

LILLIE D. WHEAT

NO. 17-CA-394

VERSUS

FIFTH CIRCUIT

LOUISIANA STATE BOARD OF PRACTICAL
NURSE EXAMINERS

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 744-105, DIVISION "I"
HONORABLE NANCY A. MILLER, JUDGE PRESIDING

November 27, 2017

SUSAN M. CHEHARDY
CHIEF JUDGE

Panel composed of Judges Susan M. Chehardy,
Fredericka Homberg Wicker, and Robert A. Chaisson

APPEAL DISMISSED.

SMC

FHW

RAC

COUNSEL FOR PLAINTIFF/APPELLANT,
LILLIE D. WHEAT

Thomas J. Hogan, Jr.

COUNSEL FOR DEFENDANT/APPELLEE,
LOUISIANA STATE BOARD OF PRACTICAL NURSE EXAMINERS

Jerry W. Sullivan

CHEHARDY, C.J.

On appeal, Lillie Wheat challenges that trial court's ruling that affirmed the decision of the Louisiana State Board of Practical Nurse Examiners (the "Board"), to deny her application for licensure. For the following reasons, this appeal is dismissed.

Facts and Procedural History

The facts are not in dispute. On January 31, 2012, Ms. Wheat completed a form entitled "Evaluation for Admission to a Practical Nursing Program." In her application, Ms. Wheat admitted that she had been terminated or resigned in lieu of termination by a state agency. In her explanation of the incident, Ms. Wheat stated that she was "wrongfully terminated" for using "excessive force" while defending herself against a "violent female youth."

In 2013, after completing her coursework, Ms. Wheat applied to the Board to take the practical nursing exam to obtain her license. On July 18, 2013, Ms. Wheat received a letter from the Board, seeking further information regarding her termination from a state agency. On November 12, 2013, in its subsequent letter, the Board informed Ms. Wheat as follows:

Upon reviewing all information submitted, it appears that you may have violated the law relating to the practice of practical nursing. A summary of the accusations being made against you is as follows:

The board received documents from Florida Parish Juvenile Detention Center (FPJDC) indicating that you were terminated on January 19, 2012 for violating company role/policy by using excessive force on a child and made several threatening statements. Additionally, on your application for employment with FPJDC, you stated that you graduated from Coastal College's Certified Nursing Assistant (CNA) program; however on your evaluation form you state that you did not complete the CNA program at Coastal College.

Ms. Wheat was informed that her eligibility for licensure would be determined by the "full board following a formal hearing."

On May 2, 2014, the formal hearing before a hearing officer was held. On October 10, 2014, at the meeting of the full board, the hearing officer presented findings of fact and conclusions of law, with her recommendation that Ms. Wheat be denied licensure, fined \$500.00 for violations of La. R.S. 37:969(A)(4), and assessed a hearing fee of \$500.00. The Board adopted the hearing officer's findings and conclusions and issued an order denying Ms. Wheat's eligibility for licensure, which was mailed to Ms. Wheat on October 10, 2014.

On November 7, 2014, Ms. Wheat filed a petition for judicial review of the adverse administrative ruling. In her brief to the district court, she alleged that the Board's decision should be reversed because, after the Board's initial acceptance and admission of Ms. Wheat into a Practical Nursing Program, the Board caused Ms. Wheat to rely to her detriment that she was eligible for licensure by the Board. Ms. Wheat also prayed for "such damages as may be proved at the trial."

On May 11, 2015, the Board filed an opposition to the petition. In it, the Board argued that, under La. R.S. 37:969, the Board's jurisdiction extends only to applicants for licensure and licensees. Therefore, the Board did not acquire jurisdiction over Ms. Wheat until the date that she applied to take the licensing examination, which was on or about July 18, 2013. The Board contended that, once it acquired jurisdiction over Ms. Wheat, it could inquire into her statements on her application for admission into a Practical Nursing Program, which, after a formal hearing, revealed that she was not eligible for licensure.

On June 2, 2016, the trial judge heard argument on this case. That day, the judge found that the record reflected that the Board did not act arbitrarily and capriciously and, thus, denied the petition for review. On July 12, 2016, the trial judge signed a judgment affirming the Board's decision and denying the petition for review. Notice of judgment was mailed that day. No motion for appeal was filed.

On August 9, 2016, the Board filed a peremptory exception of no cause of action alleging that Ms. Wheat has no cause of action against the Board as it has “quasi-judicial absolute immunity” for its actions in this case. After a hearing, the trial judge granted the Board’s exception of no cause of action on November 28, 2016. On January 18, 2017, Ms. Wheat filed a motion for appeal of the July and November judgments, which was granted. This appeal follows.

Law and Argument

The issues before us are (1) whether Ms. Wheat timely appealed the judgment affirming the Board’s ruling and denying her petition and (2) whether the trial court properly entertained the exception of no cause of action.

First, we will address the timeliness of the appeal of the July judgment. The Louisiana Administrative Procedures Act (APA) provides the scope of a trial court’s judicial review of an administrative decision in La. R.S. 49:964. *Fritzner v. City of New Orleans*, 12-1617 (La. App. 4 Cir. 5/22/13), 116 So.3d 945, 946. Further, La. R.S. 49:965 states, “An aggrieved party may obtain a review of any final judgment of the district court by appeal to the appropriate circuit court of appeal. The appeal shall be taken as in other civil cases.”

“A judgment that determines the merits in whole or in part is a final judgment.” La. C.C.P. art. 1841. Here, the district court judgment affirmed the Board’s ruling denying Ms. Wheat’s licensure, which determined the merits in their entirety and, thus, was a final judgment.

La. C.C.P. art. 2087(A) provides:

Except as otherwise provided in this Article or by other law, an appeal which does not suspend the effect or the execution of an appealable order or judgment may be taken within sixty days of any of the following:

- (1) The expiration of the delay for applying for a new trial or judgment notwithstanding the verdict, as provided by Article 1974 and Article 1811, if no application has been filed timely.

- (2) The date of the mailing of notice of the court's refusal to grant a timely application for a new trial or judgment notwithstanding the verdict, as provided under Article 1914.

In this case, neither party moved for a new trial or judgment notwithstanding the verdict. The final judgment at issue was rendered on July 12, 2016. Notice of judgment was mailed that day. Under La. C.C.P. art. 1974 and La. C.C.P. art. 1811, the seven-day delay for filing a motion for new trial or a motion for judgment notwithstanding the verdict expired on July 20, 2016. Thus, Ms. Wheat had until Monday, September 19, 2016 to take a devolutive appeal.¹ Ms. Wheat's motion for appeal was filed on January 18, 2017, well outside of the delay allowed by law. Thus, this Court lacks jurisdiction to address the merits of the final judgment rendered on July 12, 2016.

Next, we turn to whether the trial court properly entertained the Board's peremptory exception of no cause of action. According to La. C.C.P. art. 921, "An exception is a means of defense, other than a denial or avoidance of the demand, used by the defendant, whether in the principal or an incidental action, to retard, dismiss, or defeat the demand brought against him." "The function of the peremptory exception is to have the plaintiff's action declared legally nonexistent, or barred by effect of law, and hence this exception tends to dismiss or defeat the action." La. C.C.P. art. 923.

As we noted above, the trial court's denial of Ms. Wheat's petition for judicial review addressed the merits of the matter in their entirety. Thus, there was no action to dismiss or defeat. Further, the trial court was acting in an appellate posture. Under the Administrative Procedures Act, Ms. Wheat's remedy against

¹ The time period ended on Sunday, September 18, 2016, which is a legal holiday under La. R.S. 1:55, and, thus, not included in the time computation pursuant to La. C.C.P. art. 5059.

the Board was limited to administrative relief, not damages for alleged tortious conduct.² For these reasons, we find that the trial court erred in entertaining the exception as it was moot.

Conclusion

Based on the foregoing, we dismiss this appeal as untimely.

APPEAL DISMISSED.

² This opinion does not address whether a litigant might file a petition for damages against a Board in an ordinary proceeding

SUSAN M. CHEHARDY
CHIEF JUDGE

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MARC E. JOHNSON
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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **NOVEMBER 27, 2017** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

17-CA-394

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE NANCY A. MILLER (DISTRICT JUDGE)

THOMAS J. HOGAN, JR. (APPELLANT)

JERRY W. SULLIVAN (APPELLEE)

MAILED

NO ATTORNEYS WERE MAILED