

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DEREK D. DINGEY	:	JUDGES:
	:	Hon. John W. Wise, P.J.
Plaintiff-Appellant	:	Hon. Craig R. Baldwin, J.
	:	Hon. Earle E. Wise, Jr., J.
-vs-	:	
	:	
REGISTRAR, OHIO BUREAU OF	:	Case No. CT2019-0012
MOTOR VEHICLES	:	
	:	
Defendant-Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Case No. CF2018-0347

JUDGMENT: Affirmed

DATE OF JUDGMENT: August 14, 2019

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

KRISTOPHER K. HILL
17 North Fourth Street
P.O. Box 340
Zanesville, OH 43702-0340

LIDIA C. MOWAD
30 East Broad Street
26th Floor
Columbus, OH 43215-3400

Wise, Earle, J.

{¶ 1} Plaintiff-Appellant, Derek D. Dingey, appeals the January 18, 2019 journal entry of the Court of Common Pleas of Muskingum County, Ohio, granting the motion to dismiss filed by Defendant-Appellee, Registrar, Ohio Bureau of Motor Vehicles.

FACTS AND PROCEDURAL HISTORY

{¶ 2} On July 10, 2018, appellant, a commercial truck driver, was issued a traffic citation. Appellant did not take any action to resolve the citation. As a consequence of appellant's failure to appear or failure to comply with a court order, the BMV mailed a notice dated September 5, 2018, to appellant informing him that his driving and registration privileges were indefinitely suspended commencing on August 29, 2018.

{¶ 3} On September 8, 2018, appellant was issued another traffic citation in the state of Wyoming. He was also cited for driving under a suspended license. On September 28, 2018, a Wyoming court convicted appellant of driving under a suspended license.

{¶ 4} On October 12, 2018, the BMV mailed a notice to appellant informing him that he was disqualified from driving a commercial vehicle due to his driving a commercial vehicle while his license was suspended. The notice informed appellant that he would be disqualified thirty days from the notice's mailing date, and the disqualification would last for one year. The notice also informed appellant that he could request an adjudication hearing on the matter. Appellant did not request a hearing.

{¶ 5} On November 14, 2018, the BMV issued a final order of disqualification from driving a commercial vehicle, from November 16, 2018 to November 16, 2019.

{¶ 6} On November 27, 2018, appellant filed a notice of appeal with the trial court. On December 20, 2018, appellee filed a motion to dismiss the appeal for lack of subject matter jurisdiction because appellant had failed to exhaust his administrative remedies. By journal entry filed January 18, 2019, the trial court granted the motion and dismissed the appeal.

{¶ 7} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

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{¶ 8} "THE TRIAL COURT ERRED IN DISMISSING APPELLANT'S APPEAL."

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{¶ 9} In his sole assignment of error, appellant claims the trial court erred in dismissing his appeal. We disagree.

{¶ 10} Appellant filed his appeal to the trial court pursuant to R.C. 119.12 which states in part:

Any party adversely affected by any order of an agency *issued pursuant to an adjudication* denying an applicant admission to an examination, or denying the issuance or renewal of a license or registration of a licensee, or revoking or suspending a license, or allowing the payment of a forfeiture under section 4301.252 of the Revised Code may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident * * *. (Emphasis added.)

{¶ 11} In its motion to dismiss filed December 26, 2018, appellee argued the trial court lacked subject matter jurisdiction because appellant failed to exhaust his administration remedies pursuant to R.C. 119.12. The trial court agreed and granted the motion.

{¶ 12} "The standard of review for dismissal for want of subject matter jurisdiction pursuant to Civil Rule 12(B)(1) is whether any cause of action cognizable by the forum has been raised in the complaint. *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 537 N.E.2d 641 (1989). This determination involves a question of law that we review de novo." *Huntsman v. State*, 5th Dist. Stark No. 2016CA00206, 2017-Ohio-2622, ¶ 22.

{¶ 13} It is undisputed that an adjudication by an agency never occurred in this case as required under R.C. 119.12. Although appellant was noticed of the opportunity to request an adjudication, he never requested one. Appellant argues he never received any of the notices because he moved and although he changed his address with the post office on August 17, 2018, the post office failed to forward the notices.

{¶ 14} Ohio Adm.Code 4501:1-10-01 governs written notice of orders. Subsections (A) and (B) state the following in pertinent part:

(A) Unless a different method is specified by law, the registrar of motor vehicles shall give written notice of any order revoking, canceling, or suspending a driver's license, a commercial driver's license, motorcycle operator's license or endorsement, or temporary permit, or any order requiring the surrender of a certificate of registration or registration plates,

by regular mail sent to the person at the person's last known address as determined in accordance with this rule.

(B) Pursuant to division (D) of section 4506.14 and division (C) of section 4507.09 of the Revised Code, each person licensed as a commercial driver under Chapter 4506. of the Revised Code or a driver under Chapter 4507. of the Revised Code shall notify the registrar of any change in the person's address within ten days following that change.

{¶ 15} R.C. Chapter 4506. governs commercial drivers' licensing. R.C. 4506.14(D) states:

Each person licensed as a driver under this chapter shall notify the registrar of any change in the person's address within ten days following that change. The notification shall be in writing on a form provided by the registrar and shall include the full name, date of birth, license number, county of residence, social security number, and new address of the person.

{¶ 16} It is undisputed that appellant never notified appellee of his address change. Appellee properly sent the notices to the address on file which had been provided by appellant (Certified Exhibits 3, 4, and 5).

{¶ 17} Upon review, we concur with the trial court's determination that appellant failed to exhaust his administrative remedies and therefore, the trial court lacked subject matter jurisdiction. The trial court properly dismissed the appeal.

{¶ 18} Appellant's argument that the proper party to represent appellee is the Muskingum County Prosecutor's Office and not the Attorney General of Ohio lacks merit. R.C. 119.10.

{¶ 19} The sole assignment of error is denied.

{¶ 20} The judgment of the Court of Common Pleas of Muskingum County, Ohio is hereby affirmed.

By Wise, Earle, J.

Wise, John, P.J. and

Baldwin, J. concur.

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