

**COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

IAN DONALD EICHELBERGER, :
 :
 Appellant, : **CASE NO. 16 CV 6928**
 :
 -vs- : **JUDGE COLLEEN O'DONNELL**
 :
 DIVISION OF FINANCIAL : **MAGISTRATE CHRISTINE LIPPE**
 INSTITUTIONS, DEPARTMENT
 OF COMMERCE, :
 :
 Appellee. :

DECISION AND ENTRY

O'DONNELL, J.,

This case involves the R. C. 119.12 administrative appeal filed by Appellant, Ian Donald Eichelberger, from a July 13, 2016 Division Order of the Ohio Department of Commerce, Division of Financial Institutions (“Agency”). Appellant asserts that the Agency’s order is not supported by reliable, probative and substantial evidence; and is not in accordance with law, based on the Agency’s failure to provide him with proper notice.

STANDARD OF REVIEW

R.C. § 119.12 sets forth the standard of review a common pleas court must follow when reviewing an administrative appeal. R.C. 119.12 provides in pertinent part:

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative and substantial evidence and is in accordance with law.

In *Our Place* the Ohio Supreme Court provided the following definition of reliable, probative and substantial evidence:

(1) ‘Reliable’ evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) ‘Probative’ evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) ‘Substantial’ evidence is evidence with some weight; it must have importance and value.

Our Place, Inc. v. Ohio Liquor Comm., 63 Ohio St. 3d 570, 571 (1992).

Once the common pleas court has determined that the administrative agency’s order is supported by reliable, probative and substantial evidence, the court must then determine whether the order is in accordance with law. See R.C. § 119.12. The reviewing court cannot substitute its judgment for the agency’s decision where there is some evidence supporting the decision. See *Harris v. Lewis*, 69 Ohio St. 2d 577, 579 (1982); see also *University of Cincinnati v. Conrad*, 63 Ohio St. 2d 108 (1980).

LAW AND ANALYSIS

The record demonstrates that on June 1, 2016, Appellee sent Appellant a Notice of Intent to Refuse to Renew Loan Originator License and a Notice of Opportunity for a Hearing. The record shows that the June 1, 2016 notice was sent to Appellant at the following address, which was the address of record that Appellee provided to the Agency:

3658 Crescent Hill Rd
Springfield, Ohio 45502-8966

The record shows that the certified mail receipt for 7012 1010 0002 0834 6946 was signed by Rachel Sheets. The record also shows that the Division of Financial Institutions received the returned receipt in its office on June 8, 2016. Thus, this Court concludes as a matter of law that service was perfected, based on the signed and returned certified mail service card to the address Appellant had on record with Appellee. R.C. 119.07; R.C. 119.06; and R.C. 1322.10(A)(1). Moreover, R.C. 1.02(G) provides that “registered mail” includes certified mail and “certified mail” includes registered mail, and it is clear that the context of R.C. 119.07 reflects these terms as

interchangeable. *Lundeen v. State Med. Bd. of Ohio*, 2013-Ohio-112.

The record lacks any evidence to dispute perfected service under the facts of this case. Additionally, there is no evidence that Appellant provided the post office with his forwarding address for the 3658 Crescent Hill Rd. address he provided to Appellee.

Because the record demonstrates that certified mail service to Appellant was perfected on June 8, 2016, this Court need not address the issue(s) as to what must legally occur when certified mail service is not perfected.

The record also demonstrates that Appellee made efforts to notify Appellant when it sent notice to a second address, 4833 Legare Lane, Columbus, Ohio 43230. The record includes the certified mail receipt for 7012 1010 0002 0834 6953. This certified mail receipt also includes the following:

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

Thus, as to the 4833 Legare Lane address, Appellant did not provide the post office with a forwarding address to have his mail delivered to him at his new address. The record demonstrates that Appellant updated his address of record through the Nationwide Multistate Licensing System and Registry (NMLS), on July 25, 2016.

Accordingly, this Court concludes that Appellee complied with all applicable laws regarding notice and service. There is no evidence that Appellant changed his address with the Agency before July 25, 2016, as he was required to do. R.C. 1322.02(C)(1). Moreover, there is no evidence that Appellant requested a hearing within the statutory time period. This Court concludes as a matter of law that Appellee complied with all applicable laws regarding notice and service, and that service was perfected by certified mail at Appellant's address of record.

DECISION

This Court concludes as a matter of law that there is reliable, probative and substantial evidence that Appellee complied with all applicable laws regarding notice and service and thus, service was perfected. This Court will note that neither party requested a hearing. Accordingly, The July 13, 2016 Division Order of the Ohio Department of Commerce, Division of Financial Institutions is hereby **AFFIRMED**.

It is so **ORDERED**.

Copies to all parties registered for e-filing

Franklin County Court of Common Pleas

Date: 11-09-2016
Case Title: IAN DONALD EICHELBERGER -VS- OHIO STATE
DEPARTMENT COMMERCE
Case Number: 16CV006928
Type: ENTRY

It Is So Ordered.

A handwritten signature in cursive script, "Colleen O'Donnell", is written over a circular, textured seal. The seal appears to be the official seal of the Franklin County Court of Common Pleas.

/s/ Judge Colleen O'Donnell