

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA01-292

NORTH CAROLINA COURT OF APPEALS

Filed: 4 June 2002

COUNTY OF BUNCOMBE,

Petitioner-Appellant,

v.

Buncombe County
No. 00 CVS 4773

NORTH CAROLINA CODE OFFICIALS
QUALIFICATION BOARD, and
NORTH CAROLINA DEPARTMENT
OF INSURANCE,

Respondents-Appellees.

Appeal by petitioner from order entered 4 December 2000 by Judge James L. Baker, Jr., in Buncombe County Superior Court. Heard in the Court of Appeals 10 January 2002.

Stanford K. Clontz, for petitioner-appellant.

Attorney General Roy Cooper, by Assistant Attorney General Anne Goco Kirby, for respondents-appellees.

BRYANT, Judge.

Buncombe County [petitioner] appeals from the trial court's granting of respondents' motions to dismiss. Respondent North Carolina Code Officials Qualifications Board [Board] concluded that four of Buncombe County's building inspectors were guilty of gross incompetence in inspecting and approving certain construction areas in the building of the Wingate Inn in the 1990s and revoked the inspection certificates of three of the inspectors. The Board

disciplined the inspectors, and petitioner and three of the inspectors appealed to the Buncombe County Superior Court for judicial review. Petitioner filed a voluntary dismissal on 27 September 1999. Petitioner filed another petition for judicial review on 20 September 2000 after being sued by the owners of the construction project. Respondents filed motions to dismiss the petition for judicial review for lack of subject matter jurisdiction and for failure to state a claim upon which relief could be granted. The trial court granted the motions to dismiss after concluding that petitioner lacked standing and failed to timely file the petition. Petitioner appealed.

Petitioner presents two assignments of error. Petitioner argues that the trial court erred: 1) in granting respondents' motions to dismiss on the ground that petitioner is not an "aggrieved person" within the meaning of N.C.G.S. § 150B-43; and 2) in granting respondent's motions to dismiss on the ground that petitioner's petition was not timely filed according to N.C.G.S. § 150B-45. We disagree with petitioner and affirm the trial court.

I.

Petitioner first argues that it is a "person aggrieved" within the meaning of N.C.G.S. § 150B-43 because the Board's ruling is one which could affect petitioner's revenue. We disagree.

The purpose of the Administrative Procedure Act is to establish "a uniform system of administrative rule making and adjudicatory procedures for agencies." N.C.G.S. § 150B-1(a)

(2001). Section 150B-43 of the Act concerns the right to judicial review, and states,

Any person who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute.

N.C.G.S. § 150B-43 (2001). Our courts have held that in order to have standing for judicial review, five requirements must be met: 1) the petitioner is an aggrieved party; 2) there was a final agency decision; 3) the decision was the result of a contested case; 4) all administrative remedies have been exhausted; and 5) there is no adequate procedure for judicial review under another statute. *Charlotte Truck Driver Training Sch. v. N.C. Div. of Motor Vehicles*, 95 N.C. App. 209, 381 S.E.2d 861 (1989). A "person aggrieved" means "any person or group of persons of common interest directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision." N.C.G.S. § 150B-2(6) (2001). "Person" is defined by the Act as "any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society which may sue or be sued under a common name." N.C.G.S. § 150B-2(7) (2001). The appeal will be dismissed where a party is not aggrieved by an order. *State ex rel. Utilities Comm'n v. Carolina Utility Customers Ass'n*, 104 N.C. App. 216, 408 S.E.2d 876 (1991). Whether a person lacks standing to seek judicial review of an agency

decision is a question of subject matter jurisdiction. *Carter v. N.C. State Bd. for Prof'l Engineers*, 86 N.C. App. 308, 357 S.E.2d 705 (1987).

Petitioner argues that it is aggrieved because the administrative decision *could* affect the County's revenue. Specifically, petitioner argues that it is aggrieved because other parties have asserted claims against petitioner as a result of the Board's disciplinary action and findings in support of said action. Petitioner essentially argues that, because it is now subject to law suits, it is an aggrieved party and that the court erred in dismissing its petition for judicial review. Petitioner relies on *In re Brunswick County*, 81 N.C. App. 391, 344 S.E.2d 584 (1986), in support of this argument.

In *Brunswick County*, respondent appealed her discharge by the Brunswick County Department of Social Services [DSS] to the DSS Board, which voted to reinstate her. The Brunswick County Board of Commissioners denied the DSS Board's request for funding to reinstate respondent. The DSS Board sought a declaratory ruling from the Office of State Personnel [OSP] as to the DSS Board's authority to enter into a binding legal agreement regarding personnel actions. The OSP ruled that the DSS Board had such authority, whereupon the Board entered into a settlement agreement to reinstate respondent and grant her back pay and attorney fees. The full Personnel Commission certified the agreement.

Brunswick County filed a petition for review of a final agency decision. The trial court heard the matter and held that the DSS

Board did not have the authority to enter into a binding agreement to settle personnel disputes without the County Commissioners' approval. The trial court remanded the matter to the State Personnel Commission. Respondent appealed to this Court, alleging, inter alia, that the County was not a party to the proceedings. This Court disagreed, stating that the County was an aggrieved person because the County was required to provide funding for the reinstatement, back pay and attorney fees. *In re Brunswick County*, 81 N.C. App. at 396, 344 S.E.2d at 587-88 (citations omitted). The instant case is distinguishable.

In *Brunswick County*, the County was aggrieved because the final agency decision – a binding settlement agreement allowing for reinstatement, back pay and attorney fees – was entered into without the County's approval yet required the expenditure of county funds. In the instant case, however, petitioner argues that it is aggrieved because it has been subjected to at least one law suit as a result of the Board's ruling. We are not persuaded.

Carter v. N.C. State Bd. for Prof'l Engineers, 86 N.C. App. 308, 357 S.E.2d 705 (1987), lends some guidance as to the legal right or interest that must be affected before one obtains standing as an aggrieved person. In *Carter*, plaintiff, a registered land surveyor, complained to the Engineering Board that another registered surveyor failed to comply with the Engineering Board's Standards of Practice in surveying a parcel of land next to that owned by plaintiff. The Engineering Board voted to dismiss as unfounded the charges against the land surveyor. Upon review, the

Engineering Board concluded that the plaintiff was not an aggrieved person; therefore, it lacked subject matter jurisdiction. *Carter*, 86 N.C. App. at 312, 357 S.E.2d 707.

The plaintiff sought a writ of mandamus to compel other land surveyors to perform their duties. The trial court dismissed the action, holding that the plaintiff was not an aggrieved person and therefore lacked standing. This Court affirmed, stating,

Plaintiff's own status as a registered land surveyor . . . was not directly or indirectly affected by the Board's action with respect to [the land surveyor] Any decision of the Board in regard to plaintiff's complaint could not adversely affect plaintiff's legal rights or interests and he is, therefore, without standing as a "person aggrieved" to obtain judicial review of the Board's decision.

Carter, 86 N.C. App. at 313, 357 S.E.2d at 708.

In the instant case, respondent argues that

[t]he Carter decision establishes that the only person whose legal rights may be adversely affected by an occupational licensing board's decision in a disciplinary proceeding is the licensee against whom the charges were brought and disciplinary action taken. Thus, in this case, only the building inspectors against whom the charges were brought had standing to seek judicial review of the Board's decisions.

(Emphases added.) We are not prepared to go as far as respondent urges and hold that *Carter* establishes that only the licensee who is subject to a disciplinary action can be aggrieved. However, in the instant case, as in *Carter*, petitioner is not a party to the action, nor does the Board's decision affect petitioner's legal rights or interests. The fact that petitioner might possibly be

held liable in one or more lawsuits in which liability may or may not be based on the gross negligence of former county inspectors whose inspection certificates have been revoked, is too speculative for this Court to consider. Such speculation does not create a legal right or interest and confer standing so as to make petitioner "aggrieved" by the Board's decision. The Board's decision to discipline the inspectors and revoke their inspection certificates adversely affected only the rights of the inspectors, not petitioner. Therefore, based on the reasoning in *Carter*, petitioner is not an aggrieved person and therefore lacks standing. Accordingly, this assignment of error is overruled.

II.

Petitioner next assigns error to the court order granting respondent's motion to dismiss on the grounds that petitioner failed to timely file its petition. Having found that petitioner is not an aggrieved party it is unnecessary for the Court to reach this assignment of error.

AFFIRMED.

Judges MARTIN and TIMMONS-GOODSON concur.

Report per Rule 30(e).