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IN THE
COURT OF APPEALS OF INDIANA

INDIANA STATE BOARD OF DENTISTRY,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 55A01-1101-PL-28
	)	
JULIA FRANCIS,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE MORGAN SUPERIOR COURT
The Honorable G. Thomas Gray, Judge
Cause No. 55D01-1008-PL-457

September 13, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issues

The Indiana State Board of Dentistry ("ISBD") appeals the trial court's order that it issue to Julia Francis a license to practice dental hygiene using her federal Individual Taxpayer Identification Number as an alternative to a social security number, so long as Francis is otherwise qualified for the license. The ISBD raises three issues for our review, which we reorder and restate as 1) whether the trial court erred in denying the ISBD's motion to dismiss; 2) whether the ISBD acted arbitrarily and capriciously in requiring Francis to have a social security number; and 3) whether the trial court erred in ordering the ISBD to issue Francis a license, as opposed to vacating the ISBD decision and remanding for further proceedings by the ISBD. Concluding that the trial court erred in denying the ISBD's motion to dismiss because the trial court did not have jurisdiction to hear or determine Francis's appeal, we vacate the trial court's order. Further, because we conclude the trial court did not have jurisdiction to review an agency decision, we do not address the subsequent issues.

Facts and Procedural History

Julia Francis, also known as Iulia Polovinchina, is a foreign national legally living in the United States pursuant to an H-4 dependent visa. The H-4 dependent visa makes Francis ineligible for a social security number because she is not allowed to work in the United States and the Social Security Administration has determined she "do[es] not have a valid reason to get a non-work Social Security number." Appendix of Appellant at 73.

In May 2008, Francis received a degree in dental hygiene from the Indiana University School of Dentistry, and applied for a license to practice dental hygiene in Indiana. The

ISBD, the state agency governing such licenses, held two hearings regarding her application and she provided supplemental documentation to the ISBD as well. In April 2010, the ISBD held a third hearing before finally denying her application. The ISBD explained that it denied her application because she was "unable to provide a social security number as requested" and required by state law and ISBD rules. Id. at 48. Francis appealed her decision to the ISBD, essentially requesting reconsideration, and following another hearing, the ISBD denied her application again for the same reason on July 8, 2010.

On August 9, 2010, Francis appealed to the trial court and attached the ISBD's July 8 decision to her petition for judicial review. On October 4, 2010, the ISBD filed a motion to dismiss and accompanying legal brief in support, in which it argued that Francis failed to timely file the agency record with the trial court, and therefore the trial court did not have jurisdiction to hear Francis's case. Also on October 4, Francis filed a motion for an extension of time to file the agency record. This motion noted that Francis's attorney "contacted the [ISBD] and was told the record should be compiled within another five or so working days from today, October 4, 2010." Id. at 22. On October 7, the trial court granted Francis's motion for an extension, and on October 18, Francis filed the completed agency record.

Following a hearing, the trial court concluded that administrative rules and statutes do not require withholding a license from Francis for lack of a social security number, and ordered the ISBD to issue a license to Francis if she otherwise qualifies for one. The ISBD now appeals.

Discussion and Decision

I. Filing an Agency Record

A. Timing

On August 9, 2010, Francis filed her petition for judicial review and attached the July 8 decision by the ISBD, but did not file the agency record or seek an extension. On October 4, nearly two months later and the same day on which the ISBD filed a motion to dismiss for failure to timely file an agency record or extension, Francis sought an extension to do so.[1] The trial court granted an extension and denied the ISBD's motion to dismiss.

Appeals of administrative decisions to Indiana trial courts are governed by the Administrative Orders and Procedures Act ("AOPA"). Ind. Code Ch. 4-21.5-5. AOPA provides: "Within thirty (30) days after the filing of the petition [for judicial review], or within further time allowed by the court or by other law, the petitioner shall transmit to the court the original or a certified copy of the agency record for judicial review of the agency action." Ind. Code § 4-21.5-5-13(a). Paragraph (b) adds:

> An extension of time in which to file the record shall be granted by the court for good cause shown. Inability to obtain the record from the responsible agency within the time permitted by this section is good cause. Failure to file the record within the time permitted by this subsection, including any extension period ordered by the court, is cause for dismissal of the petition for review by the court, on its own motion, or on petition of any party of record to the proceeding.

(emphasis added).

Our supreme court has explained:

[1] The appellate record is unclear as to whether Francis's actions on October 4 were in direct response to the ISBD's October 4 motion to dismiss.

> AOPA provides the exclusive means for judicial review of a final agency action. . . . Section 13 addresses the . . . requirement to file the record[.] . . .
>
> The purpose of AOPA section 13 is to ensure that the review of agency action proceeds in an efficient and speedy manner, and that the reviewing trial court has access to the record before rendering its decision. The filing requirement also ensures that "no relevant evidence or materials are hidden, and no 'new' or 'secret' evidence is introduced to either contradict or support an agency decision."
>
> We believe the statute is clear. The statute places on the petitioner the responsibility to file the agency record timely. Although the statute allows a petitioner to seek extensions of time from the trial court, and requires that extensions be granted if the petitioner demonstrates "good cause" for a delay in filing the record, the statute does not excuse untimely filing or allow nunc pro tunc extensions. As we recently observed:
>
> > It is well settled that a reviewing court may grant a request for an extension under section 4-21.5-5-13 of AOPA only if the request is made during the initial thirty days following the filing of the petition for review or within any previously granted extension.
>
> In short, the statute acknowledges possible difficulties in preparing and submitting the agency record, but places the burden on the petitioner to file or seek an extension within the statutory period or any extension.

Indiana Family & Social Servs. Admin. v. Meyer, 927 N.E.2d 367, 370-71 (Ind. 2010) (citations omitted).

The AOPA provision and Meyer make it abundantly clear that the trial court erred in granting Francis's extension to file the agency record after the thirty-day period expired. Ind. Code § 4-21.5-5-13; Meyer, 927 N.E.2d at 370 (addressing "whether AOPA requires a court to deny a petition for extension of time to file the record when the petition [for extension] is filed after the time for filing the extension has expired," and concluding that "[i]t does.").

Further, Francis's failure to file an agency record or seek an extension within thirty days of filing her petition for judicial review on August 9, 2010 precludes judicial review of the ISBD's decision. Meyer, 927 N.E.2d at 370-71. Francis did not comply with the

statutory requirements for seeking judicial review of an agency decision, and as a result, the trial court did not have jurisdiction to hear or determine her appeal of the ISBD's decision. See Indianapolis Yellow Cab, Inc. v. Indiana Civil Rights Comm'n, 570 N.E.2d 940, 942 (Ind. Ct. App. 1991) ("Failure to comply with th[e] statutory mandate [of Ind. Code section 4-21.5-5-13] is jurisdictional . . . ."), trans. denied.

B. Sufficiency

Nevertheless, Francis argues that she sufficiently satisfied AOPA requirements by attaching to her petition for judicial review the ISBD's July 8 two-page decision. She bases this argument on case law addressing what constitutes an adequate agency record for purposes of a petition for judicial review. Our court has concluded that petitioners are only required to file "all that is necessary . . . for the reviewing court to accurately assess the challenged agency action." Izaak Walton League of Am., Inc. v. DeKalb Cnty. Surveyor's Office, 850 N.E.2d 957, 965 (Ind. Ct. App. 2006), trans. denied; see Meyer, 927 N.E.2d at 371 (embracing this holding of Izaak Walton).

Indiana Code sections 4-21.5-5-13 and 4-21.5-3-33 describe the materials to be included in the agency record. Among other things, the agency record submitted should include evidence received or considered by the agency, a statement of matters officially noted, and any motions, requests, and intermediate rulings. See Ind. Code § 4-21.5-3-33(b). For the same reason that the General Assembly requires our great deference to agencies as specialists with more intimate knowledge of how particular circumstances affect specific sectors of Indiana, these statutory provisions require particular materials be included in

agency records submitted for judicial review because they indicate the degree to which an agency thoroughly evaluated the case and the degree to which circumstances affect the agency's decision in ways that the judiciary may not fully appreciate. The availability of a thoroughly inclusive agency record – including materials that the agency considered but for some reason did not base its decision upon – is vital.

In other words, a petitioner must provide more than simply the agency's conclusions and decision. Francis argues that the ISBD's decision is sufficient because the ISBD purportedly based its decision entirely on its interpretation of a state statute and accompanying regulation. We disagree because the ISBD's record includes materials that explain why the ISBD believed it was compelled to apply the pertinent state statutes and regulation as it did and deny her license application. For example, the ISBD's record includes conflicting materials regarding whether applicants' social security numbers are essential for the ISBD to comply with federal statutes and regulations (in addition to Indiana statutes and regulations). Regardless of whether the ISBD's interpretation of these state and federal laws is accurate, these materials in the ISBD record would have been important for the trial court to review, as the materials may have formed a basis for the ISBD's opinion, although not articulated either fully or clearly in its two-page decision and order.

Conclusion

Francis failed to timely file with the trial court the agency record or an extension to do so. Francis's attachment of the ISBD's decision is insufficient. Accordingly, the trial court erred in denying the ISBD's motion to dismiss Francis's petition for judicial review, and the

trial court did not have authority to hear or determine Francis's claim. Therefore, we vacate the trial court's order. Because the trial court did not have jurisdiction, we do not review the other issues on appeal.

Vacated.

BARNES, J., and BRADFORD, J., concur.