

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2016 CA 0294

DONALD BRITTON

VERSUS

LOUISIANA ADDICTIVE DISORDER REGULATORY AUTHORITY

MM
DATE OF JUDGMENT: OCT 31 2016

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER C637870, SECTION 22, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE TIMOTHY E. KELLEY, JUDGE

* * * * *

Rev. Donald Britton
Lancaster, Texas

Plaintiff-Appellant
In Proper Person

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State of Louisiana through
the Addictive Disorder Regulatory
Authority

* * * * *

BEFORE: HIGGINBOTHAM, THERIOT, AND CHUTZ, JJ.

TMA Disposition: AFFIRMED.

Higginbotham, J. concurs.

CHUTZ, J.

Plaintiff-appellant, Donald Britton, appeals the district court's judgment, sustaining peremptory exceptions raising objections of prescription and no cause of action as to his respective claims for judicial review of the disciplinary-action order of and for tort damages against the Louisiana Addictive Disorder Regulatory Authority (ADRA). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

ADRA brought a disciplinary action against Britton, a licensed addictions counselor.¹ In response, he filed this lawsuit against ADRA. Subsequent to a hearing at an open meeting conducted on January 16, 2015, ADRA issued "Findings of Fact, Conclusions of Law and Board Order," concluding that Britton had obtained his credential by means of fraud, misrepresentation, or concealment of material facts; and was guilty of unprofessional conduct, including departing from, or failing to conform to minimal standards of acceptable and prevailing practice.² According to ADRA's factual findings, Britton had incorrectly answered "no" on his June 8, 2013, addictions counselor license renewal application when asked if he had ever been convicted of a felony and whether he had ever been

¹ See generally La. R.S. 37:3387 (defining a licensed addiction counselor and setting forth the criteria for licensure); see also La. R.S. 37:3390.3B(1) (giving ADRA power to conduct hearings on charges pursuant to the Administrative Procedure Act calling for disciplinary action against anyone holding credentials under the Addictive Disorders Practice Act) and La. R.S. 37:3386.1(1) (defining an addiction counselor as any person, licensed or certified or registered in accordance with the provisions and procedures of the Addictive Disorders Practice Act as established by ADRA, who by means of his special knowledge acquired through formal education or practical experience is qualified to provide addiction counseling services to those individuals afflicted with or suffering from an addictive disorder or certain co-occurring disorders; and providing that the counseling services shall be those which utilize the knowledge, skills and attitudes or core functions as determined by ADRA as appropriate for the addictive disorder or disorders presented); accord LAC 46:105A.

² See La. R.S. 37:3390.3A(9) and (15) (setting forth causes for ADRA to deny, revoke, or suspend any credential, specialty certification, status, or other recognition authorized by the Addictive Disorders Practice Act).

disciplined by any professional organization for violation of ethical standards.³ Thus, ADRA ordered a one-year suspension of Britton's license. ADRA also ordered that he complete ethics training and pay a fine and all costs of the disciplinary action.

On March 13, 2015, in a pleading entitled "Motion for Appeal Injunctive Relief and Monetary Damages," Britton commenced this litigation in the 19th Judicial District Court. Although all the allegations contained in the numbered paragraphs set forth allegations that were primarily directed to judicial review of ADRA's disciplinary-action decision,⁴ in the prayer of his pleading, Britton requested an order directing ADRA "to pay [him] for harassment[,] violation of his civil rights[,] and punitive damages for continued systematic harassment."

ADRA filed dilatory exceptions raising several objections, including improper cumulation of actions and vagueness/ambiguity of the petition. ADRA also asserted a peremptory exception of prescription as to the timeliness of Britton's claim for judicial review of the disciplinary decision. After a hearing, the district court signed a judgment, which sustained the exceptions of improper cumulation of actions and vagueness/ambiguity of the petition, ordered the ordinary proceeding for damages severed from the request for injunctive relief, and allowed Britton thirty days to amend his petition to state a cause of action for

³ ADRA found that in 2005, Britton had been convicted of felony theft; and that in 2010, the Louisiana Licensed Professional Counselors Board of Examiners had concluded Britton was guilty of unprofessional conduct and revoked his license based on a failure to disclose a felony conviction in his 2007 Licensed Professional Counselor application. See generally La. R.S. 37:1101-1123 (setting forth the provisions of the Louisiana Mental Health Counselor Licensing Act).

⁴ Britton attached to his pleading a document, issued by the Department of Public Safety and Corrections, showing that on February 14, 2007, he received an automatic first offender pardon pursuant to La. R.S. 15:572 for the 2005 felony theft conviction. Thus, he apparently contends, that he did not misrepresent the answers to the questions posited in his 2013 application for renewal of his addiction counselor license. Since a first offender pardon does not return the offender to the status of innocence; rather, its effect is to restore the basic rights of citizenship to the offender, see *In re Succession of Bernstine*, 2004-0150 (La. App. 3d Cir. 7/7/04), 879 So.2d 411, 413, Britton's assertion is without merit.

damages. The district court also sustained the peremptory exception of prescription and dismissed Britton's appeal of the ADRA decision.⁵

ADRA subsequently filed a motion to dismiss, averring that Britton had failed to comply with the order to amend his pleading to assert facts sufficient to support a cause of action in damages. A hearing was held on January 11, 2016, at which Britton did not appear but for which he was duly served. Because he failed to comply with the order to amend his petition, the district court sustained an exception of no cause of action and dismissed Britton's claim for damages.⁶ This appeal by Britton followed.⁷

TIMELINESS OF REVIEW OF ADRA DECISION

Any person aggrieved by a decision of ADRA in a disciplinary hearing may appeal the decision within thirty days to the district court for the parish wherein the hearing was held pursuant to the Administrative Procedure Act. La. R.S. 37:3390.3C; see also La. R.S. 49:964B (proceedings for review may be instituted by filing a petition in the district court of the parish in which the agency is located

⁵ An appeal to this court was dismissed as interlocutory and not immediately appealable as to the district court's actions of sustaining the dilatory exceptions; and a partial final judgment not designated as immediately appealable as to the dismissal of Britton's claim for judicial review as untimely. See *Britton v. La. Addictive Disorder Regulatory Authority*, 2015-1061 (La. App. 1st Cir. 12/7/15) (unpublished action).

⁶ Britton's failure to amend his petition to state a cause of action for injunctive relief resulted in the dismissal of that claim as well and is the subject of *Britton v. La. Addictive Disorder Regulatory Authority*, 2016-0295 (La. App. 1st Cir. --/--/2016) (unpublished opinion), also rendered this day.

⁷ ADRA challenges the timeliness of Britton's appeal of both the dismissal his claim for judicial review of the ADRA decision as untimely and the dismissal of his claim for damages based on a failure to state a cause of action. While it is true that Britton did not expressly reference the date of judgment in his motion for appeal, our review of the allegations in his motion show that he clearly directed his complaints to the district court's dismissal of his claims, particularly the claim for judicial review of ADRA's decision. Moreover, we are mindful that this litigant is *pro se*, his contentions in both the motion for appeal and his appellate brief challenge the dismissal of all his claims, and that appeals are favored under Louisiana law. See *Phi Iota Alpha Fraternity, Inc. v. Schedler*, 2014-1620 (La. App. 1st Cir. 9/21/15), 182 So.3d 998, 1002. Therefore, we broadly construe the district court's order granting the appeal and reach the merits of his appeal as to both rulings, see La. C.C.P. art. 2164 (providing that the appellate court shall render any judgment which is just, legal, and proper upon the record on appeal), which are final. See La. C.C.P. art. 1841 (a judgment that determines the merits in whole or in part is a final judgment).

within thirty days after the transmittal of notice of the final decision by the agency).

Our review of the record establishes that ADRA sent the decision on January 28, 2015 by certified mail to Britton's address of record. Thus, Britton had thirty days, or until February 27, 2015, to file his claim under the Addictive Disorders Practice Act. See La. R.S. 37:3390.3C. His pleading, filed on March 13, 2015, was too late.

Pointing to a correspondence he sent to ADRA on April 25, 2014, ostensibly in response to its letter notifying him of causes for suspension of his credential and giving him an opportunity to show compliance with all lawful requirements for retention of the status as a counselor, Britton avers that ADRA was aware that he had changed his address. Britton, therefore, contends that ADRA purposefully and intentionally directed its transmittal of its disciplinary decision to an incorrect address to thwart any possibility of review by the district court. We disagree.

According to LAC 37:913B, ADRA's order in conjunction with its disciplinary-action decision "shall be ... rendered within thirty days of the hearing and then served personally or domiciliary at the respondent's last known address by regular, registered, or certified mail, or by a diligent attempt thereof." LAC 46:503C(2) states, "It is the counselor's ... responsibility to keep [ADRA] informed of changes of address." LAC 47:503D(1) provides in pertinent part, "Any and all communications ... are official when ... mailed to the address of record. It is the responsibility of the individual to insure that the mailing address maintained by [ADRA] is current and to advise [ADRA] immediately of any change in the individual's mailing address."

Our review of the certified administrative record filed by ADRA in compliance with the Administrative Procedure Act⁸ shows that Britton was apprised of the charges at the address of record, which was the same address he provided ADRA on his renewal application. The receipt of the last correspondence from ADRA to Britton, sent by certified mail to his address of record on November 7, 2014 notifying him of the January 16, 2015 hearing date, appears to have been signed by him. More importantly, Britton appeared at the hearing and failed to expressly apprise ADRA of his change of address. Indeed, at oral argument before this court, Britton advised that he had never filed a change of address with ADRA. Because ADRA has shown that it mailed its disciplinary-action decision to Britton at his address of record on January 28, 2015, his appeal to district court, filed in excess of 30 days on March 13, 2015, was untimely. Accordingly, the district court correctly dismissed Britton's claim for judicial review of ADRA's disciplinary-action decision based on a finding that it was untimely and, therefore, prescribed.⁹

DISMISSAL OF CLAIM FOR DAMAGES

The function of an exception of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the pleading. *Everything on Wheels Subaru, Inc. v. Subaru South, Inc.*, 91-2708 (La. 4/12/93), 616 So.2d 1234, 1235. The court reviews the petition and accepts well-pleaded allegations of fact as true. *Id.* Any facts shown in annexed documents must also be accepted as true. *Pelican Educ. Found., Inc.*

⁸ See La. R.S. 49:964D (providing that within thirty days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review).

⁹ To the extent that Britton asserts the district court's dismissal of his pleading as untimely was error for violating La. R.S. 37:21, which proscribes certain time limitations on disciplinary proceedings by professional or occupational boards and commissions, we find no merit in this contention for the reasons set forth in *Britton v. La. Addictive Disorder Regulatory Authority*, 2016-0295 (La. App. 1st Cir. --/--/2016) (unpublished opinion), also rendered this day.

v. Louisiana State Bd. of Elementary & Secondary Educ., 2011-2067 (La. App. 1st Cir. 6/22/12), 97 So. 3d 440, 444.

Britton averred entitlement to an order directed at ADRA “to pay [him] for harassment[,] violation of his civil rights[,] and punitive damages for continued systematic harassment.” Under La. C.C. art. 2315, liability for damages is founded upon fault. Whether or not fault exists depends upon the facts and circumstances presented in each particular case. A common sense test is to be applied in determining the question of fault. The test is: how would a reasonably prudent man have acted or what precautions would he have taken if faced with similar circumstances and conditions. The degree of care to be exercised must always be commensurate with the foreseeable dangers confronting the alleged wrongdoer. *Cusimano v. Wal-Mart Stores, Inc.*, 2004-0248 (La. App. 1st Cir. 2/11/05), 906 So.2d 484, 486.

Louisiana courts have adopted a duty-risk analysis in determining whether to impose liability under the general negligence principles of La. C.C. art. 2315. For liability to attach under a duty-risk analysis, a plaintiff must prove five separate elements: (1) whether the defendant had a duty to conform his conduct to a specific standard (the duty element); (2) whether the defendant’s conduct failed to conform to the appropriate standard (the breach element); (3) whether the defendant’s substandard conduct was a cause-in-fact of the plaintiff’s injuries (the cause-in-fact element); (4) whether the defendant’s substandard conduct was a legal cause of the plaintiff’s injuries (the scope of protection element); and (5) whether the plaintiff was damaged (the damages element). *Id.*, 906 So.2d at 486-87. Based on our review of Britton’s allegations, he has failed to offer any facts that would apprise defendant of the basis for his claim for money damages based on “continued systematic harassment” under La. C.C. art. 2315.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State subjects, or causes to be subjected, any citizen of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U.S.C.A. § 1983. To recover damages for a violation of his civil rights, Britton was required to identify the specific constitutional right allegedly infringed. See *Albright v. Oliver*, 510 U.S. 266, 271, 114 S. Ct. 807, 811, 127 L. Ed. 2d 114 (1994). Section 1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred. *Id.*

Our code of civil procedure sets forth a system of fact pleading. Article 854 provides that “[a]ll allegations of fact of the petition ... shall be set forth in numbered paragraphs.” The Code further provides that a petition must contain “a short, clear, and concise statement of ... the material facts of, the transaction or occurrence that is the subject matter of the litigation...” La. C.C.P. art. 891A. To plead “material facts,” the petitioner must allege more than mixed questions of law and fact, such as that the defendant acted unreasonably. Rather, “[t]he Code requires the pleader to state what act or omission he or she will establish at trial.” *Fitzgerald v. Tucker*, 98-2313 (La. 6/29/99), 737 So. 2d 706, 713 (citing Frank L. Maraist & Harry T. Lemmon, 1 *Louisiana Civil Law Treatise Civil Procedure* § 6.3, at 102 (1999) (footnote omitted)). Thus, a plaintiff must allege, with reasonable specificity, a state of facts or condition of things that would show fault under La. C.C. art. 2315. See *Fitzgerald*, 737 So.2d at 713.

Britton has failed to set forth any palpable facts to support the requisite elements of either a claim under a theory of a violation of La. C.C. art. 2315 or for a federal violation of his civil rights. Because the district court ordered Britton to amend his pleading and allowed him 30 days to state a claim for relief, the failure

of Britton to comply with that order after more than eight months correctly resulted in the dismissal of any action, claim, demand, issue, or theory for damages he may have had. See La. C.C.P. art. 934; *Dunaway Realty Co., Inc. v. Pulliam*, 364 So.2d 198, 201 (La. App. 1st Cir. 1978).

DECREE

For these reasons, we affirm the trial court's dismissal of Britton's claims for appeal of ADRA's disciplinary-action order and for damages against the Louisiana Addictive Disorder Regulatory Authority. Appeal costs are assessed against plaintiff-appellant, Donald Britton.

AFFIRMED.