

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

MICHAEL T. DENNIS, R. PH.,	:	JUDGES:
And	:	Hon. W. Scott Gwin , P.J.
AMY LYNN FROMAN, R. PH.,	:	Hon. Julie A. Edwards, J.
Plaintiffs-Appellees	:	Hon. Patricia A. Delaney, J.
-vs-	:	Case Nos. 2009 AP 02 0009 and
	:	2009 AP 02 0010
OHIO STATE BOARD OF PHARMACY	:	
Defendant-Appellant	:	
	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Administrative Appeals from the
Tuscarawas County Court of Common
Pleas Case Nos.
2007-AA-01-0042 and 2007-AA-01-0055

JUDGMENT: REVERSED AND JUDGMENT VACATED

DATE OF JUDGMENT ENTRY: February 17, 2010

APPEARANCES:

For Appellee Dennis:

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For Appellee Froman:
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For Appellant:

RICHARD CORDRAY
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Assistant Attorney General
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Columbus, Ohio

Delaney, J.

{¶1} Appellant Ohio State Board of Pharmacy (“Board”) appeals two judgment entries of the Tuscarawas County Court of Common Pleas, both filed on January 5, 2009, which granted attorney’s fees in administrative appeals regarding the pharmaceutical licensure of Appellees Michael T. Dennis, R.Ph. (Case No. 2009 AP 02 0009) and Amy Lynn Froman, R. Ph. (Case No. 2009 AP 02 0010).

{¶2} Because the two cases involve the same issue and the identical assignment of error, they shall be addressed together.

STATEMENT OF THE CASE¹

{¶3} Michael Dennis is the owner and responsible pharmacist at Strasburg Pharmacy, a small independent pharmacy located in Strasburg, Ohio. Amy Lynn Froman is a staff pharmacist at Strasburg Pharmacy. Strasburg Pharmacy is Terminal Distributor of dangerous drugs under the supervision of Dennis. All were duly licensed by the Board pursuant to R.C. Chapter 4729, which governs the practice of pharmacy in the State of Ohio.

{¶4} On July 19, 2005, the Board issued separate Notices of Violations to Appellees. Each Notice alleged Appellees: “did...knowingly sell, conspire to sell, and/or aid and abet the sale of a controlled substance when the conduct was not in accordance with Chapter 3719., 4729., and 4731. of the Ohio Revised Code, to wit: [Appellees] sold the following controlled substances to [the listed patients] when not for a legitimate medical purpose issued by a prescriber acting in the usual course of his professional practice and in compliance with the administrative code rules addressing

¹ A Statement of the Facts is not necessary to the disposition of these appeals.

pain management and violating Rule 4729-5-30 of the Ohio Administrative Code and 21 CFR 1306.04.”

{¶5} An administrative hearing on the charges commenced on November 6, 2006, before the Board. Pursuant to separate Orders mailed on January 11, 2007, the Board revoked the terminal distributor license of Strasburg Pharmacy, but suspended the revocation provided there are no similar violations within the next year; permanently revoked Dennis’ pharmacist license and suspended Froman’s pharmacist license for a period of three years.

{¶6} Strasburg Pharmacy (Common Pleas Case No. 2007 AA 01 0041), Dennis (Common Pleas Court Case No. 2007 AA 01 0042) and Froman (Common Pleas Case No. 2007 AA 01 0055) then appealed to the Tuscarawas County Court of Common Pleas. Pursuant to judgment entries, all filed on September 4, 2008, the trial court reversed and vacated the Board’s Orders in each case, finding that they were not supported by reliable, probative and substantial evidence.

{¶7} The Board timely appealed all cases, and this Court reversed the trial court in all three cases (Case Nos. 2008 AP 10 0063; 2008 AP 10 0064; and 2008 AP 10 0065) and reinstated the Board’s Orders.

{¶8} However, prior to this Court’s disposition on the merits, the trial court granted Appellees attorney’s fees pursuant to R.C. 119.12 and 2335.39 in each case. The Board also timely appealed the trial court’s decision on attorney’s fees to this Court.

{¶9} The Board raises the same assignment of error in each case:

{¶10} “I. THE LOWER COURT ERRED WHEN IT AWARDED ATTORNEY FEES PURSUANT TO R.C. 2235.38 (SIC).”

I.

{¶11} R.C. 2335.39 authorizes a trial court to award attorney's fees to a prevailing eligible party in an appeal of an adjudication order of any agency pursuant to R.C. 119.12. Due to this Court's reversal of the trial court's decisions in Case Nos. 2008 AP 10 0063, 2008 AP 10 0064 and 2008 AP 10 0065, the Appellees have not prevailed within the meaning of R.C. 2335.39 and are not eligible for attorney's fees based upon this disposition.

{¶12} Accordingly, the judgment of the Tuscarawas County Court of Common Pleas is reversed and vacated.

By: Delaney, J.

Gwin, P.J. and

Edwards, J. concur.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. JULIE A. EDWARDS

IN THE COURT OF APPEALS FOR TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

MICHAEL T. DENNIS, R. PH.,	:	
	:	
And	:	
	:	
AMY LYNN FROMAN, R. PH.,	:	
	:	
Plaintiffs-Appellees	:	JUDGMENT ENTRY
-vs-	:	
	:	
OHIO STATE BOARD OF PHARMACY	:	
	:	
Defendant-Appellant	:	Case Nos. 2009 AP 02 0009 and 2009 AP 02 0010

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Tuscarawas County Court of Common Pleas is reversed and vacated. Costs assessed to Appellees.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. JULIE A. EDWARDS