Third District Court of Appeal

State of Florida

Opinion filed February 12, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-2181
Lower Tribunal No. 2018-22133

Henry S. Stolar,
Appellant,

vs.

Florida Department of Health, etc.,
Appellee.

An Appeal from the State of Florida Department of Health.

Harper Meyer Perez Hagen Albert Dribin & DeLuca LLP, and Roselvin S. Edelman, for appellant.

Sarah Young Hodges, Chief Appellate Counsel (Tallahassee), for appellee.

Before SCALES, GORDO and LOBREE, JJ.

SCALES, J.

Appellee Florida Department of Health (the "Agency") has moved to dismiss the appeal of Henry S. Stolar ("appellant"), a complainant in a disciplinary proceeding against a podiatrist licensed and regulated by the Agency. Because appellant is not a "party adversely affected by final agency action" – as required by section 120.68(1) of the Florida Statutes – he lacks standing to seek appellate review of the subject order. We, therefore, grant the Agency's motion and dismiss the appeal.

Relevant Background

Appellant filed a disciplinary complaint against a podiatrist who, pursuant to chapter 456 of the Florida Statutes, is licensed and regulated by appellee Agency. The Agency investigated appellant's complaint and presented the case to the Probable Cause Panel for the Board of Podiatric Medicine (the "Panel"). In confidential proceedings conducted pursuant to section 456.073(10) of the Florida Statutes, the Panel determined that no probable cause existed of a violation.

Appellant was informed of this Panel determination by letter dated August 13, 2019. On November 12, 2019, appellant filed his notice of appeal to this Court, with this August 13th letter appended to it. The Agency has moved to dismiss the appeal,

arguing that appellant lacks standing to appeal the Panel's probable cause determination.[1]

The Parties' Arguments

The Agency argues that only the respondent podiatrist and the Agency are "parties" to the underlying administrative action. The Agency asserts that, although appellant initiated the complaint and was critical to the investigation leading up to the presentation of the case to the Panel, a complainant who sets in motion a disciplinary proceeding is simply not a "party" with standing to appeal a Panel determination of no probable cause.

Conversely, appellant argues that, although he technically was not a litigant in the Panel proceedings below, we nevertheless should afford him party status here given the unique circumstances of this case. Appellant argues that, like the appellant in Portfolio Investments Corp. v. Deutsche Bank National Trust, 81 So. 3d 534, 536-37 (Fla. 3d DCA 2012), he is no "stranger to the record" and thus has standing to bring the instant appeal.

[1] Appellant's notice of appeal, filed almost three months after the issuance of the August 13, 2019 letter, contains a detailed explanation of counsel's attempts to obtain from the Agency an appealable order reflecting final agency action. The Agency's motion to dismiss the appeal does not address the timeliness of the appeal. Because of our determination that appellant lacks standing, and because the Agency does not address the timeliness issue in its motion to dismiss, we need not, and therefore do not, address the timeliness issue.

Analysis[2]

Initially, we note that standing to seek appellate review of administrative action is governed by express statutory law. Section 120.68(1) of the Florida Statutes allows for appellate review of final agency action only by "(a) *party* who is adversely affected by final agency action." (Emphasis added). Section 120.52(13) of the Florida Statutes defines four distinct classes of "parties" for the purposes of Florida's Administrative Procedures Act. In relevant part, the subsection defines a "party" as: (i) a specifically named person whose substantial interests are determined in the proceeding; (ii) a person entitled by law to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, *and who makes an appearance as a party*; (iii) a person allowed to intervene in the proceedings; and (iv) a county governmental unit authorized to represent the county's consumers. See § 120.52(13)(a)-(d), Fla. Stat. (2019).

Appellant does not fit into any of these specifically delineated definitions of the term "party." Indeed, each of the relevant provisions affords "party" status only to an actual participant in the proceeding. Appellant concedes he was not a participant in the confidential Panel proceedings, but, relying on Portfolio

[2] Whether an appellant has standing to seek appellate review of an administrative order is a pure question of law that we address *de novo*. K.M. v. Fla. Dep't of Health, 237 So. 3d 1084, 1087 (Fla. 3d DCA 2017).

Investments, appellant nevertheless urges us to treat him as a party so that he may appeal the Panel's decision.

The Portfolio Investments decision, though, is readily distinguishable from this case. Portfolio Investments is a foreclosure case, not an administrative proceeding governed by express standing rules dictated by the Florida Legislature. For this and additional reasons particular to Portfolio Investments's procedural history, its holding provides no support for appellant's argument.

During the pendency of a foreclosure action, Portfolio Investments purchased the subject property from a named defendant and, without objection, Portfolio Investments stepped into the shoes of its assignor, adopted the assignor's defenses, and actively participated in the foreclosure litigation where its interests in the subject property were being determined. Portfolio Investments, 81 So. 3d at 536-37. Given these unique circumstances, we determined that, despite Portfolio Investments never having intervened in the case formally as a party defendant, it had standing to challenge the foreclosure judgment because it had actively participated in the litigation without objection, the title to its property was at stake, and it was no "stranger to the record." Id.

While the respondent podiatrist might have been subject to discipline by the Agency as a result of appellant initiating the administrative proceedings, appellant's property interests were not being determined by the Agency. Indeed, we

discern no right, privilege or property interest of appellant that was subject to adjudication by the Panel. Consequently, unlike Portfolio Investments – which was actively participating in litigation by defending against a foreclosure action where title to its property was at stake – appellant lacked both participation in the proceedings and an interest in the outcome of those proceedings comparable to that of Portfolio Investments.

We, therefore, agree with the Agency that appellant lacks standing to appeal the probable cause determination of the Panel, and we grant the Agency's motion to dismiss.

Appeal dismissed.