STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1362

In the Matter of the Teaching License of Scott Selmer

Filed July 31, 2017
Affirmed
Halbrooks, Judge

Minnesota Board of Teaching
OAH No. 80-1302-33017

Scott Selmer, Minneapolis, Minnesota (pro se relator)

Lori Swanson, Attorney General, Nathan J. Hartshorn, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Board of Teaching)

Considered and decided by Halbrooks, Presiding Judge; Ross, Judge; and Randall, Judge.*

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Relator challenges an order dismissing his administrative appeal as moot, arguing that the Minnesota Board of Teaching did not give him a fair opportunity to be heard before concluding that it had the authority to revoke his teaching license. We affirm.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

Relator Scott Selmer applied for a short-call substitute-teaching license in 2014. On his license application, he disclosed a pending disciplinary case before the Minnesota Supreme Court regarding his attorney license. In May 2014, the board issued Selmer an interim short-call substitute-teaching license and directed him to advise it of the supreme court's decision.

In July 2015, the supreme court suspended Selmer from the practice of law, with no right to petition for reinstatement for 12 months because he "committed professional misconduct by engaging in a pattern of harassing and frivolous litigation, failing to abide by court orders, and refusing to comply with discovery requests." *In re Disciplinary Action against Selmer*, 866 N.W.2d 893, 894, 901 (Minn. 2015); *see also In re Disciplinary Action against Selmer*, 749 N.W.2d 30, 33 (Minn. 2008); *In re Disciplinary Action against Selmer*, 568 N.W.2d 702, 704-05 (Minn. 1997); *In re Disciplinary Action against Selmer*, 529 N.W.2d 684, 685 (Minn. 1995). Selmer did not advise the board of the supreme court's decision.

On September 24, 2015, the board's disciplinary committee notified Selmer by letter that it planned to recommend revocation of his teaching license on the grounds of immoral character or conduct. *See* Minn. Stat. § 122A.20, subd. 1(a)(1) (2016). Selmer demanded a contested hearing in response to the letter.

In November 2015, the board commenced a license disciplinary action in the Office of Administrative Hearings and served Selmer with a notice and order for a prehearing conference scheduled on January 19, 2016. An administrative law judge (ALJ) conducted

the prehearing conference as scheduled, but Selmer failed to appear. He did not request a continuance or communicate with the ALJ prior to the prehearing conference. The ALJ denied the board's motion for default due to Selmer's failure to appear, scheduled a second prehearing conference, and directed the board to re-serve Selmer with a notice and order for the second prehearing conference.

On January 20, 2016, the board served Selmer with a second notice and order for another prehearing conference scheduled on February 16, 2016. Selmer again failed to appear or communicate with the ALJ prior to the second prehearing conference, and the ALJ determined that Selmer was in default. The ALJ presumed that the allegations in the board's notice were true and recommended that it take disciplinary action against Selmer.

The board took the ALJ's recommendation under advisement and scheduled consideration of the matter for April 8, 2016. Through his counsel, Selmer requested that the board postpone consideration until at least June 15, 2016. The board granted his request and rescheduled consideration of the matter for July 15, 2016, its first regular meeting after June 15, 2016.

On June 30, 2016, Selmer's short-call substitute-teaching license expired by its own terms. The board dismissed the matter as moot at its meeting on July 15, 2016. It also determined that it had the authority to revoke Selmer's license based on immoral character or conduct, pursuant to Minn. Stat. § 122A.20, subd. 1(a)(1), if his license had not expired by its own terms. The board concluded, "As a matter of law, at the time the Report was issued, [Selmer]'s conduct referenced in the findings of fact demonstrated immoral

character and constituted immoral conduct sufficient to revoke his license . . . ." This appeal follows.

D E C I S I O N

In a judicial review of an agency decision, this court

> may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are . . . affected by other error of law.

Minn. Stat. § 14.69 (2016); *see Falgren v. State, Bd. of Teaching*, 545 N.W.2d 901, 904-05 (Minn. 1996). As a threshold matter, the board contends that Selmer's disciplinary case became moot when his license expired. Because we have concluded that the board's findings and conclusion result in collateral consequences, Selmer's appeal is not moot. *See In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999). We, therefore, reach the merits of this appeal.

Selmer argues that the board's revocation of his teaching license would not have been proper because he was never afforded a full and fair opportunity to contest its allegations. We disagree.

"Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Falgren*, 545 N.W.2d at 908 (quotation omitted). "Sufficient due process generally requires reasonable notice and a hearing." *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 563 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001).

A person has a property interest in his or her short-call substitute-teaching license. *See Falgren*, 545 N.W.2d at 908 (stating that the board conceded that teaching licenses are property interests); *see also CUP Foods*, 633 N.W.2d at 562-63 (stating that a person "has a property interest in his business licenses"); *Humenansky v. Minn. Bd. of Med. Exam'rs*, 525 N.W.2d 559, 566 (Minn. App. 1994) ("[A] license to practice medicine is a property right deserving constitutional protection . . . ."), *review denied* (Minn. Feb. 14, 1995). Because Selmer had a property interest in his teaching license while it was effective, we must determine whether he had reasonable notice and an opportunity to be heard prior to the board's decision to revoke his teaching license.

Selmer argues that the ALJ should have waited until he returned to Minnesota to proceed with the contested hearing. The ALJ found Selmer to be in default because he failed to appear at two prehearing conferences.

"A default occurs when a party fails to appear without the prior consent of the judge at a prehearing conference . . . ." Minn. R. 1400.6000 (2015). An agency or judge "may dispose of a contested case adverse to a party which defaults. Upon default, the allegations of or the issues set out in the notice of and order for hearing or other pleading may be taken as true or deemed proved without further evidence." *Id.*

The record demonstrates that Selmer had an opportunity to contest revocation of his teaching license. The board twice served Selmer with a notice and order for a hearing and prehearing conference before an ALJ. He failed to appear or communicate with the ALJ on both occasions. Consequently, the ALJ found Selmer to be in default.

Selmer argues that the ALJ erred because he timely requested a hearing continuance in writing. He directs us to his letter, requesting the board to schedule a contested hearing when he was returning to Minnesota at the end of August 2016.

> Requests for a continuance of a hearing shall be granted upon a showing of good cause. Unless time does not permit, a request for continuance of the hearing shall be made in writing to the judge and shall be served upon all parties of record and the agency if it is not a party. In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance. A request for a continuance filed within five business days of the hearing shall be denied unless the reason for the request could not have been earlier ascertained.

Minn. R. 1400.7500 (2015). Because his letter was addressed to the board and not the ALJ, we conclude that Selmer failed to request a continuance.

Even if Selmer had properly requested a continuance, the ALJ never granted the request or concluded that he made a showing of good cause. Good cause includes:

> death or incapacitating illness of a party, representative, or attorney of a party; a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleadings requiring postponement; and agreement for a continuance by all parties provided that it is shown that more time is clearly necessary to complete authorized discovery or other mandatory preparation for the case and the parties and the judge have agreed to a new hearing date, or, the parties are engaged in serious settlement negotiations or have agreed to a settlement of the case which has been or will likely be approved by the final decision maker.

Id. Selmer maintains that his attendance in a graduate program in New York constituted good cause to continue a contested hearing. We disagree.

"Parties may be represented by an attorney throughout the proceedings in a contested case, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law." Minn. R. 1400.5800 (2015). And a "prehearing conference may be held by telephone." Minn. R. 1400.6500, subp. 2 (2015). Selmer's participation in graduate school is not good cause for his failure to appear because he could have found someone else to represent him or participated in the preconference by phone. We conclude that the ALJ did not err in concluding that Selmer was in default.

Lastly, Selmer argues that the doctrines of collateral estoppel and res judicata should not apply here. Because neither collateral estoppel nor res judicata was an issue before the board or the ALJ, we decline to address these issues on appeal. *See In re A.D.*, 883 N.W.2d 251, 261 (Minn. 2016) ("Generally, we will not consider an issue not addressed below."); *accord Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). And for the first time in his reply brief, Selmer argues that the ALJ abused its discretion by failing to explicitly rule on his credibility and that we should relieve him from the ALJ's default ruling for mistake, inadvertence, and excusable neglect. Because we do not "address issues raised for the first time on appeal, particularly when the issue is raised in a reply brief," we decline to address these issues. *Emerson v. Sch. Bd. of Indep. Sch. Dist. 199*, 809 N.W.2d 679, 687 (Minn. 2012).

In summation, we conclude that Selmer had a full and fair opportunity to contest the revocation of his teaching license. Because he failed to request a continuance and failed to appear at two prehearing conferences, the ALJ did not err in concluding that he was in default. Thus, the board did not err in adopting the ALJ's findings. And based on the

ALJ's findings, the board had an adequate basis to revoke Selmer's short-call substitute-teaching license for immoral character or immoral conduct. *See* Minn. Stat. § 122A.20, subd. 1(a)(1).

Affirmed.