[Cite as **_High Hopes Transp., Inc. v. Beasley_**, 2009-Ohio-4064.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

High Hopes Transportation, Inc., et al.	Court of Appeals No. WD-09-021
Appellants	Trial Court No. 2008 CV 0939
v.	
James G. Beasley, Director, Ohio Department of Transportation	**DECISION AND JUDGMENT**
Appellee	Decided: August 14, 2009

* * * * *

Max E. Rayle, for appellants.

Richard Cordray, Ohio Attorney General and Michael L. Stokes, Senior Assistant Attorney General for appellee.

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SINGER, J.

{¶ 1} Appellants appeal from a judgment of the Wood County Court of Common Pleas, dismissing for want of jurisdiction their administrative appeal. For the reasons that follow, we affirm.

{¶ 2} Appellants, High Hopes Transportation, Inc. and C & G Transportation, Inc., are small Wood County trucking enterprises that are frequently required to obtain special hauling permits from appellee, James G. Beasley, Director of the Ohio Department of Transportation ("ODOT".) Such permits must be obtained to carry oversize or overweight loads.

{¶ 3} Ohio Adm. Code 5501:2-1-03 provides that applications for special hauling permits may be made in writing or online. Permits may be obtained for periods of five, 90 or 365 days, "* * * at the option of the permit holder." Ohio Adm. Code 5501:2-1-08(B).

{¶ 4} At some point prior to June 26, 2008, according to the pleadings, appellants heard rumors that ODOT intended to increase significantly the fees for special hauling permits. To minimize the effect of such a rate increase, appellants chose to obtain permits for the longest period possible: 365 days. According to appellants, prior to June 26, appellant High Hopes applied for and was issued a number of 365 day permits. The last of these was approved at 10:29 a.m. on June 26. Subsequent submissions, however, were rejected with a notation that "as of 10:30 a.m. this morning we will no longer be issuing 365 day continuing permits. Do not send back in. * * * you'll need to re-enter this as a 90 day permit." A few days later, the 365 day option was removed from the online application site.

{¶ 5} On July 8, 2008, through counsel, appellants wrote to appellee suggesting that he had no legal authority to suspend issuance of the 365 day permits and demanding

that he reopen applications for such permits. On July 31, 2008, ODOT counsel responded that the director had, "* * *issued a standing order to withhold the issuance of continuing permits over 90 days, as of June 26, 2008." On August 27, 2008, appellant wrote to appellee requesting a formal hearing on the matter.

{¶ 6} On September 18, 2008, appellants received a letter from the transportation section chief of the Ohio Attorney General's office, rejecting appellant's request for a hearing on the ground that appellants had never been denied a permit because they had not actually filed an application. Thus, a hearing for a denial of application under Ohio Adm. Code 5501:2-1-12(A) was inappropriate. On October 2, 2008, appellants commenced the underlying administrative appeal in the common pleas court.

{¶ 7} On November 10, 2008, appellee moved to dismiss the administrative appeal. Appellee noted that appellants failed to file their original notice of appeal with the agency with a copy filed in the common pleas court. Rather, appellants filed a copy with the agency and the original with the court. Thus, the court never acquired jurisdiction to hear the administrative appeal, appellee insisted.

{¶ 8} Alternatively, appellee moved to dismiss because the ODOT Director's "verbal standing order" to suspend 365 day permits was rulemaking rather than adjudicatory and not appealable pursuant to R.C. 119.12. Additionally, appellee maintained that there was no adjudication because appellants had never filed a permit application.

{¶ 9} On February 12, 2009, the common pleas court dismissed the action for want of jurisdiction because, "* * * appellants filed the original notice of appeal with the court and only provided ODOT with a lowly copy."

{¶ 10} From this judgment, appellants now bring this appeal, setting forth the following two assignments of error:

{¶ 11} "Assignment of Error No. 1

{¶ 12} "The trial court committed error in dismissing the administrative appeal on the basis that a copy of the Notice of Appeal rather than the original was filed with the administrative agency.

{¶ 13} "Assignment of Error No. 2

{¶ 14} "The trial court committed error in ruling that the filing of an amended complaint could not cure a technical deficiency in the initiation of the appeal taken."

{¶ 15} Appellants' first assignment of error is not well-taken, but, for the purposes of determining the rights of the parties, it is important that we make clear that delivering the wrong paper to the wrong place is not the only reason the common pleas court lacked jurisdiction to hear this administrative appeal.

{¶ 16} The common pleas court followed the pronouncement of the Supreme Court of Ohio in *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 2007-Ohio-2877, which held, at paragraph two of the syllabus, that "[a] party aggrieved by an administrative agency's order must file the original notice of appeal with the agency and a copy with the court of common pleas." The rule enforces strict compliance with R.C.

119.12, which, for whatever reason, requires that the original notice of appeal goes to the agency. Failure to abide by this requirement is a jurisdictional defect, a condition precedent to the court acquiring authority to hear an R.C. Chapter 119 appeal. Id. at ¶ 18.

{¶ 17} This, however, was only half of the *Hughes* court's ruling. The other issue that the court considered was the sufficiency of the administrative order being challenged. R.C. 119.09 requires that "* * * the agency shall serve by certified mail, return receipt requested, upon the party affected thereby, a certified copy of the order and a statement of the time and method by which an appeal may be perfected. A copy of such order shall be mailed to the attorneys or other representatives of record representing the party." The administrative agency must strictly comply with this requirement, id. at paragraph one of the syllabus, or the common pleas court is without jurisdiction to hear the appeal and the time within which to perfect an appeal does not begin to run. Id at ¶ 19.

{¶ 18} In this matter, the determination appealed from was merely a letter to appellants' counsel. There was no certification, no statement of time or method of appeal. Consequently, the common pleas court lacked jurisdiction to hear any appeal.

{¶ 19} Appellants' second assignment of error is moot.

{¶ 20} On consideration, the judgment of the Wood County Court of Common Pleas is affirmed. Appellants shall pay the court costs of this matter pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J. _______________________________
JUDGE

Arlene Singer, J.

Thomas J. Osowik, J. _______________________________
CONCUR. JUDGE

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.