

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Earl Legleiter,	:	
Appellant-Appellant,	:	
v.	:	No. 12AP-253 (C.P.C. No. 11CV-15695)
State of Ohio, Ohio Department of Education,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

D E C I S I O N

Rendered on December 4, 2012

Law Office of Brian M. Garvine, LLC, and Brian M. Garvine,
for appellant.

Michael DeWine, Attorney General, and Peggy W. Corn,
for appellee.

APPEAL from the Franklin County Court of Common Pleas

BRYANT, J.

{¶ 1} Appellant-appellant, Earl Legleiter, appeals from a judgment of the Franklin County Court of Common Pleas dismissing his appeal from an order of appellee-appellee, State of Ohio, Department of Education ("department"), that permanently revoked his five-year professional adolescence to young adult teaching license. Because (1) appellant failed to perfect his appeal pursuant to the terms of R.C. 119.12 and (2) the department's notice of right to appeal complies with R.C. 119.09, we affirm.

I. Facts and Procedural History

{¶ 2} By letter dated March 17, 2011, the department notified appellant that it intended to determine whether to limit, suspend, revoke or permanently revoke his five-year professional adolescence to young adult teaching license issued in 2009. The reason for the department's action was that "[o]n or about December 17, 2008, the Colorado State Board of Education denied [appellant's] application for a Colorado Type III Emergency Authorization to teach in Denver Public Schools." The notice explained the disciplinary action in Colorado "was based upon findings that [appellant] engaged in inappropriate conduct toward a former student and [he] provided false information regarding the facts and circumstances surrounding [his] dismissal by the Unified School District No. 489 on [his] Colorado Emergency Authorization application." (State's exhibit No. 1.) The department's notice advised that if appellant desired a hearing, the request must be made in writing and received in the offices of the department within 30 days of the date the notice was mailed.

{¶ 3} By letter dated April 18, 2011, appellant requested a hearing, in response to which the department informed appellant that because his request was untimely the state board would "not honor [his] request for hearing." (State's exhibit No. 3.) The department's letter dated July 1, 2011 notified appellant that his failure to timely request a hearing did not preclude a hearing in the matter but only resulted in his waiving his right to present evidence on his behalf at the hearing.

{¶ 4} A hearing officer for the department heard the matter on July 19, 2011 and, based on the evidence presented, determined appellant falsely attested on his Ohio application for Ohio licensure. As the hearing officer explained, appellant's previous application to teach in the state of Colorado was denied based on appellant's inappropriate actions with a female student when he was teaching in Kansas, as well as his misleading explanation to the Colorado licensing board of what occurred in Kansas. Appellant, however, disclosed none of that information on his application for licensure in Ohio.

{¶ 5} In determining whether appellant's actions warranted disciplinary action, the hearing officer cited and applied R.C. 3319.31(B), which allows the board to sanction a licensed educator for engaging in conduct unbecoming to the applicant or the applicant's

position. The hearing officer noted the state board, in defining conduct unbecoming an applicant or an applicant's position, adopted the licensure code of professional conduct for Ohio educators. The hearing officer enunciated three principles from the code and appellant's conduct violating them:

- Principle one of the code mandates that educators behave in a professional manner; appellant's discipline from another state educational entity or licensing board violated the principle.
- Principle two mandates educators maintain a professional relationship with all students; appellant's inappropriate relationship with a student or minor violated the principle.
- Principle three requires educators to accurately record information a state education entity requires; appellant's falsifying information submitted to the department violated the principle.

{¶ 6} Given the evidence presented, the hearing officer determined appellant's behavior, inconsistent with the requirements of all three principles, violated R.C. 3319.31(B)(1). Accordingly, the hearing officer recommended that the state board revoke appellant's teaching license and declare him permanently ineligible to reapply for future licensure.

{¶ 7} In a letter dated September 8, 2011, the department advised appellant of the hearing officer's report and recommendation and his opportunity to file objections within ten days of receiving the report. By letter dated September 14, 2011, appellant filed objections to the hearing officer's report and recommendation. The state board found the objections unpersuasive and revoked appellant's five-year professional adolescence to young adult teaching license. The state board determined appellant to be permanently ineligible to apply for any license the state board issued.

{¶ 8} In a letter dated December 2, 2011, the department advised appellant of the state board's resolution ordering his five-year license permanently revoked. The letter

informed appellant that, in accordance with R.C. 119.12, he had the right to appeal, and it noted the statutory requirements to perfect an appeal. In a fax dated December 15, 2011, appellant advised the department's director of the office of professional conduct that appellant was appealing the board's resolution because not only did reliable, probative, and substantial evidence not support it but it was not in accordance with law. On December 16, 2011, appellant filed a notice of appeal with the Franklin County Court of Common Pleas.

{¶ 9} The department responded with a motion to dismiss. The department contended that although appellant filed a timely notice of appeal with the common pleas court, the only timely filing giving notice to the department was a faxed letter that was not a copy of the notice of appeal filed with the court. The department thus asserted appellant failed to invoke the jurisdiction of the court, and the court should dismiss the appeal. After the parties briefed the issue, the common pleas court issued a decision and order filed February 28, 2012, granting the department's motion. Relying on R.C. 119.12 and *Berus v. Ohio Dept. of Adm. Servs.*, 10th Dist. No. 04AP-1196, 2005-Ohio-3384, the common pleas court determined appellant failed to comply with the strict requirements of R.C. 119.12. The court interpreted R.C. 119.12 to require appellant "to timely file the original notice of appeal with appellee and a copy * * * with this court." (Decision, at 3-4.) Because he did not do so, the court concluded it lacked jurisdiction over his appeal.

II. Assignments of Error

{¶ 10} Appellant appeals and assigns the following errors:

I. THE COURT OF COMMON PLEAS ERRED BY DISMISSING APPELLANT'S ADMINISTRATIVE APPEAL FOR LACK OF SUBJECT MATTER JURISDICTION BECAUSE APPELLANT PROPERLY PERFECTED THE ADMINISTRATIVE APPEAL PURSUANT TO O.R.C. § 119.12

II. THE COURT OF COMMON PLEAS ERRED BY DISMISSING APPELLANT'S ADMINISTRATIVE APPEAL FOR LACK OF SUBJECT MATTER JURISDICTION BECAUSE APPELLEE FAILED TO COMPLY WITH THE REQUIREMENTS OF O.R.C. § 119.09.

{¶ 11} Appellant's assignments of error, with their multiple subparts, raise two issues: (1) whether appellant properly invoked the jurisdiction of the common pleas court

with the letter it faxed to the department and the notice of appeal filed in the common pleas court and (2) whether the department properly advised appellant pursuant to R.C. 119.09 of the method for perfecting an appeal to the common pleas court from the board's order.

III. Jurisdiction of the Common Pleas Court - R.C. 119.12

{¶ 12} Appellant first contends the common pleas court erred in dismissing his appeal for lack of jurisdiction, as he complied with the requirements of R.C. 119.12 in invoking the jurisdiction of the common pleas court. He does not dispute that the notices of appeal filed with the department and the common pleas court were not exact copies of one another. He, however, points out that both notices of appeal were originals, were timely filed with both the department and the common pleas court, and expressly stated the basis for appellant's appeal. "A motion to dismiss for lack of subject-matter jurisdiction raises questions of law, which we review de novo." *Courtyard Lounge v. Bur. of Environmental Health*, 190 Ohio App.3d 25, 2010-Ohio-4442, ¶ 5 (10th Dist.).

{¶ 13} Appellant acknowledges that the prior version of R.C. 119.12 required a party first to file an original notice of appeal with the agency and an exact copy of the original notice with the common pleas court. Appellant appropriately points out that the legislature amended R.C. 119.12 and, unlike the prior version, the current version requires a party to "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." R.C. 119.12 (also noting the notice of appeal may, but is not required to, set forth the specific grounds for the appeal beyond the general statement that reliable, probative, and substantial evidence does not support the order and the order is not in accordance with law). Neither party disputes that appellant complied with the provisions of R.C. 119.12 requiring that he delineate the basis for his appeal.

{¶ 14} The revised statute further requires the notice of appeal "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." R.C. 119.12. The department contends appellant failed to comply with those statutory requirements of

amended R.C. 119.12 and therefore failed to invoke the jurisdiction of the common pleas court.

{¶ 15} *Courtyard* addressed the change from the former to the current version of R.C. 119.12. *Courtyard* initially noted that "[w]hen the right to appeal is conferred by statute, an appeal can be perfected only in the manner prescribed by statute." *Id.* at ¶ 6, citing *Ramsdell v. Ohio Civ. Rights Comm.*, 56 Ohio St.3d 24, 27 (1990). As a result, "this court has required strict compliance with the filing requirements of R.C. 119.12 in order for jurisdiction to vest in the trial court." *Courtyard* at ¶ 6. *Courtyard*, however, concluded the revised version of R.C. 119.12 no longer requires the notice of appeal filed with the agency to be an original and the notice of appeal filed with the court to be a copy. As a result, filing an original notice of appeal with both the agency and the common pleas court "is of no consequence with respect to the trial court's subject-matter jurisdiction." *Id.* at ¶ 9. Because the common pleas court here based its dismissal of appellant's appeal on his failure to file with the common pleas court a *copy* of the original notice of appeal filed with the department, it erred.

{¶ 16} Even so, *Courtyard* does not salvage appellant's notices of appeal. Unlike *Courtyard* where two original notices of appeal were filed, one in the common pleas court and one with the agency, appellant filed two notices of appeal that were not identical to each other. R.C. 119.12, as revised, loosened the requirements from the prior version of the statute, but it nonetheless requires that a notice of appeal be filed with the agency and that "[t]he notice of appeal shall also be filed by the appellant with the court." (Emphasis added.) R.C. 119.12. The statute's use of "the" indicates the notice is the same as the one filed with the agency, whether an original or a copy of the original; the statute's use of original and copy similarly indicates the two documents are to be identical. Appellant failed to file two identical documents.

{¶ 17} Although we recognize the decision in *Zidian v. Dept. of Commerce*, 7th Dist. No. 11 MA 39, 2012-Ohio-1499, reaches a different conclusion, it premises its decision largely on whether the filed notice advised the agency and the court of the purpose of the appeal. Rather than use a substantial compliance approach to R.C. 119.12, this court consistently has required strict compliance with the statute that, in its current version, allows an appellant to file an original or a copy of the original with either the

agency or the common pleas court but nonetheless continues to require the two documents be identical. Because appellant failed to comply with R.C. 119.12's requirements, he failed to invoke the common pleas court's jurisdiction.

{¶ 18} Accordingly, appellant's first issue is not persuasive.

IV. Notice from the Agency - R.C. 119.09

{¶ 19} Appellant next contends the common pleas court erred in dismissing his appeal for lack of subject-matter jurisdiction when the department failed to comply with the procedural requirements of R.C. 119.09. According to appellant, the department's letter did not adequately notify appellant of the method for perfecting his appeal. Because, under *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 2007-Ohio-2877, paragraph one of the syllabus, the department's compliance with the statutory provisions of R.C. 119.09 is a procedural prerequisite to triggering the 15-day period to perfect an appeal, appellant suggests the department's failure to comply with R.C. 119.09 renders his appeal to the common pleas court premature and provides him the opportunity to file a timely appeal when the department eventually complies with R.C. 119.09.

{¶ 20} The department's notice to appellant stated: "In accordance with Section 119.12 of the Ohio Revised Code, you have the right to appeal the State Board's order. If you desire to appeal, you must file a notice of appeal with the Ohio Department of Education setting forth the order appealed from and stating that the order is not supported by reliable, probative, and substantial evidence and is not in accordance with the law" and "must also file the notice of appeal with the Court of Common Pleas in the county of your residence or the county in which your place of business is located." (Record of Proceedings, Admin. Appeal H.) It further specified the notice of appeal "must be filed with the Ohio Department of Education and the appropriate Court of Common Pleas within fifteen (15) days after the mailing of this notice." (Record of Proceedings, Admin. Appeal H.)

{¶ 21} *Hughes* deems the agency's statement for the time and method by which to perfect an appeal to be sufficient when the "agency's description of * * * appeal rights tracks the language" of R.C. 119.12. *Id.* at ¶ 17. Because the department's notice tracks the language of R.C. 119.12 regarding appeal procedures, it complies with *Hughes*. In doing so, the notice refers to a notice of appeal to be filed with the agency, advising also that the

notice of appeal is to be filed in the common pleas court. Although the department's notice could have been more explicit, it complies with R.C. 119.09 in that it tracks the statutory language and thus is as explicit as the statute itself.

{¶ 22} Accordingly, appellant's second issue lacks merit.

V. Disposition

{¶ 23} Because both of appellant's issues lack merit, we overrule appellant's two assignments of error and affirm the judgment of the Franklin County Court of Common Pleas, albeit for reasons other than those stated in the common pleas court's decision.

Judgment affirmed.

TYACK and FRENCH, JJ., concur.
