STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1649

In the Matter of Virginia Marie Carlson, Unlicensed.

Filed September 30, 2019
Affirmed
Florey, Judge

Minnesota Board of Architecture, Engineering, Land Surveying,
Landscape Architecture, Geoscience and Interior Design
File No. 5-1006-34618

Virginia Carlson, Wayzata, Minnesota (pro se relator)

Keith Ellison, Attorney General, Anthony De Sam Lazaro, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design)

Considered and decided by Reyes, Presiding Judge; Smith, Tracy M., Judge; and Florey, Judge.

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

FLOREY, Judge

In this certiorari appeal, in a case involving allegations that relator improperly held herself out as an architect, relator challenges orders by respondent Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design (the Board) granting summary disposition against her and imposing a civil penalty of $10,000. We affirm.

FACTS

Relator Virginia Marie Carlson has never been a licensed architect. In 1999, the Board issued her a cease-and-desist order because she was holding herself out as one. The Board ordered that she cease and desist "from the practice of architecture and from holding herself out to the public as a licensed architect, whether in written, oral, electronic, or other communications."

In October 2012, relator and her husband, principals of Architektur, Inc., signed a contract with Bryan and Karen Crane to design and build a home in Scandia, Minnesota. Throughout relator's interactions with the Cranes, she stated that she was a licensed architect and an associate of the American Institute of Architects (AIA). The Cranes paid relator $10,000 toward the Scandia project. In early 2013, upon learning that relator lacked an architect license, the Cranes terminated their contract with Architektur.

Criminal and Civil Litigation

As a result of relator's interactions with the Cranes, she was criminally charged with theft by swindle. In August 2013, relator, through Architektur, sued the Cranes. The Cranes counterclaimed fraud and breach of contract and moved for summary judgment. While relator's criminal and civil cases were pending, relator was found guilty of theft by swindle in a case concerning an unrelated commercial real-estate project with different victims. She appealed, and this court affirmed the conviction. *State v. Carlson*, No. A15-0179, 2016 WL 952453 (Minn. App. Mar. 14, 2016), *review denied* (Minn. May 31, 2016).

In January 2015, the Cranes prevailed in their civil case, but judgment was not entered until September 2016 due to an unresolved claim for attorney fees. In granting

summary judgment for the Cranes, the district court found that relator misrepresented that she was a licensed architect. Relator appealed, but her appeal was dismissed, and the case became final. *Architektur, Inc. v. Crane*, No. A16-1739 (Minn. App. Dec. 8, 2016) (order op). This court denied relator's subsequent petition for discretionary review. *Architektur, Inc. v. Crane*, No. A18-0322 (Minn. App. Mar. 13, 2018) (order op).

Relator pleaded guilty to, and was convicted of, theft by swindle for her actions concerning the Cranes. She made admissions during her plea confirming that she told them that she was an architect and led them to believe that she was one, even though she was aware of the 1999 cease-and-desist order prohibiting her from holding herself out as an architect. Relator appealed, and this court affirmed the conviction. *State v. Carlson*, No. A15-1219, 2016 WL 3961792 (Minn. App. July 25, 2016), *review denied* (Minn. Oct. 26, 2016).

Complaint to Board

Meanwhile, the Cranes had submitted a written complaint concerning relator to the Board. In their complaint, they stated that relator represented to them that she was a licensed architect and attempted to bill them for architectural work despite failing to produce plans. They requested that the Board investigate. The Board's complaint committee opened an investigation. *See* Minn. Stat. § 326.111, subd. 1 (2018) (permitting the establishment of a complaint committee to investigate complaints on the unauthorized practice of architecture).

Relator submitted several letters in response to the investigation and spoke with the complaint committee at a meeting. She conceded that she had described herself as a

"residential architect," "project architect," and "design architect," but asserted that these were not misrepresentations. She claimed that she had never used the standalone term, "architect," and did not hold herself out as being licensed.

The complaint committee sought disciplinary action against relator and moved for summary disposition. Relator filed a response to the committee's motion, and a motion hearing was held before an Administrative Law Judge (ALJ). The ALJ issued an order recommending that the Board grant the committee's motion. The ALJ concluded that relator had held herself out as an architect in violation of Minn. Stat. § 326.02 (2018) and the 1999 cease-and-desist order. The ALJ concluded that relator's violation was established by the prior litigation (the grant of summary judgment for the Cranes), and relator was collaterally estopped from relitigating the issue. The ALJ also concluded that relator admitted to describing herself as a design architect, project architect, and residential architect, and this constituted violations of section 326.02.

In July 2018, relator submitted a memorandum and other documents challenging the ALJ's determination. In September 2018, the Board adopted the ALJ's recommendations, subject to some minor revisions. The Board acknowledged that relator submitted additional materials in July 2018, but the Board declined to consider them—deeming them "outside the evidentiary record." The Board imposed a $10,000 civil penalty against relator. *See* Minn. Stat. § 326.111, subd. 6 (permitting the Board to impose a civil penalty up to $10,000 per violation). On October 9, 2018, the Board served upon relator a final civil-penalty order, affirming the $10,000 penalty. *See* Minn. Stat. § 16D.17 (2018). This certiorari appeal followed.

D E C I S I O N

When reviewing an agency decision following a contested case, under the Minnesota Administrative Procedure Act (MAPA), Minn. Stat. § 14.001-.69 (2018), this court may affirm, remand, reverse, or modify the agency's decision if the substantial rights of the petitioner may have been prejudiced because the decision violates constitutional provisions; exceeds statutory authority; was made "upon unlawful procedure," or is otherwise legally erroneous; is unsupported by substantial evidence; or is "arbitrary or capricious." Minn. Stat. § 14.69; *see also* Minn. Stat. § 326.111, subd. 1(c) (2018) (stating that all hearings concerning the unauthorized practice of architecture shall be conducted in accordance with MAPA).

Summary disposition is the administrative-law equivalent of summary judgment. *Pietsch v. Minn. Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004). Review of a grant of summary disposition "consists of determining whether there are any genuine issues of material fact and whether there was an error in applying the law to the facts." *Id.*; *In re Leisure Hills Health Care Ctr.*, 518 N.W.2d 71, 75 (Minn. App. 1994). We view the evidence in the light most favorable to the party against whom summary disposition was granted. *In re Rate Appeal of Benedictine Health Ctr.*, 728 N.W.2d 497, 507 (Minn. 2007); *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). When a summary-disposition motion is made and supported, the nonmoving party must present specific facts showing that a genuine issue of material fact exists. *Leisure Hills*, 518 N.W.2d at 75; *see also DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (quotation omitted).

The Board is authorized under Minn. Stat. § 326.04, subd. 1 (2018) "[t]o carry out the provisions of sections 326.02 to 326.15," which govern the licensure of architects and practice of architecture in Minnesota. *See* Minn. Stat. §§ 326.02-.15 (2018). This authority includes regulation of the unlicensed practice, and solicitation, of architectural work. *See* Minn. Stat. § 326.02, subds. 1-2. A person may not "use in connection with the person's name" or otherwise "use or advertise any title or description tending to convey the impression that the person is an architect . . . unless such person is qualified by licensure or certification." *Id.*, subd. 1. Additionally, the Board may impose a civil penalty for a violation of an "order that the [B]oard has issued or is empowered to enforce." Minn. Stat. § 326.111, subd. 6(a).

I. Collateral estoppel applies to the issue of whether relator held herself out as a licensed architect to the Cranes and establishes that relator violated section 326.02, subdivision 1, and the 1999 cease-and-desist order.

In determining that no genuine issue of material fact remained, the Board relied on collateral estoppel; specifically, a determination in the 2015 grant of summary judgment that relator misrepresented to the Cranes that she was a licensed architect.

"Collateral estoppel, also known as issue preclusion, prohibits a party from relitigating issues that have been previously adjudicated." *Barth v. Stenwick,* 761 N.W.2d 502, 507 (Minn. App. 2009). "Whether the doctrine of collateral estoppel applies is a mixed question of law and fact and is reviewed de novo." *Id.*

"Collateral estoppel bars the relitigation of an issue when: (1) the issue is identical to one in a prior adjudication; (2) there was a final judgment on the merits in the prior proceeding; (3) the estopped party was a party or in privity with a party to the prior

adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue." *Id.* at 508. "In addition to these four factors, a court applying collateral estoppel must be convinced that its application is fair." *Id.*

Here, the requirements for the application of collateral estoppel are met. The issue resolved in 2015 was whether relator misrepresented that she was a licensed architect. This clearly qualifies as a violation of section 326.02 and the 1999 cease-and-desist order. A final judgment on the merits was reached because the 2015 grant of summary judgment fully disposed of the litigation on the merits. "A final judgment ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *T.A. Schifsky & Sons, Inc. v. Bahr Const., LLC*, 773 N.W.2d 783, 788 (Minn. 2009) (quotation omitted). Relator was a party to the action, and the record indicates that she was given a full and fair opportunity to litigate the matter. Under the circumstances, application of the collateral-estoppel doctrine is fair.

Relator asserts that collateral estoppel is inapplicable because the underlying case was not final, and an issue of fraud remained the subject of further appeal. Relator is wrong. The case became final after relator's appeal was dismissed due to her failure to pay a required filing fee. *See Architektur, Inc. v. Crane*, No. A16-1739 (Minn. App. Dec. 8, 2016) (order op); *see also Carlson v. Crane*, No. A18-1666 (Minn. July 1, 2019) (stating in an order opinion that relator "falsely represented to the Cranes that she was a licensed architect" and that "the district court's judgment was final").

Because collateral estoppel applies and establishes that relator violated section 326.02 and the 1999 cease-and-desist order, relator's numerous arguments that the Board's

conclusion is erroneous, arbitrary, or unsupported by substantial evidence are unavailing. The Board did not abuse its discretion by applying collateral estoppel to the issue of whether relator improperly held herself out as a licensed architect. *See Barth*, 761 N.W.2d at 508 (stating that if collateral estoppel is available, a reviewing court will not reverse application of the doctrine absent an abuse of discretion). Accordingly, no genuine issue of material fact remains on whether relator used a title conveying the impression that she was an architect, a violation of section 326.02, subdivision 1, and no genuine issue of material fact remains on whether relator violated the 1999 cease-and-desist order, which prohibited her from holding herself out to the public as a licensed architect.

II. Regardless of collateral estoppel, relator failed to present specific facts showing that a genuine issue of material fact remains on whether she improperly held herself out as an architect, even when viewing the evidence in the light most favorable to her.

In addition to the applicability of collateral estoppel, summary disposition was permitted because relator failed to rebut the evidence that she unlawfully held herself out as an architect and violated the 1999 cease-and-desist order.

In seeking summary disposition, the complaint committee relied upon relator's admissions, during the complaint committee's investigation, that she used the terms residential architect, project architect, and design architect, in reference to herself. The complaint committee also relied on relator's plea admission in her criminal case, in which she admitted that she told the Cranes that she was an architect and led them to believe as much. The Board found that relator's acts, as established by the plea admission, were a

violation of the 1999 cease-and-desist order and that relator's use of the terms residential architect, project architect, and design architect, constituted a violation of section 326.02.

Because relator failed to present specific facts to rebut the evidence that she violated the 1999 cease-and-desist order and section 326.02 by her use of terms conveying that she was an architect, summary disposition was appropriate. *See Leisure Hills*, 518 N.W.2d at 75 (indicating that the nonmoving party must present specific facts showing that a genuine issue of material fact exists).

Relator asserts that she was permitted to refer to herself as an architect because she did not call herself a licensed architect. However, section 326.02, subdivision 1, prohibits more than referring to oneself as a licensed architect, it prohibits a person from using a title "tending to convey the impression that the person is an architect . . . unless such person is qualified by licensure or certification." The unrebutted evidence, specifically relator's plea admissions, indicates that she led the Cranes to believe, through her representations, that she was an architect.

III. The Board properly applied section 326.02, subdivision 1, based on the plain language of the statute and did not exceed its powers.

Relator asserts that the Board misapplied the plain language of section 326.02, subdivision 1, and exceeded its powers. "Statutory interpretation is a question of law subject to de novo review." *Pietsch*, 683 N.W.2d at 306. We review de novo whether an agency "has exceeded its statutory authority." *See In re Application of Minn. Power*, 838 N.W.2d 747, 753 (Minn. 2013). "We resolve any doubt about the existence of an agency's authority against the exercise of such authority." *Id.* (quotation omitted).

"Administrative agencies are creatures of statute and they have only those powers given to them by the legislature." *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010). "An agency's statutory authority may be either expressly stated in the legislation or implied from the expressed powers." *Id.* To determine the extent of an administrative agency's powers, "we first look to the plain language of the authorizing statute." *In re Valley Branch Watershed Dist.*, 781 N.W.2d 417, 421-22 (Minn. App. 2010).

As previously discussed, the Board is authorized to regulate solicitation of architectural work and enforce prior orders of the Board. Section 326.02, subdivision 1, plainly prohibits a person from using titles "tending to convey the impression that the person is an architect," unless the person is licensed. Collateral estoppel establishes that relator told the Cranes that she was a licensed architect, a clear violation of the plain language of section 326.02, subdivision 1, as well as the 1999 cease-and-desist order. Likewise, relator's plea admissions and other admissions constitute unrebutted evidence that the Cranes were led to believe that relator was an architect by her representations to them, a similarly clear violation of the plain language of section 326.02, subdivision 1, and the 1999 cease-and-desist order. The Board properly applied section 326.02, subdivision 1, and section 326.111, subdivision 6(a), based upon the plain language of those statutes, and did not exceed its powers. Relator also asserts that the Board lacked jurisdiction because the prior cases that the Board relied upon "are pending appeal." Relator is incorrect. The orders relied upon are final.

IV. Relator's constitutional claims are unavailing.

A. First Amendment

Relator asserts that her right to free speech was violated because the Board "cannot legally confiscate the word 'architect' as it is a common language term." She argues that her use of the terms architect, project architect, design architect, and residential architect, do not imply that she is a licensed architect. As a threshold matter, the Board argues that relator waived her free-speech argument by failing to apply the applicable constitutional standard. Relator has sufficiently set forth her free-speech argument, and we therefore address its merits.

The constitutionality of a statute presents a question of law, which we review de novo. *State v. Bussmann*, 741 N.W.2d 79, 82 (Minn. 2007). "A statute is unconstitutionally overbroad as applied if it prohibits constitutionally protected activity in the particular context of the facts and circumstances of the case." *State v. Hall*, 887 N.W.2d 847, 856 (Minn. App. 2016), *review denied* (Minn. Feb. 22, 2017). We find relator's free-speech argument unavailing.

We reject relator's assertion that section 326.02, subdivision 1, prohibits the use of the terms architect, project architect, design architect, and residential architect. Section 326.02, subdivision 1, prohibits using terms "tending to convey the impression that the person is an architect" when the person is not so qualified. The statute, as applied, prohibits relator from making misrepresentations, and the Supreme Court has repeatedly recognized that false factual statements possess no intrinsic First Amendment value. *See, e.g., Brown v. Hartlage*, 456 U.S. 45, 60, 102 S. Ct. 1523, 1532 (1982) ("Of course, demonstrable

falsehoods are not protected by the First Amendment in the same manner as truthful statements."); *see also State v. Hall*, 887 N.W.2d 847, 853 (Minn. App. 2016) (stating that party asserting a First Amendment protection bears initial burden of demonstrating that First Amendment is implicated), *review denied* (Minn. Feb. 22, 2017). Relator's statements to the Cranes conveying that she was an architect were not protected by the First Amendment.

B. Substantive due process; unconstitutional-conditions doctrine

Relator nominally raises substantive due process and the unconstitutional-conditions doctrine. She fails to offer any argument in her principal brief concerning the application of these protections, and we deem her challenges forfeited. *See State v. Bartylla*, 755 N.W.2d 8, 10 (Minn. 2008) ("A defendant must provide argument or legal authority for [her] pro se claims, unless any error is obvious upon inspection, or the claims will be deemed waived.").

V. The Board properly concluded that the statute of limitations was inapplicable.

Relator asserts that the statute of limitations renders the 1999 cease-and-desist order void.[1] She also asserts that the complaint committee violated the statute of limitations

[1] In her statute-of-limitations argument, relator references Minn. Stat. § 15.059 (2018), concerning advisory councils and committees, but this statute is inapplicable to the complaint committee. *See* Minn. Stat. §§ 15.059, subd. 1 (stating that the section is applicable "whenever specifically provided by law"); 241.71 (2018) ("The provisions of section 15.059, subdivision 6, shall govern the terms, expenses, and removal of members of the advisory task force."); 326.111, subd. 1(b) (containing no reference to section 15.059). She also references Minn. Stat. § 326.11, subd. 3(c) (2018), permitting a hearing on a cease-and-desist order "no later than 30 days after the request for the hearing is received by the [B]oard." However, her argument concerns the 2018 proceedings, which

because they received a complaint on April 15, 2014, but waited until August 22, 2018, to commence a disciplinary action. The Board concluded that "[t]he statute of limitations set forth in Minn. Stat. § 541.07(2) (2016) [did] not apply to [the] regulatory action." "The construction and application of a statute of limitations, including the law governing the accrual of a cause of action, is a question of law and is reviewed de novo." *MacRae v. Grp. Health Plan, Inc.*, 753 N.W.2d 711, 716 (Minn. 2008).

Under Minn. Stat. § 541.07(2), a two-year statute of limitations is required for "actions" based "upon a statute for a penalty or forfeiture, except as provided in sections 541.074 and 541.075." However, courts have consistently refused to impose time limitations on administrative proceedings, which are not "actions." *See, e.g.*, *In re Holly Inn, Inc.*, 386 N.W.2d 305, 308 (Minn. App. 1986) ("In light of section 645.45(2), which continues to define 'action' as any proceeding in any *court* of this state, and case law which continues to apply that same definition, we believe the general statute of limitations does not apply to this administrative proceeding." (quotations and citation omitted)); *In re Schultz*, 375 N.W.2d 509, 518 (Minn. App. 1985) ("There is no statute of limitations in the statutes governing the dental profession, Minn. Stat. §§ 150A.0l-.21."). Because the proceeding at issue was not an "action," we reject relator's statute-of-limitations argument.

---

did not involve the issuance of a cease-and-desist order. We therefore find her argument concerning the 30-day hearing timeline unavailing.

VI. Relator's procedural challenges are unavailing.

Relator challenges the Board's procedures, arguing that the Board "failed to adequately investigate claims and weigh the evidence" and that she was deprived of the opportunity for meaningful discovery. Relator's case was decided on summary disposition, an accepted procedure that precedes a trial or evidentiary hearing. *See* Minn. R. 1400.5500(K) (permitting summary disposition). Any further procedures or hearings would not have changed the issues resolved by collateral estoppel and relator's own admissions nor reduced the risk of an erroneous ruling, but would have merely added additional administrative burdens. Relator was provided with an ample opportunity to oppose the committee's summary-disposition motion. We are not persuaded by relator's procedural challenges. We have thoroughly reviewed her remaining arguments and find them unavailing.

Affirmed.