that had been stricken from the administrative record.[5] In support of his argument, appellant attached the stricken exhibit to his brief. Appellees filed a motion to strike from appellant's brief any reference to, or arguments based on, the evidence proffered by appellant in his brief and the accompanying exhibit. Appellees separately filed a response to appellant's brief.

{¶ 13} Thereafter, appellant filed a motion seeking to overturn the Board's adjudication based on the lack of subject-matter jurisdiction. In its response to the motion, appellees noted that appellant's arguments were premised on materials that had been stricken from the certified administrative record.

{¶ 14} In a decision and entry filed October 12, 2022, the common pleas court found it had subject-matter jurisdiction over the proceedings and concluded the Board's order was supported by reliable, probative, and substantial evidence and was in accordance with law. The court, therefore, affirmed the Board's order to permanently deny appellant's applications and to permanently deny appellant's eligibility to apply for any license with the Board.

II. Assignment of Error

{¶ 15} Appellant appeals and assigns the following sole assignment of error for our review:

> The trial court's finding that Appellees' decision is supported by reliable, probative and substantial evidence and in accordance with law (*Watkins v. Ohio Bd. Of Ed.*, 22CV003974) is void *ab initio* as the trial court (and hearing officer for Ohio Bd. Of Ed. In the Matter of Watkins) lacked subject matter jurisdiction. The Ohio Board of Ed failed to provided '*statutory*' (R.C. § 119.06) response and hearing within 15 days to Watkins request for hearing on January 23, 2019. Said hearing request was neither responded to filed or granted within the statutory fifteen days required by R.C. § 119.06

(Sic passim.)

[5] The exhibit is the January 23, 2019 email referenced in footnote 2.

III. Analysis

{¶ 16} "The Ohio Department of Education is an agency of the state, and the Ohio State Board of Education * * * is part of a state agency, and its adjudications are subject to the appeal procedures and standards contained in the Ohio Administrative Procedure Act, R.C. Chapter 119." *Miller v. Ohio Dept. of Edn.*, 2d Dist. No. 27359, 2017-Ohio-7197, ¶ 21. R.C. 119.12 provides the standard of review for appeals brought under R.C. Chapter 119. *Bartchy v. State Bd. of Edn.*, 120 Ohio St.3d 205, 2008-Ohio-4826, ¶ 35-36. In such appeals, a court of common pleas "may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law." R.C. 119.12(M). The Supreme Court of Ohio has defined reliable, probative, and substantial evidence as follows: " '(1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value.' " (Footnotes omitted.) *Bartchy* at ¶ 39, quoting *Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St.3d 570, 571 (1992).

{¶ 17} On appeal to an appellate court, the standard of review is more limited. In reviewing whether the common pleas court's determination concerning reliable, probative, and substantial evidence does or does not support the agency's order, the appellate court's role is limited to determining whether the common pleas court abused its discretion. *Niese Holdings, Ltd., L.L.C. v. Ohio Liquor Control Comm.*, 10th Dist. No. 22AP-123, 2022-Ohio-3896, ¶ 10, citing *Duncan v. Liquor Control Comm.*, 10th Dist. No. 08AP-242, 2008-Ohio-4358, ¶ 10, citing *Roy v. Ohio State Med. Bd.*, 80 Ohio App.3d 675, 680 (10th Dist.1992). Absent an abuse of discretion on the part of the trial court, an appellate court may not substitute its judgment for the judgment of the agency or a trial court. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621 (1993). However, "on the question of whether the agency's order was in accordance with law, this court's review is plenary." *Leslie v. Ohio Dept. of Dev.*, 171 Ohio App.3d 55, 2007-Ohio-1170, ¶ 44 (10th Dist.), citing *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.*, 63 Ohio St.3d 339, 343 (1992).

{¶ 18} In his sole assignment of error, appellant does not argue the common pleas court abused its discretion by finding the Board's order was supported by reliable, probative, and substantial evidence and was in accordance with law. Rather, appellant contends that appellees failed to comply with R.C. 119.06 and 119.07 and, as a result, the proceeding was void for lack of subject-matter jurisdiction; accordingly, the Board's order, and the common pleas court's affirmance of that order, should be invalidated.

{¶ 19} Appellant premises his argument on two pieces of correspondence from ODE to appellant—a July 12, 2017 letter and a January 23, 2019 email—and his responsive email to ODE's January 23, 2019 email. (The letter and emails, outlined below, are attached to appellant's brief as exhibits 1 and 2, respectively.)[6]

{¶ 20} The July 12, 2017 letter advised appellant that an investigation had been opened into allegations that he may have engaged in conduct unbecoming to the teaching profession. The letter described the investigative process and advised appellant of his right to participate in the process, with or without counsel, in person or through written correspondence. In addition, the letter explained that at the conclusion of the investigation, a determination would be made whether legal grounds existed to initiate disciplinary action against his application for licensure. Finally, the letter advised that all information obtained during the investigation would remain confidential unless and until disciplinary action was imposed.

{¶ 21} The January 23, 2019 email, titled "ODE Professional Conduct Investigation Decision," notified appellant that the investigation had concluded and requested he voluntarily surrender his teaching credentials. The email advised appellant that voluntary surrender of his credentials would immediately and fully resolve the matter. In addition, the email indicated that a voluntary surrender form was enclosed that would surrender his current credentials and permanently limit him from reapplying. The email informed appellant that by signing the form, he authorized the Board to enter an order revoking his teaching credentials, confirmed his understanding that he was no longer permitted to hold any position in an Ohio school that required a teaching certificate, license, or permit, and waived all rights under R.C. Chapter 119, including, but not limited to, the right to an

[6] Appellant's responsive email was not originally included in exhibit 2. Appellant has filed a motion for leave to refile exhibit 2 with the addition of page two, which includes appellant's responsive email.

administrative hearing, the right to counsel, the right to present evidence and witnesses, the right to cross-examine witnesses, and the right to appeal the Board's order. The email further advised appellant that if he chose not to surrender his teaching credentials, the matter would proceed to an administrative hearing. The email requested appellant notify ODE of his decision within three weeks (February 13, 2019), and that failure to do so would be construed as declining the offer and result in initiation of the administrative hearing process. Later that same day, appellant responded by email, writing, "I don't agree. Please immediately schedule a hearing."

{¶ 22} R.C. 119.06 provides a procedural safeguard to persons affected by adjudication orders of state agencies. *Koutsounadis v. Newton Falls Joint Fire Dist.*, 11th Dist. No. 2009-T-0031, 2009-Ohio-6517, ¶ 12. R.C. 119.06 states that " '[n]o adjudication order shall be valid unless an opportunity for a hearing is afforded in accordance with [R.C. 119.01 to 119.13]. Such opportunity for a hearing shall be given before making the adjudication order except in those situations where this section provides otherwise.' " *Id.* at ¶ 13, quoting R.C. 119.06. Under R.C. 119.06, the opportunity for a preadjudication hearing is required unless one of three enumerated exceptions to the statute applies. *Id.* at ¶ 14, citing *Gen. Motors Corp. v. McAvoy*, 63 Ohio St.2d 232, 234 (1980). It is undisputed that appellant was entitled to a preadjudication hearing in this case.

{¶ 23} " 'R.C. 119.07 prescribes the manner in which the opportunity for hearing should be provided. This process begins with the issuance of a notice informing the individual of his right to a hearing.' " *Id.* at ¶ 16, quoting *State ex rel. Ohio Dept. of Health v. Sowald*, 65 Ohio St.3d 338, 342 (1992). R.C. 119.07 provides that the "notice shall be given by registered mail, return receipt requested, and shall include the charges or other reasons for the proposed action, the law or rule directly involved, and a statement informing the party that the party is entitled to a hearing if the party requests it within thirty days of the time of mailing the notice." The notice "shall also inform the party that at the hearing the party may appear in person, by the party's attorney, or by such other representative as is permitted to practice before the agency, or may present the party's position, arguments, or contentions in writing and that at the hearing the party may present evidence and examine witnesses appearing for and against the party." R.C. 119.07. The provision of R.C. 119.07 upon which appellant expressly relies states that "[w]henever a

party requests a hearing in accordance with this section and section [R.C. 119.06], the agency shall immediately set the date, time, and place for the hearing and forthwith notify the party thereof. The date set for the hearing shall be within fifteen days, but not earlier than seven days, after the party has requested a hearing, unless otherwise agreed to by both the agency and the party."

{¶ 24} Appellant maintains that ODE's January 23, 2019 email constituted notice informing him of his right to a hearing under R.C. 119.07 and that his responsive email requesting a hearing triggered the mandatory requirement that the Board set a hearing within 15 days of his request. Appellant argues that because the Board did not hold a hearing within 15 days of his request, it lacked subject-matter jurisdiction over the proceeding, and therefore, the Board's order permanently denying his applications and permanently barring him from applying for any type of teaching credentials was invalid.

{¶ 25} As a preliminary matter, our review of the record reveals that neither the July 12, 2017 letter nor the January 23, 2019 emails were admitted into evidence at the administrative hearing; indeed, the January 23, 2019 emails were expressly stricken from the record by the hearing officer. In addition, the emails were expressly stricken by the common pleas court. Thus, none of this evidence is part of the certified administrative record. It is well-established that " ' "[a] reviewing court cannot add matter to the record before it, which was not a part of the trial court's proceedings, and then decide the appeal on the basis of the new matter." ' " (Citations omitted.) *Moore v. Moore*, 10th Dist. No. 21AP-276, 2022-Ohio-1862, ¶ 64, quoting *Blevins v. Blevins*, 10th Dist. No. 14AP-175, 2014-Ohio-3933, ¶ 14; *Miller*, 2017-Ohio-7197, at ¶ 69. Because neither the letter nor the emails were expressly made part of the certified administrative record, this court may not consider them.

{¶ 26} Moreover, even if we could consider these materials, they do not support appellant's contention.

{¶ 27} First, the January 23, 2019 email from ODE to appellant does not constitute notice as contemplated by R.C. 119.07. R.C. 119.07 requires that the notice be given "by registered mail, return receipt requested." An email is not sent by registered mail, return receipt requested. Further, R.C. 119.07 requires the notice include information about the charges, the law or rule involved, the right to a hearing if timely requested, as well as details

about the hearing process. The January 23, 2019 email does not delineate any of the information required by R.C. 119.07. Because the January 23, 2019 email does not constitute the notice contemplated by R.C. 119.07, appellant's responsive email requesting a hearing is of no significance.

{¶ 28} Moreover, even if ODE's January 23, 2019 email could be construed as R.C. 119.07 notice and appellant's responsive email could be construed as requesting a hearing, the failure of the Board to afford appellant a hearing within 15 days of that request would not divest the Board of jurisdiction over the proceeding. In *State ex rel. Vernon Place Extended Care Ctr., Inc. v. State Certificate of Need Review Bd.*, 10th Dist. No. 82AP-1044 (Aug. 11, 1983), this court considered whether an administrative agency's violation of the 15-day time requirement set forth in R.C. 119.07 divested the agency of jurisdiction over the proceeding. There, the relator sought a writ prohibiting the respondent from proceeding on a case because no hearing was scheduled or held within the time required by R.C. 119.07. This court concluded that although the time requirement was clearly mandatory and not merely directory, any alleged improper delay was error reviewable on appeal and not an automatic divestiture of the agency's jurisdiction. In so concluding, we defined subject-matter jurisdiction as the "power of the tribunal to hear and determine a case because it is one of the class of cases over which the tribunal has power to exercise jurisdiction."

{¶ 29} Here, appellant does not argue that the discipline of an Ohio teaching license is not one of the class of cases over which the Board and the common pleas court have authority to adjudicate. Rather, appellant's jurisdictional argument derives from the faulty premise that the Board is divested of jurisdiction if a hearing is not scheduled or held within the time required by R.C. 119.07.

{¶ 30} Further, appellant's citation to R.C. 119.06 as establishing that an administrative agency must afford a hearing any time a person requests a hearing is unavailing. The sections of R.C. 119.06 on which appellant relies address circumstances not applicable here, such as when a statute permits the suspension of a license without a prior hearing; when an agency claims that a person is statutorily required to obtain a license and the person claims that the statute does not impose such a requirement; when a person has been refused admission to an examination required for licensure; and when a person has been denied periodic registration of a license.

{¶ 31} It is important to reiterate that appellant was provided an adjudication hearing in accordance with R.C. 119.09. Appellant appeared at the hearing pro se and was afforded the opportunity to cross-examine each of ODE's witnesses and challenge ODE's documentary evidence. Appellant elected not to testify or to present any witnesses or documentary evidence. Following the hearing, the hearing officer issued a lengthy and detailed report recommending the permanent denial of appellant's applications and an order permanently denying eligibility to obtain a teaching license. The Board adopted the report and recommendation and issued an order in accordance therewith. Upon appeal, the common pleas court concluded the Board's order was supported by reliable, probative, and substantial evidence and was in accordance with law. On appeal to this court, appellant presents only a flawed jurisdictional challenge to the proceeding.

{¶ 32} As a final matter, we note appellant's brief contains arguments that are not connected to his assignment of error. Pursuant to App.R. 12(A)(1)(b), appellate courts "determine [an] appeal on its merits on the assignments of error set forth in the briefs under App.R. 16." "This court rules on assignments of error, not mere arguments." (Internal quotations omitted.) *Reese v. Reese*, 10th Dist. No. 22AP-309, 2023-Ohio-360, ¶ 20, fn. 1, quoting *Jordan v. Truelight Church of God in Christ*, 10th Dist. No. 20AP-500, 2021-Ohio-2507, ¶ 9, quoting *Huntington Natl. Bank v. Burda*, 10th Dist. No. 08AP-658, 2009-Ohio-1752, ¶ 21, quoting App.R. 12(A)(1)(b); *Williams v. Barrick*, 10th Dist. No. 08AP-133, 2008-Ohio-4592, ¶ 28 (holding appellate courts "rule[] on assignments of error only, and will not address mere arguments"). Accordingly, we decline to consider the arguments in appellant's brief that do not correspond with his assignment of error.

IV. Conclusion

{¶ 33} For the foregoing reasons, we overrule appellant's sole assignment of error. Appellees' January 11, 2023 motion to strike appellant's exhibits to his merit brief is granted. Appellant's May 23, 2023 motion for leave to file a corrected brief is rendered moot. Accordingly, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

LUPER SCHUSTER and BOGGS, JJ., concur.