[Cite as *Downie v. Lake Metro. Hous. Auth.*, 2015-Ohio-811.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

MS. DINA DOWNIE,	:	**O P I N I O N**
Plaintiff-Appellant,	:	
		CASE NO. 2014-L-060
- vs -	:	
COUNTY OF LAKE, LAKE COUNTY, OHIO,	:	
Defendant,	:	
LAKE METROPOLITAN HOUSING AUTHORITY,	:	
	:	
Defendant-Appellee.		
	:	

Administrative Appeal from the Lake County Court of Common Pleas, Case No. 14 CV 000395.

Judgment: Affirmed.

Michael A. Heller, The Brueck Law Firm, LLC, 333 Babbitt Road, #301, Euclid, OH 44123 (For Plaintiff-Appellant).

Richard A. Hennig, Hennig, Szeman & Klammer Co., L.P.A., 10 West Erie Street, Suite 106, Painesville, OH 44077 (For Defendant-Appellee, Lake Metropolitan Housing Authority).

DIANE V. GRENDELL, J.

{¶1} Appellant, Dina Downie, appeals the dismissal of her administrative appeal in the Lake County Court of Common Pleas as untimely. Downie sought judicial

review of appellee, Lake Metropolitan Housing Authority's, termination of her participation in the Housing Choice Voucher Program. The issues before this court are whether the dismissal of Downie's administrative appeal violated her due process rights and whether Lake Housing Authority failed to accommodate Downie's mental illness. For the following reasons, the judgment of the lower court is affirmed.

{¶2} On February 18, 2014, Downie filed a Complaint/Administrative Appeal in the Lake County Court of Common Pleas against Lake County and the Lake Metropolitan Housing Authority. Downie alleged that she "was an approved recipient of housing assistance from the Housing Choice Voucher Program administered by Defendant" and was terminated from the Program "on or about 09/30/2013." Downie alleged that she was terminated from the program "without proper cause," "proper notice," or a "fair or proper hearing or process." Downie further alleged that the "Defendant failed to accommodate [her] disability(s)."

{¶3} On April 11, 2014, the Lake Housing Authority filed a Motion to Dismiss, "based on Plaintiff's failure to timely file the within action." On May 12, 2014, Downie filed a Brief in Opposition. On May 19, 2014, the Lake Housing Authority filed a Reply Brief.

{¶4} On May 23, 2014, the court of common pleas entered a Judgment Entry, dismissing the administrative appeal. The court found "that Appellant's appeal was served upon the Appellee more than thirty days from September 30, 2013," the date on which her participation in the Voucher Program terminated, and, thus, "this is an untimely appeal and [the court] has no subject matter jurisdiction to hear it."

{¶5} On June 19, 2014, Downie filed her Notice of Appeal. On appeal, she raises the following assignments of error:

{¶6} "[1.] The Trial Court erred in granting Defendant's (Appellee's) Motion to Dismiss.

a. Appellee's Motion to Dismiss relied on an invented premise for which there is no authority under applicable law (that is, under Appellee's extrapolation, that the 30 day appeal window provided for in ORC 2505.07 ostensibly ran from Ms. Downie's Jan. 15, 2014, affidavit of indigence).

b. The Court erred by holding that Appellant did not file her Administrative Appeal within 30 days of the Final Administrative Order, *where there was no Final Administrative Order*.

c. The Court erred by deducing that the Administrative Appeal was not filed within 30 days of Sept. 30, 2013, where, Sept. 30, 2013 was not a controlling nor dispositive date."

{¶7} "[2.] The Trial Court erred in not finding Appellant's due process rights were violated."

{¶8} "[3.] The Trial Court erred in failing to find that Appellees failed to reasonably accommodate Appellant's disabilities."

{¶9} On appeal, Downie argues the trial court erred in dismissing her appeal as untimely, identifying September 30, 2013, the date on which her participation in the Voucher Program terminated, as the date when the time for filing an appeal began to

run, inasmuch as that date did not constitute a "final order" for the purposes of filing an administrative appeal. We disagree.

{¶10} We begin our analysis with the propositions that, in administrative appeals, the courts of common pleas exercise appellate jurisdiction, *AT&T Communications of Ohio, Inc. v. Lynch*, 132 Ohio St.3d 92, 2012-Ohio-1975, 969 N.E.2d 1166, ¶ 15, and that "[a]ppellate jurisdiction is limited to the review of final orders." *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905, 843 N.E.2d 164, ¶ 18.

{¶11} "The courts of common pleas * * * shall have * * * such powers of review of proceedings of administrative officers and agencies as may be provided by law." Ohio Constitution, Article IV, Section 4(B).

{¶12} Pursuant to this grant of authority, the General Assembly enacted R.C. 2506.01, which provides: "every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located as provided in Chapter 2505 of the Revised Code." R.C. 2506.01(A).

{¶13} " After the entry of a final order of an administrative officer, agency, board, department, tribunal, commission, or other instrumentality, the period of time within which the appeal shall be perfected, unless otherwise provided by law, is thirty days." R.C. 2505.07.

{¶14} "The review of proceedings of administrative officers and agencies, authorized by Section 4(B), Article IV of the Ohio Constitution, contemplates quasi-judicial proceedings only, and administrative actions of administrative officers and

agencies not resulting from quasi-judicial proceedings are not appealable to the Court of Common Pleas under the provisions of R.C. 2506.01." *M.J. Kelley Co. v. Cleveland*, 32 Ohio St.2d 150, 290 N.E.2d 562 (1972), paragraph one of the syllabus. "Proceedings of administrative officers and agencies are not quasi-judicial where there is no requirement for notice, hearing and the opportunity for introduction of evidence." *Id.* at paragraph two of the syllabus; *AT&T*, 132 Ohio St.3d 92, 2012-Ohio-1975, 969 N.E.2d 1166, at ¶ 8 (a quasi-judicial proceeding is one "in which notice, a hearing, and the opportunity for the introduction of evidence have been given").

{¶15} "Federal regulations governing the Housing Choice Voucher Program require the opportunity for an informal hearing to determine whether the agency's decision to terminate assistance is in accordance with law." *Hammond v. Akron Metro. Hous. Auth.*, 9th Dist. Summit No. 25425, 2011-Ohio-2635, ¶ 8. Before terminating assistance payments under the Voucher Program, a public housing agency (PHA) "must notify the family[1] that * * * the family may request an informal hearing on the decision" at which the family "must be given the opportunity to present evidence, and may question any witnesses." 24 C.F.R. 982.555(c)(1) and (e)(5).

{¶16} Downie's Complaint/Administrative Appeal states that she was terminated from the Voucher Program "on or about 09/30/2013." The circumstances of Downie's termination are outlined in a letter, dated August 22, 2013, from HCV Cert Specialist, Kelly Coffman, to Downie. The letter provides in relevant part:

> This letter is to inform you that your Housing Assistance Payments contract and program participation will be terminated effective **9/30/13**.

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1. "Family" is defined as "[a] person or group of persons * * * approved to reside in a unit with assistance under the program." 24 C.F.R. 982.4(b).

> This is due to the Housing Choice Voucher Program violations that we have identified below * * *. Please find attached a request for an informal hearing in order for you to present information to challenge the Housing Authority's findings. The attached form must be completed and received by Housing Choice Voucher Program management within ten business days from the date of this letter. If a request for hearing is not received within ten business days, your right to a hearing will be waived and your termination will stand.

{¶17} Downie maintains that "it is not persuasive nor reasonable that the trial Court can hold that Sept. 30 was a 'final order' simply because an ostensible Aug. 22 letter indicated that Appellant would be terminated from the HCVP program *on* Sept. 30." Appellant's brief at 15.

{¶18} On the contrary, the August 22 letter represents a decision of the Housing Authority for which notice, a hearing, and the opportunity for the introduction of evidence were mandated by federal law. "To be clear, whether a proceeding is a quasi-judicial one from which an R.C. 2506.01 appeal may be taken depends upon what the law requires the agency to do, not what the agency actually does." *State ex rel. Mun. Constr. Equip. Operators' Labor Council v. Cleveland*, 141 Ohio St.3d 113, 2014-Ohio-4364, 22 N.E.3d 1040, ¶ 36 (cases cited); *Hennosy v. Civ. Serv. Comm.*, 10th Dist. Franklin No. 10AP-417, 2010-Ohio-5971, ¶ 13 ("[i]n determining whether an agency proceeding is quasi-judicial, the court must focus on whether the statute or rule governing the proceeding required notice and a hearing, not whether notice and a hearing were provided"); *Nuspl v. Akron*, 61 Ohio St.3d 511, 516, 575 N.E.2d 447

(1991) (where "the opportunity for the appellant to state his or her case in a hearing, which would necessarily involve the introduction of evidence by way of exhibits and/or testimony" is "implicit" in the administrative rules, "the procedure * * * is of the 'quasi-judicial' nature contemplated in *Kelley*").

{¶19} Accordingly, the Housing Authority's decision to terminate Downie's participation in the Voucher Program became final and appealable on September 30, 2013, the effective date of the decision. Downie failed to file her appeal within thirty days thereof and, thus, the trial court properly dismissed the appeal as untimely.

{¶20} In Downie's second and third assignments of error, she raises many arguments as to why the August 22, 2013 letter failed to adequately advise her of her right to request an informal hearing and, thereby, deprived her of due process. Those arguments, however, are not properly before us and have no bearing on the issue of whether a final order, adjudication, or decision of an administrative agency exists.

{¶21} The assignments of error are without merit.

{¶22} For the foregoing reasons, the judgment of the Lake County Court of Common Pleas, dismissing Downie's administrative appeal, is affirmed.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.