[Cite as *Vukovic-Burkhardt v. Dayton Bd. of Edn.*, 2021-Ohio-739.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

KELLI VUKOVIC-BURKHARDT	:	
	:	
Plaintiff-Appellant	:	Appellate Case No. 28879
	:	
v.	:	Trial Court Case No. 2019-CV-5012
	:	
DAYTON BOARD OF EDUCATION, et al.	:	(Civil Appeal from Common Pleas Court)
	:	
Defendant-Appellee	:	

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O P I N I O N

Rendered on the 12th day of March, 2021.

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HALL, J.

{¶ 1} Kelli Vukovic-Burkhardt appeals from the judgment of the Montgomery County Court of Common Pleas, which granted judgment on the pleadings to the Dayton Board of Education (the Board) as to her administrative appeal of the Board's decision to terminate her teaching contract. We agree with the trial court that Vukovic-Burkhardt's administrative appeal was untimely filed, and we affirm.

I. Factual and Procedural Background

{¶ 2} Vukovic-Burkhardt was a classroom teacher in the Dayton Public Schools. During the early part of the 2018-2019 school year, she reportedly called administrators a derogatory name in front of students, spoke about her personal life while on the phone in front of her students, used Facebook during instructional time, regularly yelled at and berated her students, and engaged in other inappropriate behavior. The Board decided to fire her. In April and June 2019, a referee conducted a hearing on the Board's decision. Afterward, the referee filed a report finding good and just cause for terminating Vukovic-Burkhardt's teaching contract and recommending that the Board do so. On September 17, 2019, the Board accepted the referee's recommendation and passed a resolution terminating her teaching contract. Vukovic-Burkhardt's attorney requested a copy of the Board's resolution, and the attorney for the Board emailed a copy of the three-page resolution to her attorney on September 20, 2019. That copy of the resolution detailed the Board's decision and indicated it was passed by a 7-0 roll call vote at a meeting of the Board on September 17, 2019, and was signed by the Treasurer. (Exhibit 1 of the Answer

to the Amended Complaint filed March 17, 2020.)[1] Vukovic-Burkhardt herself separately received a copy of the resolution six days later that was sent to her by the Board.

{¶ 3} On October 26, 2019, Vukovic-Burkhardt filed a complaint against the Board and others that contained, among other claims, an administrative appeal of the decision to terminate her teaching contract. The Board moved for judgment on the pleadings as to the administrative appeal, arguing that the appeal was untimely under R.C. 3319.16, having been filed more than 30 days after Vukovic-Burkhardt received notice of the Board's decision. The trial court agreed, and on July 24, 2020, it dismissed the administrative appeal for lack of jurisdiction.

{¶ 4} Vukovic-Burkhardt appeals.

II. Motion to Strike is Overruled

{¶ 5} On January 22, 2021, Vukovic-Burkhardt filed a "Motion to Strike" the Board's reliance on the resolution that was emailed to her counsel, contending that the resolution contained a forged date and a forged signature. Vukovic-Burkhardt claims she learned of these contentions from the deposition of the treasurer taken on December 23, 2020. We overrule her motion for several reasons. R.C. 3319.16 states that the 30-day appeal period begins with "receipt of notice of the entry," and the resolution that the Board's attorney sent Vukovic-Burkhardt's attorney on September 20, 2019, constituted notice of the Board's resolution. Furthermore, the treasurer's deposition testimony was not before the trial court when it dismissed the administrative appeal, so we should not consider it. Finally, any allegation, let alone evidence, that the resolution was a forgery was not before

[1] Vukovic-Burkhardt does not dispute that the exhibited copy of the resolution was received by counsel by email on September 20, 2019.

the trial court. We decide this appeal on the record before us, i.e., what was before the trial court when that court made its decision.

III. Analysis

{¶ 6} The sole assignment of error alleges that the trial court erred by dismissing Vukovic-Burkhardt's administrative appeal.

{¶ 7} R.C. 3319.16 governs the termination of a teaching contract by a board of education and establishes the procedures that must be followed. The statute provides that a teacher may administratively appeal a school board's order to terminate a teaching contract to the court of common pleas "within thirty days after receipt of notice of the entry of such order." The question in this case is whether receipt of a copy of the Board's resolution by a teacher's attorney starts the clock running or whether receipt of notice of such an order must be by the teacher herself.

{¶ 8} R.C. 3319.16 is silent on this question, so we must look to the general rules governing administrative appeals found in R.C. Chapters 2505 and 2506. *See Manholt v. Maplewood Joint Vocational School Dist. Bd. of Edn.*, 11th Dist. Portage No. 91-P-2410, 1992 WL 207800, *4 (Aug. 21, 1992) (stating that because R.C. 3319.11, governing decisions not to reemploy a teacher, does not explicitly state how a notice of appeal is to be perfected, the court must look to the relevant sections of R.C. Chapter 2505); *Sturdivant v. Toledo Bd. of Edn.*, 157 Ohio App.3d 401, 2004-Ohio-2878, 811 N.E.2d 581, ¶ 20 (6th Dist.), citing *Kiel v. Green Local School Dist. Bd. of Edn.*, 69 Ohio St.3d 149, 630 N.E.2d 716 (1994) ("R.C. Chapter 2506, in conjunction with R.C. Chapter 2505, governs the procedure that must be followed in filing a notice of an appeal from an administrative decision of a school board.").

{¶ 9} Under R.C. 2505.07, a party has 30 days "[a]fter the entry of a final order" to file an administrative appeal. We have said that this 30-day period begins to run when the final decision is mailed "to the party *or his legal representative*." (Emphasis added.) *601 Properties, Inc. v. City of Dayton*, 2d Dist. Montgomery No. 11620, 1990 WL 2892, *3 (Jan. 19, 1990) (concluding that the time to perfect an administrative appeal began when the final decision was mailed to the party's attorney). *Accord Cornacchione v. Akron Bd. of Zoning Appeals,* 118 Ohio App.3d 388, 392, 692 N.E.2d 1083 (9th Dist.1997) (stating that the time beings to run when the order is mailed to the party or the party's attorney); *McPhillips v. Cleveland,* 8th Dist. Cuyahoga No. 60687, 1991 WL 125693, *1 (July 3, 1991). Relatedly, we have also noted that "service upon the attorney was the equivalent of personal service upon the taxpayers concerned." *Centerville Bd. of Tax Appeals v. Wright*, 72 Ohio App.3d 313, 316, 594 N.E.2d 670 (2d Dist.1991). And, in another context, we further stated that "[a] client is bound by his attorney's notice or knowledge of facts acquired in and during the transaction for which the attorney has been engaged." *Jewell v. Underwood*, 2d Dist. Greene No. 2000-CA-61, 2000 WL 1867565, *4 (Dec. 22, 2000). Accordingly, based on the rules for administrative appeals under R.C. Chapters 2505 and 2506, we conclude that the 30-day period "after receipt of notice of the entry of such order" under R.C. 3319.16 begins to run when notice of a board of education's decision, in the form of a copy of the written and signed resolution itself, is first received by the teacher or the teacher's attorney.

{¶ 10} Here, Vukovic-Burkhardt's attorney received notice of the Board's final decision on September 20, 2019. In fact, on the record properly before us, counsel received a copy of the resolution terminating her contract. That started the clock running.

It was not until 36 days later, on October 26, that the same attorney filed Vukovic-Burkhardt's notice of appeal in the common pleas court. By that time, her statutory time to file an administrative appeal of the Board's decision had expired.

IV. Conclusion

{¶ 11} The trial court properly determined that Vukovic-Burkhardt's administrative appeal was untimely and, therefore, that the court lacked jurisdiction to consider it. The sole assignment of error is overruled. The trial court's judgment is affirmed.

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DONOVAN, J., concurs.

TUCKER, P.J., concurs:

{¶ 12} I concur in the majority opinion's conclusion that Vukovic-Burkhardt's administrative appeal was not timely filed, but my reasoning for this conclusion does not align with the majority opinion's reasoning, as outlined below.

{¶ 13} In *Am. Aggregates Corp. v. Clay Twp. Bd. of Zoning Appeals*, 2d Dist. Montgomery No. 16311, 1997 WL 282334 (May 30, 1997), we stated the following regarding what constitutes a final, appealable administrative decision:

> * * * [A] final decision by an administrative board should contain the following:
>
> 1. the case number, the applicant, and a brief description of the matter before the administrative board;
>
> 2. a designation as a final decision;
>
> 3. a clear pronouncement of the board's decision;

> 4. the signatures of the entire board, the voting majority of the board, or the signature of the clerk for the board expressly certifying that the decision constitutes the action taken by the board;
>
> 5. a date indicating when the decision was mailed to the applicant.

Id. at *5-6. As the *American Aggregates* decision noted, the requirement that a final administrative decision include the date the decision was mailed to the applicant is necessary "to comply with our holding in *601 Properties*[*,* 2d Dist. Montgomery No. 11620, 1990 WL 2892] that the time in which to perfect an [administrative] appeal begins to run on the date that the final decision is mailed to the applicant." *Id.* at *6. The *American Aggregates* discussion concerning the components of a final administrative decision concluded as follows:

> By complying with [the indicated] formalities, an administrative board ensures that the document received by the applicant clearly constitutes a final decision of the board and is, therefore, a final appealable order. Of course, the resolutions and ordinances of the political subdivision may require further formalities with which the board must comply.

Id. Thus, a final administrative order is created by a board's compliance with the formalities articulated in *American Aggregates* and any further formalities dictated by the political subdivision. Compliance with the required formalities ensures that an applicant is put on notice that a decision is final and is further put on notice concerning when an appeal must be filed.

{¶ 14} As discussed in the majority opinion, *601 Properties* also stands for the proposition that the time in which an applicant may file an administrative appeal begins

to run when the final decision "is mailed to the party or his legal representative." *601 Properties* at *3. The majority opinion uses this language to reach the conclusion that Vukovic-Burkhardt's appeal time began to run when the attorney for the Board emailed the termination decision to Vukovic-Burkhardt's attorney, at her attorney's request. But in *601 Properties*, the final administrative decision was only mailed to the attorney. It would thus seem that this was the usual, formal procedure used to notify a represented applicant of the administrative decision.

{¶ 15} In the pending case, by contrast, the transmittal of the Board's decision to Vukovic-Burkhardt's attorney on September 19 was accomplished outside of the mandated formal process, and thus, in my opinion, did not start the time in which Vukovic-Burkhardt had to file an administrative appeal in the common pleas court.

{¶ 16} The formal notification process is set out in the Board's decision as follows:

> * * * [T]he Treasurer is authorized and directed to furnish * * * [Vukovic-Burkhardt] by certified mail with written notice of this contract termination, which shall include a full-text copy of this resolution and Order of Termination * * *.

{¶ 17} Vukovic-Burkhardt states in her administrative appeal that, on September 23, 2019, the "Board sent * * * [her] a certified letter with its order terminating her teaching contract." Thus, under *601 Properties*, and based upon Vukovic-Burkhardt's admission, the time in which to file an administrative appeal began to run on September 23, 2019 and expired on October 23, 2019. Given this, the administrative appeal she filed on October 26, 2019, was untimely and subject to dismissal. On this alternate basis, I concur with the majority opinion.

Copies sent to:

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