

IN THE SUPREME COURT OF OHIO

PATRICIA CRAWFORD-COLE

*

On Appeal from the Lucas
County Court of Appeals,
Sixth Appellate District

*

Plaintiff-Appellant,

*

Court of Appeals
C.A. No. L-07-1188

*

-vs-

LUCAS COUNTY DEPARTMENT OF
JOB AND FAMILY SERVICES,

*

08-0462

*

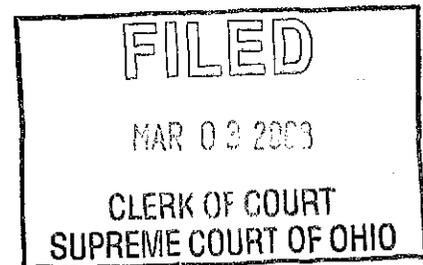
Defendant-Appellee.

*

NOTICE OF APPEAL OF APPELLEE LUCAS COUNTY DEPARTMENT
OF
JOB AND FAMILY SERVICES

JULIA R. BATES, PROSECUTING ATTORNEY
LUCAS COUNTY, OHIO

By: John A. Borell (0016461)
Karlene D. Henderson (0076083)
Assistant Lucas County Prosecutors
Lucas County Courthouse, Suite 250
Toledo, Ohio 43624
Telephone: 419.213.2001
Facsimile: 419.213.2011
E-mail: jaborell@co.lucas.oh.us
Counsel for Appellee Lucas County
Department of Job and Family Services



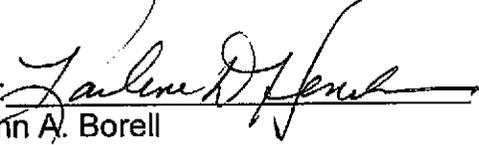
Terry Lodge
315 N. Michigan Street Ste 520
Toledo, Ohio 43624
Counsel for Appellant Crawford-Cole

Notice of Appeal of Appellee Lucas County Department of Job and Family Services

Appellee Lucas County Department of Job and Family Services, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Lucas County Court of Appeals, Sixth Appellate District, entered in Court of Appeals Case No. L-06-5976 on January 18, 2008.

This case is one of public and great general interest.

Respectfully submitted,
JULIA R. BATES
Lucas County Prosecuting Attorney

By: 
John A. Borell
Karlene D. Henderson
Assistant Prosecuting Attorneys
Counsel for Appellee Lucas County
Department of Job and Family Services

FILED
COURT OF APPEALS

2008 JAN 18 A 7:59

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

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

Patricia Crawford-Cole

Court of Appeals No. L-07-1188

Appellant

Trial Court No. CI-2006-5976

v.

Lucas County Department
of Job & Family Services

DECISION AND JUDGMENT ENTRY

Appellee

Decided:

JAN 18 2008

Terry Lodge, for appellant.

Julia R. Bates, Lucas County Prosecuting Attorney, John A. Borell and
Karlene D. Henderson, Assistant Prosecuting Attorneys, for appellee.

SKOW, J.

{¶ 1} Appellant, Patricia Crawford-Cole, appeals from a judgment entered by the Lucas County Common Pleas Court granting a motion to dismiss filed by appellee, Lucas County Department of Job & Family Services ("LCDJFS"). For the reasons that follow, we reverse the judgment of the trial court.

E-JOURNALIZED

JAN 18 2008

{¶ 2} On or about July 1, 2006, Crawford-Cole and LCDJFS entered into a one-year agreement pursuant to which Crawford-Cole, a type B home day-care provider, would provide child-care services in return for payment by LCDJFS.

{¶ 3} On July 20, 2006, LCDJFS conducted a home visit of Crawford-Cole's home. Ten violations were observed, including the presence of more than twice as many children as were permitted to be cared for at any given time, and the absence of any authorized caregivers.

{¶ 4} On July 24, 2006, Serena Rayford, Support Services Coordinator of LCDJFS, sent Crawford-Cole a letter, via certified mail, informing Crawford-Cole that LCDJFS would revoke her Type B home day-care provider certificate effective August 3, 2006. The letter detailed the violations observed during the July 20, 2006 home visit and notified Crawford-Cole of her right to appeal the revocation in accordance with O.A.C. Section 5101:2-14-40. Someone in Crawford-Cole's household signed for the certified mail.

{¶ 5} In correspondence dated August 10, 2006, Crawford-Cole wrote to Deborah Ortiz, Executive Director of LCDJFS, stating that she, Crawford-Cole, had only just received the revocation letter on August 9, 2006, and had only just learned that her appeal period had expired on August 3, 2006. She additionally stated that the LCDJFS response to a voicemail she had left earlier that day was to inform her that she had missed the appeal deadline and, "per legal," there was "absolutely no way around it."

{¶ 6} On September 27, 2006, Crawford-Cole filed a notice of administrative appeal with the Lucas County Court of Common Pleas. Attached to the notice of appeal was a letter from Ortiz-Flores, dated August 28, 2006, which stated that the letter was "a follow up" to their meeting on August 22, 2006, and provided "updated information" that she had requested, along with a summary of case notes from Crawford-Cole's file with LCDJFS.

{¶ 7} LCDJFS filed its motion to dismiss Crawford-Cole's appeal on October 23, 2006. In an opinion and judgment entry journalized on May 2, 2007, the trial court granted the motion, finding that because Crawford-Cole did not timely request a county review hearing pursuant to O.A.C. 5101:2-14-40, she failed to exhaust her administrative remedies, leaving the trial court without subject matter jurisdiction to address the appeal. Crawford-Cole timely appealed this decision, raising the following assignments of error:

{¶ 8} I. "IT IS ERROR TO NOT ENFORCE THE 30-DAY OPPORTUNITY TO INITIATE AN ADMINISTRATIVE APPEAL IN DAY CARE CERTIFICATE REVOCATION PROCEEDINGS BEFORE A COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES."

{¶ 9} II. "IT IS ERROR TO NOT STRICTLY ENFORCE THE NOTIFICATION TERMS CONTAINED IN A GOVERNMENTAL CONTRACT RESPECTING THE METHOD OF DELIVERY OF WRITTEN NOTIFICATION OF REVOCATION OF A CERTIFICATE DESPITE THE AVAILABILITY OF ALTERNATIVE METHODS OF REVOCATION."

{¶ 10} III. "IT WAS ERROR FOR THE TRIAL COURT TO FIND REVIEW OF THE NOTICE OF REVOCATION TO BE 'MOOT' AND TO REFUSE TO SCRUTINIZE ITS ADEQUACY FROM THE STANDPOINT OF DUE PROCESS CONSIDERATIONS."

{¶ 11} In her first assignment of error, Crawford-Cole argues that, pursuant to R.C. 119.07, she should have been allowed 30 days in which to file her administrative appeal of LCDJFS's decision to revoke her home day-care license. Instead, she was allowed only ten days to file her appeal, in accordance with O.A.C. 5101:2-14-40.

{¶ 12} R.C. 5104.011(G) relevantly provides that the director of job and family services shall adopt rules pursuant to Chapter 119 of the Revised Code governing the certification of type B family day-care homes.

{¶ 13} R.C. 119.06, which discusses adjudication orders, pertinently states:

{¶ 14} "No adjudication order of an agency shall be valid unless an opportunity for a hearing is afforded in accordance with sections 119.01 to 119.13 or the Revised Code. Such opportunity for a hearing shall be given before making the adjudication order except in those situations where this section provides otherwise."

{¶ 15} "Adjudication" means the determination by the highest or ultimate authority of an agency of the rights, duties, privileges, benefits, or legal relationships of a specified person * * *." R.C. 119.01(D).

{¶ 16} Applying the foregoing law to the facts of this case, we find that, pursuant to R.C. 119.06, LCDJFS was required to provide Crawford-Cole an opportunity for a hearing in connection with its decision to revoke her home day-care license.

{¶ 17} R.C. 119.07 deals with notice of agency adjudication hearings, and pertinently states:

{¶ 18} "[I]n all cases in which section 119.06 of the Revised Code requires an agency to afford an opportunity for a hearing prior to the issuance of an order, the agency shall give notice to the party informing him of his right to a hearing. Notice * * * shall include * * * a statement informing the party that *he is entitled to a hearing if he requests it within thirty days of the time of the mailing of the notice.* * * *" ¹

{¶ 19} When R.C. 119.07 is applied to the instant case, we find that Crawford-Cole was entitled to a hearing on the decision to revoke her license as long as she requested it within 30 days of the date that notice of that decision was mailed to her.

{¶ 20} O.A.C. 5101:2-14-40, the administrative rule that was relied upon both by LCDJFS and the trial court, provides a considerably shorter time for appeal, stating:

{¶ 21} "The request for a county appeal review shall be submitted in writing to the CDJFS *no later than ten calendar days* after the mailing date of the CDJFS notification that there will be an adverse action taken on his/her application for certification or his/her certification." (Emphasis added.)

{¶ 22} Because Crawford-Cole was only allowed 10 days in which to request her appeal in accordance with O.A.C. 5101:2-14-40, and not 30 days as permitted by R.C. 119.07, we must determine which of the two deadlines applies.

¹The applicable version of R.C. 119.07 was enacted effective March 27, 1991. A revised version was enacted effective September 29, 2007.

{¶ 23} The purpose of administrative rules is to accomplish the ends sought by legislation enacted by the General Assembly. *Hoffman v. State Med. Bd. of Ohio*, 113 Ohio St.3d 376, 2007-Ohio-2201, ¶17. Thus, "[r]ules promulgated by administrative agencies are valid and enforceable unless unreasonable or in conflict with statutory enactments covering the same subject matter." *State ex rel. Curry v. Indus. Comm.* (1979), 58 Ohio St.2d 268, 269. If an administrative rule either adds to or subtracts from a legislative enactment, it creates a clear conflict with the statute, and the rule is invalid, *Cent. Ohio Joint Vocational School Dist. Bd. of Edn. v. Ohio Bur. of Emp. Servs.* (1986), 21 Ohio St.3d 5, 10, and unconstitutional. *Midwestern College of Massotherapy v. Ohio Med. Bd.* (1995), 102 Ohio App.3d 17, 23 (stating that a rule that is in conflict with the law is unconstitutional because it surpasses administrative powers and constitutes a legislative function.)

{¶ 24} Here, O.A.C. 5101:2-14-40, which allows only ten days in which to file an county appeal review, clearly subtracts from, and therefore conflicts with, R.C. 119.07, which grants a 30-day deadline for the same activity. Given this conflict, we conclude that O.A.C. 5101:2-14-40 is invalid. Pursuant to R.C. 119.07, Crawford-Cole should have been afforded 30 days in which to file her appeal with the agency.² For the foregoing reasons, appellant's first assignment of error is found well-taken.

²To the extent that LCDJFS argues that Crawford-Cole's appeal to the trial court was improper due to her failure to exhaust her administrative remedies, we note that failure to exhaust administrative remedies is not a necessary prerequisite to an action, such as the one at hand, which challenges the constitutionality of an administrative rule. See *Derakhshan v. State Med. Bd. of Ohio*, 10th Dist. No. 07AP-261, 2007-Ohio-5802, citing *Jones v. Village of Chagrin Falls*, 77 Ohio St.3d 456, 462, 1997-Ohio-253.

{¶ 25} Because our decision with respect to appellant's first assignment of error results in Crawford-Cole obtaining the entirety of the relief sought by her appeal, we find that her remaining assignments of error have been rendered moot.

{¶ 26} The judgment of the Lucas County Court of Common Pleas, is reversed, and the matter is remanded to LCDJFS for additional proceedings consistent with this decision. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Lucas County.

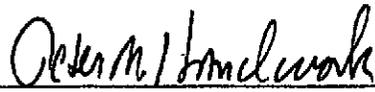
JUDGMENT REVERSED.

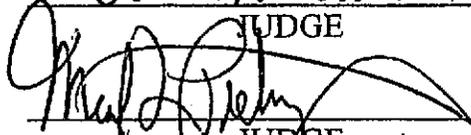
A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

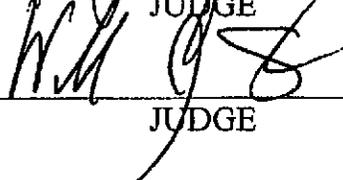
Peter M. Handwork, J.

Mark L. Pietrykowski, P.J.

William J. Skow, J.
CONCUR.



JUDGE


JUDGE


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>.