

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

MILES DAVIS,	:	APPEAL NO. C-130249
Plaintiff-Appellant,	:	TRIAL NO. A-1207256
vs.	:	<i>JUDGMENT ENTRY.</i>
CITY OF CINCINNATI CIVIL SERVICE COMMISSION,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Raising a single assignment of error, plaintiff-appellant Miles Davis challenges the judgment of the common pleas court overruling objections and adopting the magistrate's decision dismissing Davis' administrative appeal from a decision of the defendant-appellee, the Cincinnati Civil Service Commission.

The commission had rejected Davis' 2012 challenge to the score he had received on a 2009 fire department district-chief promotional examination. Since challenges to the scoring of an examination must be brought within 14 days of notice of the examination results, the commission denied Davis' untimely request. *See* Cincinnati Civil Service Rule 17, Section 2.

Davis then filed an appeal with the common pleas court within the 30-day period, established by R.C. 2505.07, for bringing an appeal from the final order of an

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administrative board. The magistrate granted the commission's Civ.R. 12(B) motion and dismissed Davis' administrative appeal noting that it was "untimely and fail[ed] to state any claims upon which relief can be granted." The court overruled Davis' objections and adopted the magistrate's decision without elaboration.

Although the common pleas court's determination that Davis' appeal to the court itself had been untimely filed was incorrect, its decision to dismiss the appeal under Civ.R. 12(B)(6) is well supported. It appears beyond doubt that Davis can prove no set of facts entitling him to relief from the commission's denial of a challenge to examination results promulgated nearly three years before. *See O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus. The assignment of error is overruled.

Therefore, the trial court's judgment is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27.

HENDON, P.J., CUNNINGHAM and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on May 16, 2014

per order of the court _____.
Presiding Judge