

RENDERED: AUGUST 29, 2014; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000869-MR

T. ROBERT LOVE, M.D.

APPELLANT

v. APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE ROBERT B. CONLEY, JUDGE
ACTION NO. 05-CI-00744

ASHLAND HOSPITAL CORPORATION,
D/B/A KING'S DAUGHTERS' MEDICAL
CENTER; FRED JACKSON, INDIVIDUALLY
AND IN HIS CAPACITY AS PRESIDENT
AND CHIEF EXECUTIVE OFFICER OF
KING'S DAUGHTERS' MEDICAL CENTER;
AND KATALIN KOVACS, M.D., INDIVIDUALLY
AND IN HER CAPACITY AS PRESIDENT OF
THE MEDICAL STAFF OF KING'S DAUGHTERS'
MEDICAL CENTER

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; COMBS AND TAYLOR, JUDGES.

ACREE, CHIEF JUDGE: Dr. Robert Love appeals an order of the Greenup Circuit Court which affirmed the revocation of his clinical privileges pursuant to *Johnson v. Galen Health Care, Inc.* and dismissed his complaint. 39 S.W.3d 828 (Ky. App. 2001). We affirm.

Love secured clinical privileges for his orthopedic surgical practice at King's Daughters Medical Center (KDMC) in Ashland, Kentucky, and practiced there for many years before this dispute arose.

In 2005, KDMC placed Love on a 60-day suspension for allegedly exhibiting abusive and unprofessional behavior toward other medical professionals. On December 8, 2005,¹ while still facing suspension, but before the hospital's internal appellate procedures had been exhausted, Love's clinical privileges were again summarily suspended following a second incident.

The reason for the second suspension was Love's reported behavior during a wound debridement procedure which he performed on December 6. Love removed a portion of the left hip bone of a patient in the Intensive Care Unit. He was alleged to have done so without obtaining the consent of the patient or the patient's wife. Medical staff further reported that Love had been disrespectful and had failed to complete patient safety protocols, including ensuring that the patient was properly anesthetized or sedated prior to the procedure. Witnesses also claimed that upon conclusion of the procedure, Love threw the removed portion of

¹ All dates identified hereinafter occurred in 2005 unless otherwise specified.

hip bone onto a nearby table, amid the patient's "Get Well" cards. The second suspension is the subject of this appeal.

Following Love's summary suspension, KDMC initiated its internal peer-review procedures. The matter was first reviewed by the Medical Executive Committee (MEC),² which affirmed the suspension on December 12.

On December 28, Love filed a civil action in the circuit court. He alleged the second suspension was improper and gave rise to a number of claims, including retaliation, interference with contract, and deprivation of his right to due process. Love simultaneously requested injunctive relief from imposition of KDMC's disciplinary action. Ultimately, KDMC's internal administrative appellate process was ordered to proceed.

Love appealed the MEC's decision to KDMC's Judicial Review Commission (JRC). The JRC recommended reversal of the suspension, concluding that although Love did fail to properly secure the patient's consent, his behavior did not warrant such a severe response.

The MEC appealed to KDMC's Board of Directors, which disagreed with the JRC's conclusions and upheld the summary suspension. The Board concluded there were two independent bases for Love's suspension. First, they believed the incidents prior to December 2005 indicated "that Dr. Love repeatedly was unable to conform his conduct" to the requirements of KDMC's bylaws. The Board

² The MEC is chaired by the President of the Medical Staff and consists of additional medical staff members. It is tasked with imposing corrective action on practitioners who fail to abide by KDMC policies in a way that negatively affects patient safety.

further concluded that the December 6 incident justified suspension because there was no credible evidence that Love had secured the informed consent of the patient; Love had conducted no pre-procedure checks; his behavior during the procedure evinced disregard for hospital protocols and the patient's psychological needs; the procedure should have been performed in an operating room rather than the ICU; and Love's actions "were both detrimental to patient safety or quality of care" which "created a substantial likelihood of imminent impairment of the health or safety of a patient."

After the administrative proceedings had concluded, KDMC filed a motion requesting review of the disciplinary decision on the basis of *Johnson v. Galen Health Care Inc.* 39 S.W.3d 828. The circuit court agreed that *Johnson* established the extent of its review of the suspension. It concluded the Board's suspension was founded on substantial evidence, affirmed the administrative decision, and dismissed all of Love's outstanding claims.

Love appealed. He asserts that a number of procedural and evidentiary errors should invalidate the Board's conclusions.³

Unfortunately for Love, his Appellant's Brief is deficient in a way that impairs our ability to review his arguments. It bears no citation to the substantive authority in support of his arguments; rather, it recites little or nothing more than

³ Following affirmation of the Board's decision, the circuit court also dismissed the balance of Love's claims, including those which did not concern his right of administrative due process. He has not argued on appeal that the dismissal of those claims was improper, and so we deem the matter waived.

the standard of review as articulated in *Johnson v. Galen Health Care, Inc* and other opinions.⁴ 39 S.W.3d 828.

A number of his arguments are wholly unsupported by any citation to legal authority. CR 76.12(4)(c)(v). For example, Love contests the Board's failure to address his objections individually, the alleged failure to consider all of the evidence, the Board's consideration of evidence Love characterizes as "false," and the supposedly inherent bias of members of the Board. Nowhere, however, does he refer to any authority which addresses the legal standards by which we may measure the Board's handling of these matters. To address the substance of these issues would require us to construct Love's legal arguments for him, a task we decline to undertake. *Hadley v. Citizen Deposit Bank*, 186 S.W.3d 754, 759 (Ky. App. 2005) ("[W]ithout any argument or citation of authorities, [an appellate] [c]ourt has little or no indication of why the assignment represents an error. It is not our function as an appellate court to research and construct a party's legal arguments, and we decline to do so here." (Citation and quotation omitted)).

It is Love's general protest that the Board's findings are not supported by substantial evidence. The parties agree that the standard of review is that which governs ordinary administrative appeals. In other words, Love "is entitled to an appellate-like review of the record of the proceedings[,]" rather than *de novo*

⁴ The Appellant's Brief is deficient in other ways, as well. Most notably, it bears no statements of preservation. Kentucky Rules of Civil Procedure (CR) 76.12(4)(c)(v). The circuit court record consists of eleven volumes, and the administrative record is large and unwieldy. The lack of preservation statements makes it very difficult for us to ascertain whether the arguments raised on appeal were preserved.

review, and the Board's findings of fact may be invalidated only when they are not supported by substantial evidence. *Johnson*, 39 S.W.3d at 832.

KDMC's bylaws permit summary suspension of a doctor's clinical privileges in the following circumstances:

Whenever a Practitioner or Allied Health Professional's conduct requires immediate action to be taken to reduce a substantial likelihood of imminent impairment of the health or safety of any patient, employee[,] or other person, any person or body authorized to initiate proposed corrective action . . . shall have the authority to summarily suspend the Medical Staff membership status or all or any portion of the clinical privileges of such Practitioner or Allied Health Professional.

The Board was persuaded that Love's suspension was warranted both because of his failure to obtain consent and to follow other safety protocols in the December 2005 debridement procedure and because of the unprofessional behavior he had exhibited earlier in 2005. Because these two bases were independent of one another, we will affirm if even one of them is supported by substantial evidence.

Substantial evidence supports the Board's findings concerning the debridement procedure, and so we affirm on that basis.⁵ The Board concluded there was no credible evidence in the record that Love secured the patient's consent. Our review has likewise revealed no such evidence, and Love has identified no evidence of record which would compel a finding in his favor.

⁵ Love protests, in passing, that some of the evidence the Board relied upon consisted of summaries of witness testimony rather than the actual testimony itself. But because he has identified no authority which prohibited the administrative body's consideration of and reliance upon the summaries, we will not exclude them from our analysis.

Johnson, 39 S.W.3d at 832 (citing *Kentucky Unemployment Ins. Comm'n v. Murphy*, 539 S.W.2d 293, 294 (Ky. 1976)).

The Board also rejected Love's testimony that he did secure the patient's consent verbally, finding it not credible because it was inconsistent and self-contradictory. Determinations of witness credibility are within the province of the Board. *Id.*

There was evidence that Love violated hospital standards in addition to the failure to obtain consent. The Board considered witness statements that Love ignored the proper procedures, including safety checks and ensuring the patient was appropriately sedated. Eyewitnesses also stated that he failed to discuss the procedure with the patient prior to performing the debridement and that the patient was obviously uncomfortable and fearful during the procedure, but Love disregarded the patient's distress and took no steps to ensure his comfort. A nurse testified that she was shocked and upset by the inhumane way Love treated the patient.

In light of this evidence, we must conclude the circuit court properly affirmed the Board's decision to uphold the suspension because Love's behavior created a risk to patient wellbeing. We affirm.

TAYLOR, JUDGE, CONCURS.

COMBS, JUDGE, CONCURS IN RESULT ONLY.

BRIEFS FOR APPELLANT:

James E. Cleveland
Alexander C. Ward
Alexis B. Mattingly
Ashland, Kentucky

BRIEF FOR APPELLEE:

John M. Famularo
Kristen K. Orr
Lexington, Kentucky

Mark W. Leach
Louisville, Kentucky