

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Errick Maurice Coleman, LPN,	:	
Appellant-Appellant,	:	
v.	:	No. 12AP-869 (C.P.C. No. 12CVF05-7035)
Ohio Board of Nursing,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

D E C I S I O N

Rendered on May 21, 2013

Sindell and Sindell, LLP, Steven A. Sindell and Rachel Sindell,
for appellant.

Michael DeWine, Attorney General, and Charissa D. Payer,
for appellee.

APPEAL from the Franklin County Court of Common Pleas

KLATT, P.J.

{¶ 1} Appellant, Errick Maurice Coleman, appeals a judgment of the Franklin County Court of Common Pleas dismissing his appeal from the order of appellee, the Board of Nursing ("Board"), which suspended Coleman's license to practice nursing. For the following reasons, we affirm.

{¶ 2} On April 9, 2010, Coleman entered a plea of no contest to persistent disorderly conduct, a fourth degree misdemeanor, in violation of R.C. 2917.11(E)(3). The Cleveland Municipal Court found Coleman guilty and sentenced him to 30 days imprisonment (26 days suspended), one year of community control, and a fine.

{¶ 3} Approximately four months after pleading no contest, Coleman submitted his biennial licensure renewal application to the Board. In the application, Coleman

answered "no" to a question asking whether he had pleaded no contest or been found guilty of a misdemeanor.

{¶ 4} Ohio Adm.Code 4723-4-06(P) prohibits a licensed nurse from making any false, misleading, or deceptive statements, or submitting any false, misleading, or deceptive information to the Board. R.C. 4723.28(B)(16) allows the Board to sanction a licensed nurse for a violation of R.C. Chapter 4723 or any rules adopted under R.C. Chapter 4723. Because Coleman erroneously represented in his renewal application that he had no misdemeanor record, the Board proposed to take disciplinary action against Coleman. The Board informed Coleman of its intent in a July 29, 2011 notice of opportunity for hearing. The Board sent the notice by certified mail to Coleman's address of record. When the notice was returned marked "unclaimed," the Board sent the notice to Coleman's address of record by ordinary mail. The notice sent by ordinary mail was not returned to the Board.

{¶ 5} Coleman did not request a hearing within the 30 days allotted for receipt of such a request. The Board, therefore, considered the charge and evidence against Coleman at its March 15-16, 2012 meeting. The Board then issued an order suspending Coleman's license for an indefinite period of time, but not less than one year. The Board also set forth conditions for reinstatement and mandated that, if Coleman met those conditions, he would be subject to a stayed suspension for a minimum period of two years, during which time he would be under specified restrictions.

{¶ 6} The Board sent the order to Coleman's address of record by certified mail. The order was returned marked "unclaimed." Therefore, on May 3, 2012, the Board sent the order to Coleman's address of record by ordinary mail. The order sent by ordinary mail was not returned to the Board.

{¶ 7} Coleman filed a notice of appeal with the trial court on May 31, 2012. The Board moved to dismiss Coleman's appeal on the ground that he had failed to exhaust his administrative remedies by not requesting a hearing before the Board. In response, Coleman represented that he had not received any of the mailings from the Board as he had moved in late August 2011. Due to his ignorance regarding the proposed discipline, he did not request a hearing. Coleman discovered that the Board had suspended his license when his employer discharged him on May 16, 2012.

{¶ 8} On September 5, 2012, the trial court issued a judgment granting the Board's motion to dismiss. Coleman now appeals from that judgment, and he assigns the following errors:

[1.] In an administrative proceeding before the Ohio Board of Nursing (OBN) to determine disciplinary action if any, against the nursing license of a Licensed Practical Nurse (LPN), Due Process of Law requires that when the OBN is aware that the nurse has not received the Notice of Opportunity for Hearing, that the OBN utilize other known and reasonable means of giving such Notice to the nurse, such as emailing the Notice to the nurse with the use of the nurse's email address in the possession of the OBN.

[2.] An administrative appeal to the Franklin County Common Pleas Court filed within 15 days of the date when the Appellant first learns of the administrative body's Adjudication Order is timely filed as a matter of law.

[3.] Even in the absence of an evidentiary hearing, an administrative agency, such as the Ohio Board of Nursing, in a professional license proceeding, does not have unlimited legal authority to impose sanctions which are so manifestly disproportionate, irrational and excessive that they violate the Federal and Ohio Constitutions, as occurred in this instant case at bar.

{¶ 9} We begin and end our review of Coleman's appeal with his second assignment of error. By that assignment of error, Coleman argues that his notice of appeal was timely and, consequently, the trial court had subject-matter jurisdiction to consider his appeal. We review questions of subject-matter jurisdiction *de novo*. *L & F Tavern, Inc. v. Ohio Liquor Control Comm.*, 10th Dist. No. 09AP-873, 2010-Ohio-1025, ¶ 11.

{¶ 10} Pursuant to R.C. 119.12:

Any party desiring to appeal shall file a notice of appeal with the agency[.] * * * Unless otherwise provided by law relating to a particular agency, notices of appeal shall be filed within fifteen days after the mailing of the notice of the agency's order as provided in this section.

{¶ 11} Where a statute confers the right of appeal, an appealing party must comply with the conditions imposed by that statute in order to perfect the appeal. *Cleveland Elec.*

Illum. Co. v. Lake Cty. Bd. of Revision, 96 Ohio St.3d 165, 2002-Ohio-4033, ¶ 14; *accord Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 2007-Ohio-2877, ¶ 17 ("[A] party adversely affected by an agency decision must * * * strictly comply with R.C. 119.12 in order to perfect an appeal."). Thus, the failure to file a notice of appeal within the 15-day period as set forth in R.C. 119.12 deprives the common pleas court of subject-matter jurisdiction over the appeal. *Nibert v. Ohio Dept. of Rehab. & Corr.*, 84 Ohio St.3d 100, 101 (1998); *Sun Refining & Marketing Co. v. Brennan*, 31 Ohio St.3d 306, 307 (1987); *Pole v. Ohio Dept. of Health*, 10th Dist. No. 08AP-1110, 2009-Ohio-5021, ¶ 7, 13.

{¶ 12} Here, the Board sent the order to Coleman by ordinary mail on May 3, 2012. Coleman did not file his notice of appeal until May 31, 2012—over 15 days after the Board mailed the order. The trial court, therefore, lacked subject-matter jurisdiction over Coleman's appeal.

{¶ 13} Coleman argues that the 15-day window for filing his appeal should begin on the day he actually received notice of the order because the Board did not direct the order to his current address. Coleman contends that he did not know about the order until May 16, 2012, so the filing of his notice of appeal on May 31, 2012 was timely. We are not persuaded by this argument because it conflicts with the plain language of R.C. 119.12, which requires an appealing party to file his or her notice of appeal within 15 days "after the mailing of the notice of the agency's order."

{¶ 14} Moreover, even if we could ignore the statutory language, we would not do so in this case. The Board sent the order to Coleman's last known address. When Coleman moved, he failed to notify the Board of his new address, despite the mandate of R.C. 4723.24(B) that he do so within 30 days of his move. As Coleman is at fault for his failure to receive the order, he cannot rely on the delay in receiving actual notice to justify his late filing of the notice of appeal. *See Townsend v. Dollison*, 66 Ohio St.2d 225, 228 (1981) (" 'A letter mailed to an incorrect address supplied by the person involved constitutes negligence on his part * * *. [I]f the address is in error because of his fault * * * [the licensee] cannot later be heard to complain that he did not get the notice at his last known address.' ").

{¶ 15} Coleman filed his notice of appeal outside the 15-day statutory period provided in R.C. 119.12. Accordingly, the trial court lacked jurisdiction over his appeal,

and we overrule Coleman's second assignment of error. Our resolution of the second assignment of error renders the remaining assignments of error moot.

{¶ 16} For the foregoing reasons, we overrule Coleman's second assignment of error, and we render the first and third assignments of error as moot. We affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and SADLER, JJ., concur.
