

IN THE SUPREME COURT OF OHIO

PATRICIA CRAWFORD-COLE

*

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

*

Plaintiff-Appellant,

*

-vs-

*

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

LUCAS COUNTY DEPARTMENT OF
JOB AND FAMILY SERVICES,

*

08-0462

*

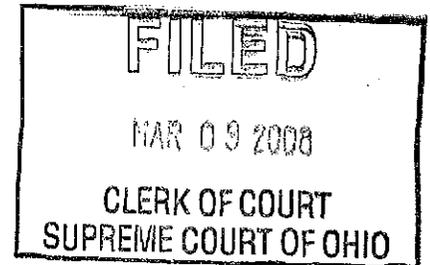
Defendant-Appellee.

*

MEMORANDUM IN SUPPORT OF JURISDICTION OF
APPELLEE LUCAS COUNTY DEPARTMENT OF
JOB AND FAMILY SERVICES

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LUCAS COUNTY, OHIO

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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST

This case is of public and great general interest because the decision of the Ohio Sixth District Court of Appeals, Lucas County ("Appellate Court") declaring an Ohio Department of Job and Family Services ("ODJFS") regulation unconstitutional and in conflict with a statute affects hundreds of county level hearings in all 88 counties in the State of Ohio. The Appellate Court erred because the statute governing the appeal of an action taken by a county department of job and family services ("CDJFS") specifically exempts the CDJFS from compliance with the notice, hearing and/or other requirements applicable to administrative appeals under Chapter 119 of the Ohio Revised Code.

This is a significant, statewide issue because the implications of the Appellate Court's decision affect every county Type B day care certificate revocation in Ohio¹. By overturning the trial court's opinion, the Appellate Court has created upheaval and delay in ability of every CDJFS to set proper appeal hearing dates.

The regulation, OAC 5101:2-14-40(C), requires a Type B day care certificate ("Certificate") holder to appeal revocation of the Certificate to the CDJFS no later than ten days following the mailing date of the notification of the CDJFS' action. The Appellate Court ruled that the ten-day deadline conflicted with R.C. 119.07, which provides for a thirty-day deadline to appeal an agency's administrative decision. However, R.C. 5101.09, which governs the adoption of rules by the ODJFS director, specifically exempts ODJFS from the notice, hearing or other requirements of R.C. Sections 119.06 to 119.13.

¹ A "Type B Certificate" refers to a family day-care home that is certified by the director of a county department of job and family services pursuant to R.C. Section 5104.11 and OAC Chapter 5101:2-14 to receive public funds for providing child care.

Thus, the Appellate Court was incorrect in determining that the Lucas County Department of Job and Family Services ("LCJFS") must give a Certificate holder whose Certificate has been revoked thirty days to appeal.

The ten-day deadline for appeal at the CDJFS level allows for quick adjudication and solutions to the a day care provider who has had their Certificate revoked. The Appellate Court's decision in extending the county appeal deadline to thirty days causes undue delay in the hearing process for both the CDJFS and the affected party. The ramifications of this ruling affect all 88 county job and family services departments. There is no conflict between the regulation and statute as the Appellate Court has ruled, because the statute cited by the appellate court is inapplicable to the regulation.

This Honorable Court must grant jurisdiction to hear this case as the decision of the Appellate Court to rule the administrative regulation in conflict with R.C. 119 creates a ripple effect and unjustified delay in resolving Certificate revocations at the local level throughout all 88 county job and family services agencies.

STATEMENT OF THE CASE

On September 27, 2006, Patricia Crawford-Cole (Appellant") filed a notice of administrative appeal in Lucas County Common Pleas Court after her Certificate was revoked by LCJFS on August 3, 2006.

Appellee LCJFS filed a motion to dismiss the appeal based on the Appellant's failure to exhaust her administrative remedies as advised by LCJFS and instructed pursuant to OAC 5101:2-14-40, thus leaving the trial court with a lack of subject matter jurisdiction.

Appellant filed an opposition to the motion to dismiss. LCJFS filed a reply. Appellant then filed a "Surrebuttal Memorandum in Opposition," and LCJFS filed its response to the Appellant's second Memorandum in Opposition.

On May 1, 2007, LCJFS's motion to dismiss was granted.

On June 1, 2007, Appellant filed a Notice of Appeal to the Appellate Court. The case was placed on the accelerated track and briefs were filed by both parties.

In a decision and judgment entry dated January 18, 2008, the Appellate Court overturned the trial court's decision to dismiss the Appellant's appeal stating that the administrative regulation allowing a ten day filing deadline for an appeal of a decision of a county job and family services agency was in conflict with an appeal filing deadline under Chapter 119 of the Ohio Revised Code.

The Court of Appeals erred in overturning the decision of the trial court and declaring the administrative regulation, OAC 5101:2-14-40(C), and R.C. 119.07 in conflict with regard to appeal deadlines. Nowhere in its decision does the Appellate Court cite the applicability or effect of R.C. 5101.09 which specifically exempts rules promulgated by the

department of job and family services from the notice, hearing and other requirements of sections 119.06 to 119.13. It is a significant issue as the decision impacts hundreds of appeal hearing dates set by all 88 county job and family services agencies.

Appellant filed an objection to the motion for summary judgment on 1/12/11.

STATEMENT OF FACTS

On or about July 1, 2006, Appellant LCJFS entered into a "Contract for Purchase of Publicly Funded Child Care Services" which set forth that Appellant, a Certificate holder would provide child care service and LCJFS would pay her for rendering those services. The contract period was from July 1, 2006 through June 30, 2007 and consisted of eight pages of terms.

On July 20, 2006, LCJFS conducted a home visit of Appellant's home. Ten violations of OAC Chapter 5101:2-14 were observed.

On July 24, 2006, Serena Rayford, LCJFS Support Services Coordinator, sent Appellant a letter, via certified mail, informing her that LCJFS was revoking her Certificate effective August 3, 2006. The letter detailed the violations observed during the July 20, 2006 home visit and set forth Appellant's right to appeal the revocation "in accordance with OAC Section 5101:2-14-40, a copy of which is enclosed for your convenience." Someone in Appellant's household signed for the certified mail.

In correspondence dated August 10, 2006, Appellant wrote to Deborah Ortiz, Director of LCJFS, stating that she, Appellant, had only just received the revocation letter from LCJFS on August 9, 2006, and learned that the appeal period had expired on August 3, 2006. Appellant also addressed the violations set forth in LCJFS's July 24, 2006 letter.

No administrative appeal for the revocation of her license was ever filed or requested by Appellant. Instead, on September 27, 2006, Appellant filed her notice of appeal in Lucas County Common Pleas Court. The appeal directly to common pleas court ignored all administrative processes.

LCJFS filed its motion to dismiss Appellant's appeal on October 23, 2006 on

grounds that Appellant failed to exhaust administrative remedies and for lack of subject matter jurisdiction. The motion to dismiss was granted on or about May 1, 1007. Appellant appealed to the Appellate Court which reversed the trial court's decision on the basis that the OAC 5101:2-14-40 appeal deadline of 10 days was not the correct time limit that governed appeals of CDJFS action and that the thirty-day time limit under R.C. 119.07 applied instead.

But the Appellate Court either ignored or did not consider the fact that the administrative code regulation is not subject to the provisions of R.C. 119.07 due to the exemption granted by R.C. 5101.09. The ruling by the Appellate Court forces a delay on both parties to adjudicate the revocation of a Certificate, affecting hundreds of hearings both at the CDJFS level.

Proposition of Law: The Appellate Court erred in applying the R.C. 119.07 thirty-day period to appeal a Certificate revocation by LCJFS instead of the ten-day period under OAC 5101:2-14-40 because although the rule may have been adopted in accordance with R.C. Chapter 119, R.C. Section 5101.09 specifically exempts the rule from the requirements of R.C. Sections 119.06 to 119.13 which include the 30-day limit.

The creation by the Appellate Court of a thirty-day right to appeal a Certificate revocation and invalidating the use of the ten-day administrative regulation deadline has a rippling effect throughout all 88 CDJFS agencies . The declaration of O.A.C. 5101:2-14-40 as "unconstitutional" disrupts the local Certificate revocation appeal process. It creates additional delay in restoration of a Certificate as well as extending the periods of time ~~exemption granted by R.C. 5101.09. However, R.C. 5101.09(A) specifically states that~~ appeals currently take.

R.C 5101.09(A) authorizes the director of job and family services to adopt rules in accordance with R.C. 119 if the rule concerns a program administered by the department of job and family services². Payment for child day-care and the certification of "Type B" homes providing such day care are programs administered by the department of job and family through the 88 CDJFS'; therefore, it appears as though OAC 5101:2-14-40 must be adopted in accordance with R.C. Chapter 119. However, R.C. 5101.09 (A) must be read in light of R.C. 5101.09 (B) specifically states that:

Except as otherwise required by the Revised Code, the adoption of a rule in accordance with Chapter 119 of the Revised Code ***does not make the department of job and family services, a county family services agency, or a workforce development agency subject to the notice, hearing or other requirements of section 119.06 to 119.13 of the Revised Code*** (Emphasis supplied).

² There is an exception in this provision for rules that must be adopted in accordance with R.C. 111.15, but it does not apply in this matter.

This is not to say that R.C. Chapter 119 is never applicable to a CDJFS; administrative regulations must be adopted in accordance with R.C. Section 119.03 and appeals of CDJFS administrative hearings are subject to appeal pursuant to R.C. 119.12. Nevertheless, with respect to the first-level appeal, the "county appeal review described under OAC 5101:2-14-40, the CDJFS is specifically exempted from R.C. 119.07 thirty-day appeal filing deadline. Furthermore, the exemption from R.C. 119.07 means the R.C. 119.07 and the OAC 5101:2-14-40 deadlines are mutually exclusive and not in conflict with one another. The failure of the Appellate Court to recognize the exemption of the regulation is contrary to the efficient system set up by the department of job and family services under the authority granted it by the Ohio Revised Code and the Ohio Administrative Code.

Put in its simplest terms:

1. Appellant was timely sent, and received, the ten (10) day notification of her right to an administrative appeal under Ohio Administrative Code 5101:2-14-40.

2. Appellant did not request a hearing with the prescribed ten day period.

3. Because she did not request the hearing, Appellant failed to exhaust her administrative remedies.

4. The failure of Appellant to exhaust her administrative remedies deprived the trial court of subject matter jurisdiction, therefore, the trial court properly granted LCJFS' Motion to Dismiss.

5. The Appellate Court erred in declaring OAC 5101:2-14-40 inapplicable vis-à-vis the the time limit to file the request for an administrative hearing by ~~regulation to be used~~ failing to recognize the exemption of CDJFS appeal reviews from the hearing and notice requirements of R.C. 119.07.

The public policy and great interest in a streamlined, effective appeal process for Certificaterevocations as currently employed by all 88 CDJFS' must not be undermined by decisions from the underlying courts.

CONCLUSION

For all of the foregoing reasons this case involves a matter of public and great general interest. The Appellee Lucas County Job and Family Services, requests that this Honorable Court accept jurisdiction in this case so that the important issue presented will be reviewed on its merits.

Respectfully submitted
JULIA R. BATES
Lucas County Prosecuting Attorney

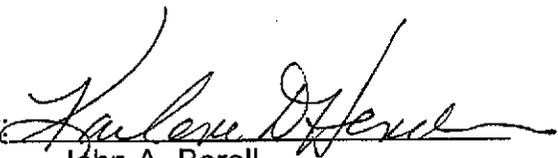
By: 
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By:  Karlene D. Henderson
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Counsel for Appellant Lucas County Job
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CERTIFICATE OF SERVICE

This is to hereby certify that a copy of the foregoing was sent via U.S. ordinary mail this 28th day of February, 2008 to the following:

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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

Karlene Henderson
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.

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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.

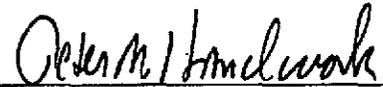
A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

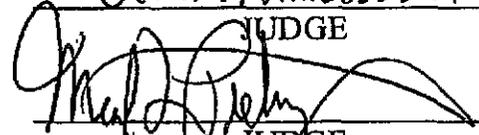
Peter M. Handwork, J.

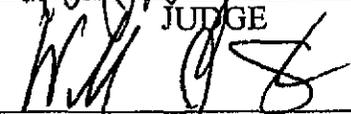
Mark L. Pietrykowski, P.J.

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>.