

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

JOHN F. MINTUS :
APPELLANT :
vs. : Case No. 93CVF-12-9035
TRUMBULL COUNTY CHILD SUPPORT : JUDGE DAVID FAIS
DEFENDANT :

DECISION AND ENTRY

Rendered this 18th day of February, 1994.

FAIS, J.

This cause is before the Court upon the motion of Appellee to dismiss which was filed January 10, 1994.

Appellee moves to dismiss the within appeal pursuant to Civ. R. 12(B)(1). In particular, Appellee argues this Court lacks jurisdiction because Appellant failed to timely file his appeal. Appellant counters his Notice of Appeal was received December 27 but not time-stamped until December 28, 1993. Therefore, Appellant argues his appeal was timely and complied with the requirements of R.C. 119.12.

Appellant relies upon Gingo v. State Medical Board (1989), 56 Ohio App. 3d 111, in support of his position. Paragraphs one and two of Gingo provide:

1. The notice of appeal required to be filed with a state agency in an appeal of an adjudication order pursuant

94 APR 14 AM 10:06

STATE PERSONNEL BOARD OF REVIEW

18 FEB 1994 2:15 PM

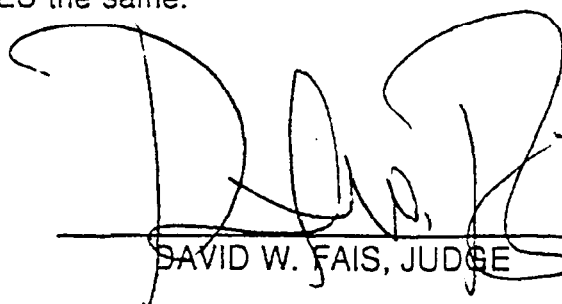
to R.C. 119.12 is presumptively timely delivered when it is shown to have been mailed within sufficient time for it to have arrived at the agency before the fifteen-day time limit. In other words, it is presumed that once the notice of appeal timely enters the ordinary course of the mails, the notice will be timely delivered.

- 2. The party contesting the timeliness of an R.C. 119.12 notice of appeal has the burden of proof of rebutting the presumption resulting from the timely mailing of the notice. An administrative agency may not overcome this presumption by merely introducing the agency's time-stamped date of reception of the notice of appeal.

A review of the affidavit and documents attached to Appellant's brief reveal Appellant's Notice of Appeal was timely filed based upon the holding in Gingo, supra.

A review of the affidavit and documents attached to Appellant's brief reveal Appellant's Notice of Appeal was timely filed based upon the holding in Gingo, supra.

Accordingly, the Court finds the motion of Appellee to dismiss not to be well-taken and hereby OVERRULES the same.



DAVID W. FAIS, JUDGE

STATE PERSONNEL
BOARD OF REVIEW
94 APR 14 AM 10:06

Copy to:

Michael D. Rossi
151 East Market Street
P. O. Box 4270
Warren, Ohio 44482

Attorney for Appellant

Milan Brkich
Assistant Prosecuting Attorney
Trumbull County
160 High Street, N.W.
Warren, Ohio 44481

STATE PERSONNEL
BOARD OF REVIEW
94 APR 14 AM 10:06