

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

L & F Tavern, Inc., :
Plaintiff-Appellant, :
v. : No. 09AP-873
(C.P.C. No. 08CVF-04-5283)
Ohio Liquor Control Commission, : (ACCELERATED CALENDAR)
Defendant-Appellee. :

D E C I S I O N

Rendered on March 16, 2010

Koblentz & Penvose, LLC, and Bryan L. Penvose, for appellant.

Richard Cordray, Attorney General, and Scott A. Longo, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Appellant, L & F Tavern, Inc. ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which dismissed its appeal of an order by appellee, the Ohio Liquor Control Commission ("commission"), revoking appellant's liquor permit. Having concluded that the trial court lacked jurisdiction over the appeal, we affirm.

{¶2} In an order dated February 5, 2008, and mailed on February 19, 2008, the commission rejected appellant's liquor permit renewal applications for 2004-2007. The order stated:

NOTICE OF APPEAL RIGHTS

Appellant is hereby notified that this Order may be appealed pursuant to Ohio Revised Code Section 119.12 by filing a Notice of Appeal with the Ohio Liquor Control Commission, setting forth the Order appealed from and the grounds of the appeal. A copy of such Notice shall also be filed with the Franklin County Court of Common Pleas. Such Notice of Appeal must be filed within twenty-one (21) days after the date of mailing of this order.

{¶3} By letter dated March 7, 2008, and sent by next-day delivery to the commission, counsel for appellant requested the filing of a notice of appeal from the February 5, 2008 order. The commission filed the original notice of appeal on March 10, 2008, which was within the 21-day filing deadline.

{¶4} In the March 7, 2008 letter, appellant's counsel stated that "copies of the enclosed notice of appeal have been served upon the Clerk of Court, Franklin County Court of Common Pleas," among others. All parties agree, however, that the notice of appeal was not filed with the common pleas court at that time.

{¶5} On April 8, 2008, appellant filed a motion to permit the filing of a notice of appeal instanter. Appellant attached an affidavit from counsel, explaining his steps in preparing and filing the notice of appeal with the commission and "providing a copy to the Franklin County Court of Common Pleas, Clerk of Court," among others. Appellant also attached a notice of appeal.

{¶6} The clerk of courts issued a briefing schedule, which identified the notice of appeal as having been filed on April 8, 2008. The parties filed briefs on the merits of the commission's order.

{¶7} On September 29, 2008, the trial court issued an order dismissing the action on two grounds. First, the court found that the notice of appeal filed with the court on April 8, 2008, was an original notice of appeal, not a copy of a notice of appeal filed with the commission. Second, the court denied appellant's motion to file its notice of appeal instanter. The court noted the absence of any assertion that a copy of the March 10, 2008 notice of appeal had been filed with the court and also the absence of any actual filing with the court on or about that date.

{¶8} Although the September 28, 2008 order was identified as final and appealable, it was mailed to the wrong counsel and was not served on appellant or appellant's counsel. Once appellant's counsel became aware of the order, appellant moved for relief from judgment.

{¶9} On August 18, 2009, the trial court filed a decision and entry granting appellant relief from judgment, in part. The court acknowledged that appellant had not received notice of the September 28, 2008 order. Due to this failure of notice, the court ordered that appellant's time for appeal should run from the issuance of the August 18, 2009 order. On the merits of appellant's request for relief, the court denied appellant's motion. The court concluded that appellant had not filed a copy of its March 10, 2008 notice of appeal with the court. And, as to appellant's April 8, 2008 filing, the court noted that appellant had filed an original notice of appeal with the court and a copy of

the notice with the commission. Both filings failed to comply with R.C. 119.12, and the court lacked jurisdiction to hear the appeal.

{¶10} Appellant filed a timely appeal and raises the following assignments of error:

First Assignment of Error

The jurisdiction of the trial court was properly invoked pursuant to O.R.C. §119.12 by the permit-holder by notice of appeal filed on March 10, 2008.

Second Assignment of Error

The trial court erred in both its September 29, 2008 and August 18, 2009 orders, by holding that its jurisdiction was not properly invoked, thereby preventing the Appellant/permit-holder from pursuing his appeal on its merits, contrary to law.

{¶11} Appellant's assignments of error contend that the trial court erred in determining that it lacked jurisdiction to consider appellant's appeal. We review questions of jurisdiction de novo. *Camper Care, Inc. v. Forest River, Inc.*, 10th Dist. No. 08AP-146, 2008-Ohio-3300, ¶6.

{¶12} Appellant first contends that jurisdiction was properly invoked upon the filing of the March 10, 2008 notice of appeal. We disagree.

{¶13} R.C. 119.12 provides, in pertinent part:

Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of the party's appeal. A copy of such notice of appeal shall also be filed by the appellant with the court. Unless otherwise provided by law relating to a particular agency, such 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. * * *

{¶14} The commission's February 5, 2008 order repeated these instructions. Consistent with R.C. 119.12, the order directed appellant to file an original notice of appeal with the commission and to file a copy of that notice with the trial court. Pursuant to R.C. 4301.28(C), the commission stated that the notice must be filed within 21 days of the mailing of the order, i.e., within 21 days of February 19, 2008.

{¶15} Appellant properly filed an original notice of appeal with the commission within the 21-day deadline. Appellant did not, however, file a copy of that notice with the trial court within 21 days. While appellant's counsel has stated throughout the proceedings that he provided a copy of the filing to the clerk of the trial court, there is no evidence within the record that appellant actually filed a copy of the March 10, 2008 notice of appeal with the court, as R.C. 119.12 requires.

{¶16} There 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 of Ohio and this court have stated repeatedly that failure to comply with these requirements deprives the trial court of jurisdiction. See *Hughes v. Dept. of Commerce*, 114 Ohio St.3d 47, 2007-Ohio-2877, ¶16-17 (filing an original notice of appeal with the court and a copy with the administrative agency deprived court of jurisdiction under R.C. 119.12); *Brass Pole v. Ohio Dept. of Health*, 10th Dist. No. 08AP-1110, 2009-Ohio-5021, ¶15 (untimely filing deprived trial court of jurisdiction under R.C. 119.12).

{¶17} Here, appellant did not comply with R.C. 119.12. Although appellant timely filed an original notice of appeal with the commission, appellant did not file a copy of the March 10, 2008 notice of appeal with the trial court.

{¶18} Appellant's April 8, 2008 filing did not cure this procedural defect. The April 8, 2008 filing did not occur within the 21-day deadline. In addition, it was not a copy of an original notice of appeal filed with the commission. The April 8, 2008 notice of appeal contained a heading and case caption that were different from the heading and case caption on the March 10, 2008 notice of appeal; therefore, it was not a copy of that notice of appeal. It also was an original notice of appeal, a copy of which was filed with the commission; therefore, it did not meet R.C. 119.12, which requires the original to be filed with the agency and a copy to be filed with the court. Thus, even if appellant's April 8, 2008 notice of appeal were considered timely, it still would not comply with R.C. 119.12.

{¶19} For all these reasons, we overrule appellant's first and second assignments of error. We affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK, P.J., and BROWN, J., concur.
