

NOT DESIGNATED FOR PUBLICATION

CHERYL ANN DUPRE * **NO. 2006-CA-1464**
VERSUS * **COURT OF APPEAL**
LOUISIANA STATE BOARD * **FOURTH CIRCUIT**
OF PRACTICAL NURSE *
EXAMINERS (F.P. * **STATE OF LOUISIANA**
BORDELON, JR., M.D.
(CHAIRMAN OF THE * * * * *
BOARD), CLAIRE GLAVIANO,
RN, BSN, MIN (EXECUTIVE
DIRECTOR), TONI
BOURQUARD, RN
(COORDINATOR FOR
COMPLIANCE)

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2004-15616, DIVISION "G-11"
Honorable Robin M. Giarrusso, Judge

* * * * *

Judge Patricia Rivet Murray

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(Court composed of Judge Charles R. Jones, Judge Patricia Rivet Murray, Judge Terri F. Love)

Cheryl Ann Dupre
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IN PROPER PERSON, PLAINTIFF/APPELLANT

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AFFIRMED

The plaintiff, Cheryl Ann Dupre, appeals the trial court's judgment dismissing her action after granting defendants' exceptions of lack of subject matter jurisdiction and failure to state a cause of action. For the reasons that follow, we affirm.

Plaintiff filed the instant lawsuit against the Louisiana Board of Practical Nurse Examiners [hereinafter referred to as "the Board"] and its individual members alleging defamation based upon the Board's June 14, 2001 order suspending plaintiff's license as a practical nurse. Plaintiff's suit, styled as a "complaint,"¹ was originally filed on September 6, 2001 in the 24th Judicial District Court for the Parish of Jefferson. On February 2, 2004, the Jefferson Parish court ordered the matter be transferred to Orleans Parish district court pursuant to La. R.S. 37:963, which provides that the domicile of the Board is in New Orleans. Following the transfer, the Louisiana Attorney General, who was served in addition to the Board, filed an exception of vagueness and nonconformity of the petition.² On February 21, 2006, the trial court granted the exception, giving the

¹ Plaintiff appears in proper person.

² La. C.C.P. art. 891 regulates the form of a petition.

plaintiff sixty days to amend. The plaintiff filed her amended petition timely. In response to the amended petition, the Attorney General, joined by the Board and the individual defendants, filed exceptions of lack of subject matter jurisdiction and failure to state a cause of action. After a hearing, the district court rendered judgment on July 14, 2006 granting both exceptions and dismissing plaintiff's suit with prejudice. The plaintiff now appeals that judgment.

LACK OF SUBJECT MATTER JURISDICTION

The district court found, without giving reasons, that it did not have jurisdiction to consider plaintiff's complaint. In support of their exception, defendants had argued the court lacked subject matter jurisdiction because the plaintiff had failed to comply with the Administrative Procedure Act, La. R.S. 49:950 *et. seq.*, which stipulates the procedure for seeking judicial review of an administrative agency decision. Specifically, La. R.S. 49:964 provides, in pertinent part:

§964. Judicial review of adjudication

A. (1) Except as provided in R.S. 15:1171 through 1177, a person who is aggrieved by a final decision or order in an adjudication proceeding is entitled to judicial review under this Chapter... without limiting, however, the utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law....

B. Proceedings for review may be instituted by filing a petition in the district court of the parish in which the agency is located within thirty days after mailing of notice or the final decision by the agency or, if a rehearing is requested, within thirty days after the decision thereon. Copies of the petition shall be served upon the agency and all parties of record.

The record reflects that pursuant to allegations by four former employers of Ms. Dupre concerning her professional misconduct, the Board issued a formal

complaint to Ms. Dupre and held a contradictory hearing. As a result of the hearing, the Board issued the July 14, 2001 order suspending Ms. Dupre's license. Plaintiff's initial complaint reflects that she was seeking judicial review and reversal of the Board's adjudication, as well as alleging defamation. Although the Board is domiciled in Orleans Parish, plaintiff's original complaint was filed in Jefferson Parish on September 6, 2001, more than thirty days from the mailing on July 14, 2001 of the order suspending her license.³ The suit was not transferred to the proper court until February 2, 2004. However, even considering the date of original filing in Jefferson Parish, the suit was not filed timely pursuant to the Administrative Procedure Act. Therefore, insofar as the plaintiff seeks judicial review of the Board's decision to suspend her license, we cannot say that the trial court erred by granting defendant's exception of lack of subject matter jurisdiction.⁴ However, we do not agree that the trial court lacked subject matter jurisdiction over plaintiff's defamation claim. Therefore, with regard to the defamation claim only, we further consider whether the trial court erred by dismissing the petition for failure to state a cause of action.

FAILURE TO STATE A CAUSE OF ACTION

Concerning the plaintiff's defamation claim and/or any other related claims for damages based upon the Board's suspension of her license, the district court held the petition failed to state a cause of action because the defendants are entitled to absolute immunity. We agree with the trial court's ruling.

³ The record reflects that the order was sent by certified mail on this date.

⁴ Although this issue might have been more properly raised by an exception of prescription, maintaining the exception of lack of subject matter jurisdiction has the same effect.

Just as a judge has absolute immunity when he performs a judicial function, Louisiana courts have commonly recognized that an administrative agency, board or commission has an equivalent, quasi-judicial absolute immunity from civil liability for actions taken and decisions made when acting in its adjudicative role. See *Durousseau v. Louisiana State Racing Commission*, 98-0442, p.4 (La. App. 4 Cir. 12/9/98), 724 So.2d 844, 846, and cases cited therein. In *Durousseau*, this court affirmed the trial court's maintenance of an exception of no cause of action, holding that the Louisiana State Racing Commission had absolute, quasi-judicial immunity from a former jockey's claim for damages based upon the Commission's refusal to reinstate his license.

Similarly, in *Talbert v. Louisiana State Board of Nursing*, 03-0258 (La. App. 1 Cir. 12/31/03), 868 So.2d 729, the First Circuit affirmed the trial court's granting of the Nursing Board's exception of no cause of action, recognizing the defendant's quasi-judicial immunity from the tort claims asserted by a nurse and her husband resulting from the Board's suspension of the nurse's license. In that case, the First Circuit based its decision partially upon the jurisprudence and partially upon the statutory grant of authority to the Louisiana State Board of Nursing found in La. R.S. 37:918. The court specifically noted that the Board of Nursing was vested by statute with broad authority over matters pertaining to the licensing of nurses. Finding that the Board of Nursing was acting in its administrative adjudicatory capacity, the court held that the extension of quasi-judicial immunity was appropriate because it "preserves the independence of

judgment of the adjudicators by foreclosing any possibility of intimidation or deterrence through the threat or actuality of suits for damages.” 03-0258 at p. 4, 868 So.2d 731

Although La. R.S. 37:918, relied upon by the *Talbert* court, regulates the Louisiana State Board of Nursing, there is a nearly identical statute, La. R.S. 37:969, setting forth the duties and powers of the Board herein, which is the licensing body for practical nurses. In addition, La. R.S. 13:3715.3 specifically grants immunity to any “professional nursing association peer review committee” or any “healthcare licensure agency of the Louisiana Department of Health and Hospitals,” providing, in pertinent part:

C. No member of any such committee...or any sponsoring entity, organization, or association on whose behalf the committee is conducting its review shall be liable in damages to any person for any action taken or recommendation made within the scope of the functions of such committee if such committee member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him.

The Board herein is a healthcare licensure agency of the Louisiana Department of Health and Hospitals. See La. R.S. 37:962 (A). Therefore, the Board and the individual defendants have absolute, quasi-judicial immunity from tort claims arising from the performance of their adjudicatory function and the resulting suspension of the plaintiff’s license unless the plaintiff can show malice.

It is well established that, since the purposes of the immunity defense are effectively eviscerated if the plaintiff is allowed to state a cause of action by merely asserting vague, broadly worded complaints unsupported by material facts, conclusory allegations will not suffice. *Lambert v. Riverboat Gaming Enforcement Division*, 98-1856, pp.6-7 (La. App. 1 Cir. 12/29/97) 706 So.2d 172, 176; *Kyle v.*

Civil Service Commission, 588 So.2d 1154, 1160 (La. App. 1st Cir. 1991); *Board of Examiners of Shorthand Reporters v. Neyrey*, 542 So.2d 56, 64 (La. App. 4th Cir. 1989). Moreover, the exception of no cause of action is the most effective vehicle to defeat suits where absolute immunity is pled, and in evaluating an exception of no cause of action, allegations that are nothing more than conclusions are disregarded. *Hayes v. Parish of Orleans*, 98-2388, p.3 (La. App. 4 Cir. 6/16/99), 737 So.2d 959, 961 (citing *Delta Bank and Trust Co. v. Lassiter* 383 So.2d 330 (La. 1980) and *Saxena v. Saxena*, 518 So.2d 1098 (La. App. 5th Cir. 1987)..

In the instant case, plaintiff's amended petition does not allege any facts which would support a claim that the Board or any of its members acted maliciously or without reason. Accordingly, we conclude that the trial court did not err by maintaining the exception of no cause of action.

La. C.C.P. art. 934 provides that when the grounds of the objection pleaded by a peremptory exception (such as an exception of no cause of action) may be removed by amendment of the petition, the judgment sustaining the exception shall allow such amendment; however, if the grounds of the objection cannot be so removed, the claim shall be dismissed. In this case, the plaintiff has already been afforded an opportunity to amend her petition to cure objections of vagueness and noncompliance of form. Considering the content of the amended petition, and accepting all allegations as true, we nevertheless must conclude that under the particular facts of this case, it is not possible for the plaintiff to state a cause of

action for defamation by further amendment. Therefore, we conclude that the trial court did not err by dismissing the petition with prejudice.

CONCLUSION

Accordingly, for the reasons stated, we affirm the trial court's judgment.

AFFIRMED