

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001684-MR

EDDIE RUSSELL, D/B/A UR BAR

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE ANDREW SELF, JUDGE
ACTION NO. 14-CI-00925

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF ALCOHOLIC
BEVERAGE CONTROL; CHIEF GUY
HOWIE; AND HOPKINSVILLE POLICE

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: JONES, J. LAMBERT, AND MAZE, JUDGES.

J. LAMBERT, JUDGE: Eddie Russell, proceeding *pro se*, has appealed from the September 24, 2014, order of the Christian Circuit Court dismissing his administrative appeal from an order of the Department of Alcoholic Beverage

Control revoking his beer license. Because we agree that Russell's appeal to the circuit court was untimely, we affirm the order on appeal.

While our review of this case is hampered by the fact that the administrative record, including the order revoking Russell's beer license, is not part of the certified record on appeal, we shall attempt to set forth the salient facts and procedural history of this case. In February 2012, Russell operated a bar in Hopkinsville, Kentucky, called UR BAR. He held a beer license for the establishment. According to Russell, he made complaint to Police Chief Guy Howie that another officer had been stalking his bar because he did not approve that his former girlfriend worked there. Chief Howie filed a complaint with the Hopkinsville Alcoholic Beverage Control (ABC) Administrator seeking to revoke Russell's beer license. In mid-February, Russell was arrested on charges that arose in Graves County, Kentucky.¹ While he was being held at the detention center on these charges, Chief Howie served Russell with notice of the petition and the hearing date of April 4, 2012. Russell stated that Chief Howie "assured" him that he would be transported to the hearing site. However, Russell gave his power of attorney to his bar manager to represent UR BAR at the hearing and provide evidence to contest the complaint. Russell did not attend the April 4, 2012, hearing

¹ Russell states throughout his pleadings and in his brief that he was indicted on and arrested for charges arising out of Calloway County. Our independent research establishes that Russell was indicted and convicted by the Graves Circuit Court on charges of complicity to murder, complicity to attempted murder, complicity to first-degree robbery, complicity to first-degree burglary, and complicity to first-degree wanton endangerment, all related to a crime that took place in February 2012. He was convicted following a jury trial and sentenced to 25 years' imprisonment. The direct appeal of his conviction is currently pending before the Supreme Court of Kentucky.

and therefore was declared to be in default, his witnesses were not permitted to speak or present any evidence, and his beer license was revoked at the conclusion of the hearing. As noted previously, a copy of this order has not been included in the certified record and was not attached to any of the appellate briefs.

More than two years later, on August 8, 2014, Russell filed a *pro se* administrative appeal in Christian Circuit Court seeking review of the ABC Administrator's revocation order.² He named the Department of the ABC, Chief Howie, and Hopkinsville Police as respondents. In the memorandum attached to his appeal, Russell contended that he was not provided with his constitutional due process rights to be heard and defend himself. Chief Howie and Hopkinsville Police moved to dismiss Russell's appeal as untimely because it was not filed within thirty days of the revocation order, citing Kentucky Revised Statutes (KRS) 13B.140(1) and *Gallien v. Kentucky Bd. of Med. Licensure*, 336 S.W.3d 924, 928 (Ky. App. 2011). In response, Russell continued to argue that he was not afforded his due process rights. Following a brief hearing on September 24, 2014, the circuit court granted the motion to dismiss and entered an order to this effect. This appeal now follows.

On appeal, Russell continues to argue that he was denied his constitutional due process rights during the revocation hearing because he was unable to attend it or defend against the complaint because he was being held on

² Russell attached a copy of a motion to vacate the revocation of his beer license he filed with the ABC Board in February or March of 2014. Again, the order ruling on this motion, if one was entered, is not in the record or attached to a brief.

criminal charges. Chief Howie and Hopkinsville Police argue that the dismissal should be affirmed because Russell's appeal to the circuit court was untimely. We agree that the order of dismissal must be affirmed.

Pursuant to its Code of Ordinances (HCO), the City of Hopkinsville adopted KRS Chapters 241, 242, 243, and 244, which contain the state Alcoholic Beverage Control laws. *See* HCO § 111.02. KRS 241.160 provides for the creation by ordinance of a city alcoholic beverage control administrator for cities that are wet or moist. The City of Hopkinsville created this position in HCO § 111.03. Pursuant to the applicable statutes, proceedings before the administrator and appeals from an administrator's order must be conducted in accordance with KRS Chapter 13B. *See* KRS 243.520; KRS 243.560. KRS 13B.140(1) provides that "[a] party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service."

In the present case, the ABC Administrator entered the final order revoking Russell's beer license on April 4, 2012, and we presume that the order was mailed or delivered to Russell at that time. Russell has not alleged that he did not receive the order or that he received it at a later date. The record is clear that Russell did not file his appeal of the revocation order until August 8, 2014, more than two years after his time to seek an appeal of that ruling had expired. Therefore, the circuit court lacked jurisdiction to hear Russell's appeal:

Our precedent holds that “[w]here an appeal is filed in the circuit court by grant of a statute, as in this case, the parties must strictly comply with the dictates of that statute.” *Spencer County Preservation, Inc. v. Beacon Hill, LLC*, 214 S.W.3d 327, 329 (Ky. App. 2007). This is because “[a]n appeal from an administrative decision is a matter of legislative grace and not a right, and thus the failure to strictly follow statutory guidelines for the appeal is fatal.” *Id.*; see also *Bd. of Adjustments of City of Richmond v. Flood*, 581 S.W.2d 1, 2 (Ky. 1978); *Ky. Unemployment Ins. Comm’n v. Providian Agency Group, Inc.*, 981 S.W.2d 138, 139–40 (Ky. App. 1998); *Taylor v. Duke*, 896 S.W.2d 618, 621 (Ky. App. 1995).

Gallien, 336 S.W.3d at 928. Accordingly, the circuit court properly dismissed Russell’s appeal as a matter of law because he failed to follow the statutory requirements for bringing an administrative appeal.

For the foregoing reasons, the order of the Christian Circuit Court dismissing Russell’s administrative appeal is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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