

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

IN THE MARION SUPERIOR COURT  
  
CAUSE NO. 49D12-2008-PL-027185

Allen Fisher, *et al.* )  
 )  
Petitioners, )  
 )  
v. )  
 )  
Tanner R. and Katelyn B. Christner, *et al.* )  
 )  
Respondents )

**FILED**  
November 17, 2020  
CLERK OF THE COURT  
MARION COUNTY  
BM

**ORDER GRANTING MOTIONS TO DISMISS AND DENYING  
REQUEST TO FILE BELATED OFFICIAL AGENCY RECORD**

This matter came before the Court on Motions to Dismiss filed by Respondents, Tanner R. and Katelyn B. Christner, and Respondents, Indiana Department of Environmental Management and the Office of Environmental Adjudication, and a Request to File Belated Official Agency Record filed by the Petitioners. The Court, having reviewed the briefs filed by the parties, and having held a remote hearing on the Motions, enters the following Findings of Fact, Conclusions of Law, and Order.

**Findings of Fact**

1. The Petitioners filed their Verified Petition for Judicial Review (the "Petition") on August 10, 2020. The Petition seeks judicial review of a final order issued by the Office of Environmental Adjudication upholding the issuance of a Confined Feeding Approval to the Christners by the Indiana Department of Environmental Management.

2. Pursuant to Ind. Code §4-21.5-5-13(a), the Petitioners were required to file the agency record within thirty (30) days after filing the Petition, or within further time allowed by the Court.

3. In accordance with the above statute, the Petitioners were required to file the agency record with the Court no later than September 9, 2020.

4. Pursuant to the Indiana Supreme Court Order, Supreme Court Case No. 20S-CB-123, the Supreme Court authorized tolling, through August 14, 2020, of all laws, rules, and procedures setting time limits in civil and criminal matters before Indiana trial courts. Under this Order, the Petitioners were required to file the agency record no later than September 14, 2020.

5. The Petitioners filed the agency record over the evening of September 16, 2020 and early morning hours of September 17, 2020. The Court FINDS that Petitioner's exercised due diligence in the filing of an official record. The Petitioners filed a Request to File Belated Official Agency Record on September 16, 2020.

6. The Petitioners did not seek an extension of time to file the agency record on or before either September 9, 2020 or September 14, 2020.

### **Conclusions of Law**

1. Indiana Supreme Court precedent has established that the failure to file an agency record within the required statutory timeframe acts as a procedural bar to proceeding with a petition for judicial review, and mandates dismissal of the petition. Affirming its unanimous holding in *Indiana Family and Social Services Administration v. Meyer*, 927 N.E. 2nd 367, 370-1 (Ind. 2010), the Indiana Supreme Court stated in *Teaching Our Posterity Success, Inc. v. Indiana Department of Education*, 20 N.E. 3rd 149 (Ind. 2014), "...the relevant provisions of AOPA do not permit untimely filing of the agency record or *nunc pro tunc* extensions of the filing deadline". *Id* at 153. The Court went on to state that "'the statute is clear' in placing the responsibility on the Petitioner to file the agency

record timely, and that any request for an extension of time must be made within the statutory time period". Id at 153.

2. The Indiana Supreme Court has also definitively ruled that a trial court cannot grant an extension of time to file the agency record unless that request is filed within the original deadline, or any extension granted by the Court. In *Teaching Our Posterity*, the Supreme Court held that trial courts lack the "...authority to extend the filing deadline for an agency record that was not filed within the required statutory period or an authorized extension thereof". Id at 155. Likewise, as stated in *Wayne County Property Tax Assessment Board of Appeals v. United Ancient Order of Druids*, 847 N.E. 2nd 924 (Ind. 2006), "It is well settled that a reviewing court may grant a request for an extension under §4-21.5-5-13 of AOPA only if the request is made during the initial thirty (30) days following the filing of the petition for review or within any previously granted extension". Id at 927.

3. It is undisputed that the Petitioners failed to file the agency record within the required statutory timeframe, even taking into consideration the Indiana Supreme Court filing moratorium. Neither did the Petitioners seek an extension of time to file the agency record within the statutory timeframe, even taking into consideration the Supreme Court moratorium.

4. The statute and caselaw provide no exception to the mandatory filing requirements.

5. Likewise, neither the statute nor caselaw require a showing of "prejudice" on the part of the party moving to dismiss a petition for failure to comply with the filing requirements.

6. The Court observes any delay in the filing of a record in this case was minimal and no party sustained any prejudice from the delay. Generally, when no prejudice results courts should chastise the tardy filer but should then decide the case on the merits or on the lack thereof. In *Teaching our Posterity Success v. Ind. DOE*, 20 N.E.3d 149,

151 (Ind. 2014), however, our Supreme Court set forth as a “bright line rule” that a petitioner seeking judicial review “must file the complete administrative record within thirty days of filing the petition or within an extension of time granted by the trial court.” It is that bright line rule the Court applies in the instant case.

7. Because the Petitioners have failed to comply with the mandatory statutory deadline to file the agency record in this cause, and did not seek an extension of time to file the agency record within that timeframe, their Petition must be dismissed.<sup>1</sup>

**Order**

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Motion to Dismiss filed by the Respondents, Tanner R. and Katelyn B. Christner, and the Amended Motion to Dismiss filed by Respondents Indiana Department of Environmental Management and the Office of Environmental Adjudication, are GRANTED, the Petitioners’ Request to File Belated Official Agency Record is DENIED, and Petitioners’ Verified Petition for Judicial Review is dismissed with prejudice. This is a final judgement.

SO ORDERED this \_\_\_\_ day of **November 17, 2020**.

*Therese Hannah.*

\_\_\_\_\_<sup>BM</sup>  
Magistrate Marion Superior Court Civil 12

Distribution: Via Electronic Notice.

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<sup>1</sup> The Petitioners raise a due process claim in the context of the Petition. The claim is rendered moot by the dismissal of the Petition.