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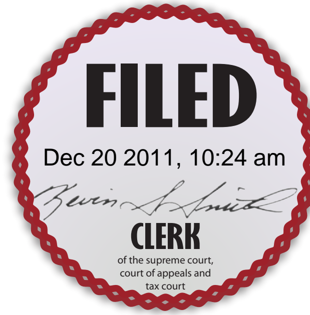

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IN THE
COURT OF APPEALS OF INDIANA

DERRICK D. JETER, M.D.,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 49A05-1101-MI-44
	)	
MEDICAL LICENSING BOARD OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Theodore M. Sosin, Judge
Cause No. 49D02-1007-MI-32536

December 20, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Derrick D. Jeter appeals the trial court's dismissal of his petition for judicial review ("petition") of an order by the Medical Licensing Board of Indiana ("the Board") revoking Jeter's medical license.

We reverse and remand.

ISSUES

1. Whether the trial court erred in dismissing Jeter's petition for judicial review as untimely.

2. Whether the trial court erred in dismissing Jeter's petition for judicial review because Jeter did not serve the Board with a copy of the petition.

FACTS

On December 12, 2002, Jeter, a medical doctor living in Munster, Indiana, and practicing medicine in Griffith, Indiana, was twice arrested by Munster police officers for operating a vehicle while under the influence of alcohol. He immediately closed his Griffith practice, where he had been sharing space with Dr. Henrique Scott, and checked into an alcohol rehabilitation program.

The State filed a petition for summary suspension of Jeter's medical license on May 7, 2003, and Jeter and the State submitted a notice of indefinite voluntary summary suspension to the Board on or about May 21, 2003.[1] The Board approved the agreement,

[1] In June of 2003, Jeter did not renew his license to practice medicine.

and it unsuccessfully attempted on October 9, 2003, to serve Jeter with the suspension order at an inpatient rehabilitation facility where Jeter had previously been in treatment.

On January 5, 2005, a deputy attorney general, representing the Board, filed a complaint for revocation of Jeter's license. The complaint was based on Jeter's history of alcohol dependency and his relapses while in treatment. The deputy attorney general, who knew Jeter's home address, sent notice by regular mail to Jeter's former medical practice in Griffith. Jeter did not receive the complaint.

On January 19, 2005, the Board sent notice of a prehearing conference by certified mail to the address of Jeter's former medical practice. One of Dr. Scott's employees, M. Santana, signed for the mail and threw it into a box where Dr. Scott's employees, without either Jeter's or Dr. Scott's knowledge, were keeping Jeter's mail. On June 3, 2005, an order consolidating causes and advising Jeter of a June 23, 2005 hearing, was sent by certified mail to the address of his former medical practice. One of Dr. Scott's employees, Rachel Richatt, signed for the mail and threw it into the box. Shortly thereafter, Dr. Scott learned of his employee's practices and told them not to accept Jeter's mail.

Jeter did not know about or attend the June 23, 2005 hearing, and on July 12, 2005, the Board sent a notice of proposed default by certified mail to the address of Jeter's former medical practice. The notice, which gave Jeter seven days to request that the Board not enter default, was not signed for and was returned unclaimed.

On August 25, 2005, the Board held a default hearing where the deputy attorney general first notified the Board that he possessed Jeter's home address. The deputy attorney general did so by offering three exhibits, two newspaper articles and a certified copy of Jeter's driving record. It appears that the Attorney General's office had received Jeter's home address from the Bureau of Motor Vehicles on or about April 22, 2003, but had not informed the Board of the address. On September 9, 2005, the Board issued findings of fact and an order revoking Jeter's medical license. Although aware of Jeter's home address, the Board again sent the order by certified mail to the address of Jeter's former practice, and it was not signed for but returned unclaimed.

On or about December 20, 2005, Jeter's addictions counselor called the Board and inquired about the status of Jeter's license. A Board employee informed the counselor that Jeter's license had been revoked. Subsequently, Jeter acquired his mail from someone working at the address of his former practice, and on February 8, 2006, he called the Board and asked "what his options were." (App. 58). The representative told Jeter to call an attorney and to re-apply in seven years. Jeter spoke with several attorneys who said that he couldn't pursue his license for seven years. Nevertheless, over the years Jeter maintained contact with the Board and consulted with other attorneys.

On March 5, 2010, after finding an attorney who questioned whether Jeter had received due process, Jeter filed with the Board his "Motion to Set Aside Revocation of Medical License." The State responded with a motion to dismiss in which it argued that a rehearing of a final order may be granted only under the limited conditions set forth in

Indiana Code section 4-21.5-3-31(c).[2] The Board held a hearing on Jeter's motion, where Jeter testified that he had been in a rehabilitation clinic, had been sober for several years, had earned a MBA degree with a concentration in hospital administration, and that he desired to pursue a position in hospital administration. Jeter argued that the revocation should be set aside and that he should remain on suspension pending further proceedings. On June 23, 2010, by a 4-2 vote, the Board denied the motion.

On July 23, 2010, Jeter filed with the trial court his "Petition for Review and Summons." The petition was directed to the "Indiana Attorney General, as Agent for the Indiana Medical Licensing Board." (App. 8-12). The Board filed a motion to dismiss on two bases. The first was that Jeter's challenge to the revocation of his license was untimely under Indiana Code section 4-21.5-5-5, which provides that a petition for judicial review should be filed within thirty days "after the date that notice of the agency action that is the subject of the petition for judicial review was served." Thus, the petition should have been filed no later than October of 2005. The second was that Jeter

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[2] The statute provides:

A party may petition the ultimate authority for an agency for a rehearing of a final order. The ultimate authority or its designee may grant a petition for rehearing only if the petitioning party demonstrates that:

> (1) the party is not in default under this chapter;
>
> (2) newly discovered evidence exists; and
>
> (3) the evidence could not, by due diligence, have been discovered and produced at the hearing in the proceeding.

The rehearing may be limited to the issues directly affected by the newly discovered evidence.

failed to comply with Indiana Code section 4-21.5-5-8, which states in pertinent part that a petitioner should serve a copy of the petition both upon the ultimate authority issuing the order and the Attorney General's office. Thus, the petition should have been served upon the Board as well as the Attorney General.

On December 21, 2010, the trial court issued a summary order granting the Board's motion to dismiss. Because the trial court does not designate the specific basis for dismissal, we address both issues raised by the Board in its motion to dismiss.

Additional facts will be discussed below as needed.

DECISION

1. Timeliness and Due Process

Jeter contends that the trial court erred in dismissing his petition as untimely. Jeter argues that the Board violated his due process rights of notice and an opportunity to be heard when the Board knew that he could not practice medicine, yet it persisted in sending notices to an address that it knew or should of known was that of the medical practice he closed after the agreed voluntary suspension of his license. Jeter also contends that the Board's due process violations rendered its revocation order void and that a void order may be challenged at any time. Jeter's Br. at 12 (citing *In the Matter of the Adoption of D.C.*, 887 N.E.2d 950, 955 (Ind. Ct. App. 2008)).

Due process does not require that a property owner receive actual notice before the government may take his property. *Dusenberry v. U.S.*, 534 U.S. 161, 170 (2002). Rather, due process requires the government to provide "notice reasonably calculated,

under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Jones v. Flowers*, 547 U.S. 220, 226 (2006) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). A decision entered where there has been no service of process is void for want of personal jurisdiction. *In re Adoption of L.D.*, 938 N.E.2d 666, 669 (Ind. 2010). Notice that may technically comply with a state statute or a trial rule does not necessarily comport with due process. *Id*.

Jeter primarily relies on *Jones* in support of his argument that he was not afforded due process. In *Jones*, the United States Supreme Court was tasked with determining whether the State of Arkansas provided constitutionally sufficient evidence to deprive Jones of his home when notices of a tax deficiency and forfeiture of the property were mailed to Jones by certified mail, as required by statute, but were returned to the State "unclaimed." 547 U.S. at 223-24. The Arkansas Commissioner of State Lands took no further action after the returns, and the State asserted that mailing the notices was sufficient to satisfy due process notice requirements. *Id*. at 236.

The Court noted that in cases where courts had found that mailing a notice via certified mail was sufficient, the sender had no reason to know that "anything had gone awry." *Id*. Those cases did not answer "whether due process entails further responsibility when the government becomes aware prior to the taking that its attempt at notice had failed." *Id*. at 227. The Court noted that although a State may have made a reasonable calculation of how to reach a party, it has good reason to suspect when notice

is returned that the party is "'no better off than if the notice had never been sent.'" *Id*. at 230 (quoting *Malone v. Robinson*, 614 A.2d 33, 37 (D.C. App. 1992)). The Court held that when mailed notice is returned unclaimed, the State must take additional reasonable steps to attempt to provide notice to the party before depriving the party of his property, if it is practicable to do so. *Id.* at 225. The Court held that an open-ended search for a new address, including searches in phone books and other government records, imposes too significant of a burden on the State. "What steps are reasonable in response to new information depends upon what the new information reveals." *Id*. at 234. The Court noted that "the State is exerting extraordinary power against a property owner—taking and selling a house he owns. It is not too much to insist that the State do a bit more to attempt to let him know about it when the notice letter addressed to him is returned unclaimed." *Id*. at 239.

The Board initially argues that *Jones* is limited to tax sale cases. It is clear, however, that the case applies whenever the State asserts its extraordinary power to deprive a citizen of his property. *See e.g., Echavarria v. Pitts*, 641 F.3d 92, 94-96 (5th Cir. 2011), as revised (June 21, 2011) (immigration bond); *Crum v. Vincent*, 493 F.3d 988, 992-93 (8th Cir. 2007) (revocation of medical license); *Yi Tu v. Nat'l Transp. Safety Bd*, 470 F.3d 941 (9th Cir 2006) (suspension of pilot's license). Indeed, the deprivation of a right to pursue one's ability to earn a living is more egregious than the taking of a house.

The Board also argues that Jeter waived his right to review when he failed to comply with Indiana Code section 4-21.5-5-5 by filing the petition for review more than thirty days after the Board's final revocation order was served. This argument ignores the issue of whether the Board's revocation order was void for lack of jurisdiction occasioned by the failure to comply with the notice requirements of the due process clause. *See In re Adoption of D.C.*, 887 N.E.2d 950, 955 (Ind. Ct. App. 2008) (holding that ineffective service of process prohibits the trier of fact from obtaining personal jurisdiction over a party; that a judgment rendered without personal jurisdiction over a party violates due process and is void; and that a void judgment may be collaterally attacked at any time). Because all notice rules operate under the umbrella of the Due Process Clause of the Fourteenth Amendment of the United States Constitution, the validity of the Board's argument depends upon whether Jeter was afforded his due process rights.

The Board further argues that Jeter should not prevail on his due process claim because he failed to inform the Board that he had closed his Griffith practice. The Board notes that physicians are required under 844 I.A.C. 4-4.5-19 to provide such information. To be sure, Jeter most likely could have avoided the default judgment by complying with the regulation. However, in *Jones*, the Court held that the governmental agency "does not argue that Jones' failure to comply with a statutory obligation to keep his address updated forfeits his right to constitutionally sufficient notice, and we agree." 547 U.S. at 232. Stated differently, "a party's ability to take steps to safeguard its own interests does

not relieve the State of its constitutional obligation." *Id.* Furthermore, it is inconceivable that Jeter would continue to practice medicine in violation of the Board's suspension of his license and in potential violation of the law.

Finally, the Board argues that although Jeter claims that the Board knew or should have known that the Griffith address was no longer a good address because it knew he could no longer practice medicine at that address, he fails to acknowledge that two of the notices sent to the address "were not returned to the Board and were accepted and signed for on more than one occasion." Board's Br. at 10. Applying *Jones*, however, we must look at the knowledge that the Board possessed at the time that the notice of proposed default was returned unclaimed and at the time before Jeter's property was taken. The Board knew that two people had signed for the prior notices but that Jeter did not make an appearance at a hearing that would determine whether he could continue to practice the profession for which he had expended much time and effort to obtain licensing. The Board also knew that the notice of default was mailed to the address of Jeter's former medical office, was not signed for, and was returned unclaimed. At this time, the deputy attorney general, who had acted as the Board's attorney in initiating the revocation of license action by filing the complaint, knew of Jeter's home address. The deputy attorney general apparently did not divulge the address to the Board. More importantly, before the revocation by default was voted upon, the Board was informed of Jeter's home address. However, rather than sending notice to the home address, it deprived Jeter of reasonable

notice of revocation and deprived him of his right to a timely appeal by again sending notice to the address of Jeter's former medical office.

Under the circumstances, we hold that the Board did not comply with the due process requirement that it provide "notice reasonably calculated, under the circumstances, to apprise [Jeter] of the pendency of the action and afford [him] an opportunity to present [his] objections." *See Jones,* 547 N.E.2d at 226 (quoting *Mullane*, 339 U.S. at 314). The additional step of sending notice to Jeter's home address required the *de minimus* effort by the Board of consulting with its attorney who filed the revocation action. This step balances the government's interest in efficiency and Jeter's interest in knowing about and defending against the deprivation of his property.

Because the Board deprived Jeter of his due process right to notice and the opportunity to defend against the revocation of his medical license, its decision is void. As such, it can be challenged at any time. Thus, Jeter's challenge is timely.

2. Notice to the Board

Jeter also contends that the trial court erred by dismissing his petition for failure to strictly comply with Indiana Code section 4-21.5-2-8, which requires service of a petition for review upon a state agency and the Attorney General, did not deprive the trial court of personal jurisdiction. He cites *Evans v. State*, 908 N.E.2d 1254 (Ind. Ct. App. 2009) in support of his contention.

In *Evans*, the Indiana Family and Social Services Administration ("FSSA") determined that Evans was not eligible for certain Medicaid coverage. Evans filed a

verified petition for judicial review of FSSA's determination. He sent a summons to Governor Daniels at the Statehouse via certified mail. The caption of the summons and the first line of the summons named the State and FSSA as respondents. Another summons was sent to the Attorney General via certified mail. This summons also referred to the State and FSSA as respondents.

A deputy attorney general filed an appearance on behalf of the State and FSSA and requested an extension of time to respond to Evans's petition. Subsequently, the State and FSSA filed a motion to dismiss Evans' petition on the basis that the trial court did not obtain personal jurisdiction because Evans failed to serve FSSA. The trial court granted the motion to dismiss.

On appeal, this court first noted that the "standard of 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." 908 N.E.2d at 1256 (citing *Wayne Cnty. Prop. Tax Assessment Bd. of Appeals v. United Ancient Order of Druids—Grove No. 29*, 847 N.E.2d 924, 926 (Ind. 2006)). We also noted that we review de novo a ruling on a motion to dismiss for lack of jurisdiction if the facts are not disputed. *Id.*

We observed that as a general rule, a trial court does not obtain personal jurisdiction when service of process has been ineffective. *Id.* at 1258 (citing *Thomison v. IK Indy, Inc.*, 858 N.E.2d 1052, 1055 (Ind. Ct. App. 2006)). However, where there is not a complete lack of service, the general rule is not always applicable. *Id.*

We concluded that even though Evans incorrectly sent one summons to the Governor instead of FSSA, that dismissal for lack of personal jurisdiction was not warranted. *Id*. at 1258. In so concluding, we noted that Indiana Trial Rule 4.15(F) provides that "[n]o summons or the service thereof shall be set aside or be adjudged insufficient when either is reasonably calculated to inform the person to be served that an action has been instituted against him, the name of the court, and the time within which he is required to respond." *Id*. We further stated:

> Under Indiana Trial Rule 4.15(F), no summons or service of process shall be set aside if either is reasonably calculated to inform the defendant of the impending action against him. Thus, Trial Rule 4.15(F) will prevent service of process which is technically deficient from defeating the personal jurisdiction of a court. [A]lthough actual notice alone will not cure defective service, it may be considered in determining whether the notice was reasonably calculated to inform an organization of the action.

Id. (quoting *Thomison*, 858 N.E.2d at 1058) (quotations and citations omitted).

We went on to find that "FSSA had actual notice of the petition for judicial review because . . . a deputy attorney general entered an appearance on behalf of the State *and* the FSSA." *Id*. at 1258-59. We also noted that, on the same day the appearance was entered, the State and FSSA moved for an enlargement of time to file a responsive pleading. *Id*. at 1259. We then concluded that "[n]ot only did the FSSA have actual notice of the action, but . . . that the summons itself was reasonably calculated to inform FSSA of the action." *Id*. We noted that the summons "specifically named the FSSA as a respondent twice." *Id*.

In the present case, the parties do not dispute that Jeter served the Attorney General but did not serve the Board. The parties also do not dispute that a deputy attorney general timely entered an appearance on behalf of the Board and asked for an enlargement of time to answer or otherwise plead. In addition, the parties do not dispute that a deputy attorney general then filed a motion to dismiss and answer on behalf of the Board. Furthermore, the parties do not dispute that Jeter's attorney informed the deputy attorney general representing the Board at the administrative hearing that he was going to file a petition of review and that the deputy attorney general informed Jeter's attorney that he would be representing the Board before the trial court.

Furthermore, the record discloses that the summons named the Board as the "Respondent," identified the trial court where the action was filed, and identified the time frame for an answer. (App. 13). In addition, the summons was sent to "The Indiana Attorney General, As Agent for The Medical Licensing Board of Indiana." (App. 13). Finally, the petition attached to the summons and referenced therein repeatedly identified the Board as the party who made the decision being appealed.

Under the circumstances of the case before us and the reasoning set forth in *Evans*, we hold that the trial court's dismissal of Jeter's petition was not warranted. In short, service was reasonably calculated to inform the Board of Jeter's petition. Thus, the trial court had jurisdiction to hear the petition for review.[3]

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[3] The Board argues that the trial court's dismissal is warranted under *Guy v. Commissioner, Ind. Bureau of Motor Vehicles*, 937 N.E.2d 822 (Ind. Ct. App. 2010). In *Guy*, however, the agency was served but the Attorney General was not. Because the Attorney General was not served, no one made an appearance for

CONCLUSION

The trial court erred in dismissing Jeter's petition for review, either on the basis of timeliness or notice to the Board. We reverse and remand for proceedings consonant with this opinion.

Reversed and remanded.

FRIEDLANDER, J., and VAIDIK, J., concur.

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the agency. As a result, we concluded that *Evans* was not controlling. Here, where the circumstances are similar to those in *Evans* and differ significantly from those in *Guy*, we conclude that *Guy* is inapposite.