

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2016 CA 0295

DONALD BRITTON

VERSUS

LOUISIANA ADDICTIVE DISORDER REGULATORY AUTHORITY

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
Desoto, Texas

Plaintiff-Appellant
In Proper Person

Celia R. Cangelosi
Baton Rouge, Louisiana

Counsel for Defendant-Appellee
Louisiana Addictive Disorder
Regulatory Authority

* * * * *

BEFORE: HIGGINBOTHAM, THERIOT AND CHUTZ, JJ.

Disposition: AFFIRMED.

T.M.H.
Higginbotham, J. concurs.

CHUTZ, J.

Plaintiff-appellant, Donald Britton, appeals the district court's judgment, sustaining a peremptory exception raising the objection of no cause of action as to his claim for injunctive relief 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. After 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 18, 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 injunctive relief from ADRA's disciplinary action decision.

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 no cause of action directed against Britton's claim for injunctive relief. 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 request for injunctive relief severed from the ordinary proceeding for damages, and gave Britton thirty days to amend his petition to state a cause of action for injunctive relief. When Britton failed to do so, after a hearing on January 11, 2016, on ADRA's motion, the

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 licensed addiction counselor renewal application. 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*, 2004-00150 (La. App. 3d Cir. 7/7/04), 879 So.2d 411, 413, Britton's assertion is without merit.

district court signed a judgment, dismissing Britton's claims for injunctive relief for failure to state a cause of action.⁵ This appeal followed.

DISCUSSION

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

Generally, a party seeking the issuance of a preliminary injunction bears the burden of establishing by a preponderance of the evidence a prima facie showing that he will prevail on the merits and that irreparable injury or loss will result without the preliminary injunction. La. C.C.P. art. 3601. However, a threat of irreparable injury need not be shown when the deprivation of a constitutional right is at issue or when the act sought to be enjoined is unlawful. *DeJean v. Purpera*, 2015-1214 (La. App. 1st Cir. 4/15/16), 199 So.3d 11, 14-15, writ denied, 2016-1682 (La. 9/13/16), --- So.3d ----.

Clearly, nothing in Britton's pleading alleges that he will suffer irreparable injury if an injunction does not issue. And while he has referenced the 14th Amendment to the U.S. Constitution, he has stated no facts in support of a breach of his constitutional rights by ADRA. Thus, we consider whether he has averred that ADRA performed an unlawful action so as to support injunctive relief. According to the allegations of Britton's claim for injunctive relief, ADRA

⁵ The district court also dismissed Britton's claims for judicial review of ADRA's disciplinary action decision and for damages, which are the subject of *Britton v. Louisiana Addictive Disorder Regulatory Authority*, 2016-0294 (La. App. 1st Cir. --/--/2016) (unpublished opinion), also rendered this day.

violated La. R.S. 37:21 by conducting a disciplinary action against him. Gleaning from his pleading, he seems to aver that a hearing was held over seven years ago in reference to the felony charge that formed the basis of the disciplinary action held in January 2015, and ADRA concluded there was no cause of action against Britton. Therefore by bringing the January 2015 disciplinary action based on his negative response to the question whether he had been convicted on a felony, Britton claims ADRA violated La. R.S. 37:21.⁶

We find Britton has failed to make the requisite allegations to support entitlement to injunctive relief based on a violation of La. R.S. 37:21 for an alleged failure of ADRA to initiate proceedings for disciplinary action against him in a timely manner. The decision of ADRA, which was attached to his pleading, showed that the basis of his disciplinary action arose out of his answers to questions elicited in his June 18, 2013 application for renewal. The decision also noted that Britton was notified by certified mail on June 18, 2014 of an informal hearing regarding the complaint for September 19, 2014, which Britton attended;

⁶ La. R.S. 37:21, which proscribes certain time limitations on disciplinary proceedings by professional or occupational boards and commissions, states in part:

A. Unless a special law is applicable, no proceeding of any kind may be initiated by a professional or occupational board or commission as follows:

(1) If the nature of the complaint is based on negligence or gross negligence, no proceeding may be initiated after two years from discovery by the complainant. However, under no circumstances shall such a proceeding be initiated more than five years from the date of the act or omission.

(2) If the nature of the complaint is based on an intentional act or omission, no proceeding may be initiated after two years from discovery by the complainant. However, under no circumstances shall such a proceeding be initiated more than five years from the date of the act or omission.

(3) If the nature of the complaint is based on fraud, no proceeding may be initiated after two years from discovery by the complainant.

(4) If the nature of the complaint is based on a license or rules violation, no proceeding may be initiated after five years from the date of the act or omission.

(5) In all cases where a complaint is filed with a professional or occupational board or commission, the board or commission shall notify the licensee in writing of the complaint within six months after the filing of the complaint or be barred from further action thereon. The board or commission shall hold any required hearing within six months after the notice of the hearing, but this period may be interrupted by the filing of procedural motions.

and again on November 7, 2014, of the formal hearing, held on January 16, 2015, that Britton also attended. ADRA subsequently issued its decision and notified Britton of its order by certified mail on January 28, 2015.

Thus, on the face of Britton's pleading, he has failed to establish that he can assert facts sufficient to show ADRA violated La. R.S. 37:21. ADRA commenced its complaint in June 2014 and concluded the disciplinary action by January 2015, well within the time limitations set forth in La. R.S. 37:21. Because in sustaining the exception of vagueness/ambiguity of the petition, the district court ordered Britton to amend his pleading and allowed him thirty 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 claim for injunctive relief 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 district court's judgment, dismissing Britton's claims for injunctive relief against the Louisiana Addictive Disorder Regulatory Authority. Appeal costs are assessed against plaintiff-appellant, Donald Britton.

AFFIRMED.