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**IN THE
COURT OF APPEALS OF INDIANA**

ROBERT J. FIEDLER,)
Appellant,)
)
vs.)
)
INDIANA OFFICE OF ENVIRONMENTAL)
ADJUDICATION, INDIANA DEPARTMENT)
OF ENVIRONMENTAL MANAGEMENT)
and LAGRANGE COUNTY)
REGIONAL UTILITY DISTRICT,)
Appellees.)

No. 49A02-1011-MI-1263

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Maryann Oldham, Commissioner
The Honorable Theodore M. Sosin, Judge
Cause No. 49D02-1006-MI-027645

August 8, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION
RILEY, Judge

STATEMENT OF THE CASE

Appellant-Petitioner, Robert J. Fiedler (Fiedler), appeals the trial court's dismissal of his petition for judicial review of an administrative permit.

We affirm.

ISSUE

Fiedler raises four issues on appeal, one of which we find dispositive and restate as follows: Whether the trial court properly dismissed his petition for judicial review due to lack of jurisdiction.¹

FACTS AND PROCEDURAL HISTORY

Between August 21 and September 3 of 2009, the Indiana Office of Environmental Adjudication (OEA) received petitions from property owners (Petitioners), including Fiedler, asking the OEA to review a construction permit that the Indiana Department of Environmental Management (IDEM) had issued to the LaGrange County Regional Utility District (LaGrange) so that LaGrange could install a sanitary sewage collection and transmission system near Shipshewana Lake in LaGrange County, Indiana. LaGrange filed a motion for summary judgment on January 27, 2010, and Petitioners filed a motion for summary judgment on January 29, 2010. On May 5, 2010, the OEA issued findings of fact, conclusions of law, and a final order, dismissing the Petitioners' petition for review.

¹ Because we conclude that Fiedler waived his claim by filing his petition for review after the deadline authorized by Ind. Code § 4-21.5-5-5, we will not address the other three issues he raises.

The OEA sent a copy of the Final Order to the Petitioners' representatives by certified mail on May 6, 2010, and Fiedler received the Final Order on May 11, 2010.

Then, on June 9, 2010, Fiedler filed a petition for judicial review of the OEA's Final Order. His petition did not contain language stating that it was submitted under oath or by affirmation, or that the representations in the petition were true. On July 2, 2010, IDEM filed a motion to dismiss Fiedler's petition. In its memorandum of law in support of its motion, IDEM claimed, among other things, that Fiedler had failed to meet the jurisdictional requirements of I.C. § 4-21.5-5-5, which requires a plaintiff to file a petition for review within 30 days of service of the notice of agency action that is the subject of the petition. On July 6, 2010, LaGrange filed a motion to intervene in the matter, as well as an additional motion to dismiss the petition. In its motion to dismiss, LaGrange asked the trial court to dismiss the cause of action under Trial Rules 12(B)(1),(2), and (6) of the Indiana Rules of Trial Procedure. The trial court granted LaGrange's motion to intervene on July 9, 2010. Subsequently, on October 18, 2010, the trial court held a hearing on the motions to dismiss and dismissed Fiedler's petition on October 18, 2010.

Fiedler now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

On appeal, Fiedler argues that the trial court did have jurisdiction over his claim because he filed it within a timely manner, as required by I.C. § 4-21.5-5-5. In cases such as this one, "the jurisdiction of the trial court may not be invoked until the plaintiffs have complied with the statutorily provided procedures." Indiana Code section 4-21.5-5-5

identifies the required procedure for filing a petition for review when it states that “[e]xcept as otherwise provided, a petition for review is timely only if it is filed within thirty (30) days after the date that notice of the agency action that is the subject of the petition for judicial review was served.” Further, a person who “fails to timely object to an order . . . waive[s] the [] right to judicial review. . . .” I.C. § 4-21.5-5-4.

The standard for appellate review of rulings on motions to dismiss on jurisdictional grounds depends on whether the trial court resolved disputed facts, and if so, whether the trial court conducted an evidentiary hearing or ruled on a paper record. *Evans v. State*, 908 N.E.2d 1254, 1256 (Ind. Ct. App. 2009), *reh’g denied*. We review a ruling on a motion to dismiss for lack of jurisdiction *de novo* if the facts are not disputed. *Wayne Cnty. Property Tax Assessment Bd. of Appeals v. United Ancient Order of Druids-Grove #29*, 847 N.E.2d 924, 926 (Ind. 2006). Here, the parties do not dispute the facts with regard to the relevant dates necessary to determine whether Fiedler properly filed his petition, so we will review the issue of jurisdiction *de novo*.

Fiedler claims that he filed his petition for judicial review within the 30 day time limit required by I.C. § 4-21.5-5-5, but we cannot agree with this argument because we find that he filed his petition one day after the time limit. Indiana Code section 4-21.5-3-2 clarifies that:

A period of time under this article that commences when a person is served with a paper, including the period in which a person may petition for judicial review, commences with respect to a particular person on the earlier of the date that:

- (1) the person is personally served with notice; or
- (2) a notice for the person is deposited in the United States mail.

Further, “[i]n computing any period of time under this article, the day of the act, event, or default from which the designated period of time begins to run is not included[,]” and “[i]f a notice is served through the United States mail, three (3) days must be added to a period that commences upon service of that notice.” I.C. § 4-21.5-3-2(a); -(e).

The OEA sent a copy of the Final Order to the Petitioners’ representatives, including Fiedler, by certified mail on May 6, 2010, which qualifies as the commencement of service under I.C. § 4-21.5-3-2. Because we do not include the day from which the designated time begins to run, though, the first day for the purposes of computing the 30 day time limit was May 7, 2010. *See* I.C. § 4-21.5-3-2(a). Also, Fiedler in actuality had a 33 day time limit because he received notice through the United States mail. *See* I.C. § 4-21.5-3-2(e). Under those standards, Fiedler was required to file his petition by Tuesday, June 8, 2010. However, he did not file his petition until June 9, 2010.

Fiedler makes an additional argument, which we reject. He contends that we should only include business days in computing his time limit because I.C. § 4-21.5-3-2(b) states that “[i]f the period allowed is less than seven (7) days, intermediate Saturdays, Sundays, state holidays, and days on which the office in which the act to be done is closed during regular business hours are excluded from the calculation.” He argues that this provision applies because the additional 3 days added to the time limit due to service by United States mail is less than 7 days. However, we conclude based on I.C. § 4-21.5-3-2 that the time period the Code is referring to is the 30-day time limit, not the 3 day extension. Indiana Code section 4-21.5-3-2 declares that “[a] period of time under this article commences when a

person is served with a paper. . . .” The 30-day limit commences with the service of a paper, but not the 3-day extension. Similarly, I.C. § 4-21.5-3-2 provides that “[i]n computing any period of time under this article, the day of the act, event, or default from which the designated period of time begins to run is not included.” From this sentence, it is clear that the statute uses the phrase “period of time” to refer to the overarching time limit. Therefore, Fiedler did not timely file his petition.

Because we conclude that Fiedler did not file his petition within the requisite statutory time frame, he necessarily also waived his claim. *See* I.C. 4-21.5-5-4. Accordingly, we find that the trial court properly dismissed Fiedler’s petition for judicial review.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly dismissed Fiedler’s petition for judicial review.

Affirmed.

DARDEN, J., and BARNES, J., concur.