IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-235

Filed: 5 November 2019

Vance County, No. 18 CVS 478

KIMARLO ANTONIO RAGLAND, Plaintiff/Petitioner,

v.

N.C. DEPARTMENT OF PUBLIC INSTRUCTION, Defendant/Respondent.

Appeal by plaintiff from order entered 21 November 2018 by Judge Marvin K. Blount in Vance County Superior Court. Heard in the Court of Appeals 2 October 2019.

Kimarlo A. Ragland, pro se plaintiff-appellant.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Tiffany Y. Lucas, for the State.

YOUNG, Judge.

Where petitioner's arguments do not allege error by the trial court or administrative law judge, those arguments are dismissed. Where petitioner has failed to show error by the administrative law judge, the decision of the administrative law judge shall not be overturned on appeal. Where petitioner has

failed to show that the trial court erred in dismissing petitioner's complaint and petition for judicial review, we affirm the order of the trial court.

I. Factual and Procedural Background

On 6 October 2014, Kimarlo A. Ragland (petitioner) was hired by the Nash-Rocky Mount School System (the School System) as a teacher at Tar River Academy. On 17 October 2014, petitioner was involved in a verbal altercation with a student. While escorting the student to the in-school suspension office, petitioner retreated to his classroom and locked the door. When the student attempted to force entry into the classroom, petitioner removed his shirt and began pacing in front of the door, preparing to fight the student. The next school day, petitioner approached a female student who had witnessed the incident, touched her hair, and made inappropriate remarks about removing his shirt during the incident.

On 22 October 2014, petitioner was suspended without pay by the School System. On 25 November 2014, the Superintendent of the School System recommended that petitioner be dismissed from employment. Petitioner challenged the decision, and the challenge was heard by the local Board of Education, which issued its decision approving petitioner's dismissal on 12 January 2015. Petitioner sought judicial review of the Board's decision in Nash County Superior Court. After review, the court affirmed the decision of the Board. Petitioner appealed the court's decision to this Court, and on 7 June 2016, this Court affirmed the decision of trial

court, upholding petitioner's termination. *Ragland v. Nash-Rocky Mount Bd. of Educ.*, 247 N.C. App. 738, 787 S.E.2d 422 (2016).

Concurrent with the proceedings above, the State Superintendent of the North Carolina Department of Public Instruction (DPI), Dr. June Atkinson (Dr. Atkinson) investigated the matter to determine whether disciplinary action should be taken with respect to petitioner's teaching license. Dr. Atkinson ultimately determined that revocation of petitioner's license was warranted, and filed a finding of reasonable cause and statement of charges on 28 July 2015. Dr. Atkinson provided petitioner notice of the proceeding on 4 August 2015. On 1 October 2015, petitioner filed a petition for contested case hearing in the Office of Administrative Hearings (OAH), alleging that the revocation proceeding was "in retribution and retaliation against the teacher (petitioner) for pursuing his appellate right[.]" The OAH contacted petitioner to inform him that his petition was incomplete. Subsequently, the OAH recognized that petitioner's complete petition was filed and accepted on 13 October 2015.

The matter proceeded with numerous filings. Finally, on 1 July 2016, DPI filed a motion for summary judgment. On 10 July 2016, petitioner filed a motion in opposition to DPI's summary judgment motion. The matter was stayed pending our Supreme Court's consideration of petitioner's petition for writ of certiorari in his dismissal case, which that Court ultimately denied on 22 September 2016. On 25

April 2018, the Administrative Law Judge (ALJ) entered his final decision, granting summary judgment in favor of DPI. The ALJ found the facts of the October 2014 incidents, and found that, in the dismissal case, the School System found petitioner's conduct in the October 2014 incidents to be inappropriate, and grounds for termination. The ALJ further noted that this Court, on appeal, upheld petitioner's dismissal, holding that the termination was not arbitrary or capricious. The ALJ went on to hold that the doctrine of collateral estoppel applied to the findings of the School System, upheld as they were on appeal, and that therefore petitioner was precluded from challenging them. The ALJ therefore concluded that no genuine issues of material fact remained, and that DPI was entitled to summary judgment as a matter of law.

On 17 May 2018, petitioner appealed this decision to Vance County Superior Court, in a combination complaint and petition for judicial review. On 18 June 2018, DPI filed its response to petitioner's petition for judicial review. DPI alleged that a petition for judicial review must state specifically the exceptions taken and relief sought, and that petitioner's petition for judicial review did not. DPI also alleged that the ALJ's decision was not erroneous. Concurrently, DPI filed its answer to petitioner's complaint and motion to dismiss, alleging petitioner's failure to comply with statutory pleading requirements, petitioner's failure to state a claim upon which relief could be granted, lack of personal jurisdiction over DPI, improper service,

various immunities, a bar on punitive damages against governmental entities, and *res judicata* and collateral estoppel.

On 29 October 2018, the trial court conducted a hearing on the various motions and pleadings of the parties, and on 21 November 2018, the court entered a written order, granting DPI's motion to dismiss pursuant to Rules 12(b)(1) and (6) of the North Carolina Rules of Civil Procedure, dismissing petitioner's petition for judicial review, and affirming the ALJ's decision to revoke petitioner's teaching license.

From this decision, petitioner appeals.

II. Standard of Review

"In cases appealed from administrative tribunals, we review questions of law *de novo* and questions of fact under the whole record test." *Diaz v. Div. of Soc. Servs.*, 360 N.C. 384, 386, 628 S.E.2d 1, 2 (2006).

"When utilizing the whole record test, . . . the reviewing court must examine all competent evidence (the whole record) in order to determine whether the agency decision is supported by substantial evidence." *Mann Media, Inc. v. Randolph Cty. Planning Bd.*, 356 N.C. 1, 14, 565 S.E.2d 9, 17 (2002) (citations and quotation marks omitted). "The 'whole record' test does not allow the reviewing court to replace the Board's judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been before it *de*

novo." *Thompson v. Wake Cty. Bd. of Educ.*, 292 N.C. 406, 410, 233 S.E.2d 538, 541 (1977).

II. Allegations Against DPI

In his first argument, petitioner raises numerous accusations against the appellee in this case, DPI. Petitioner contends that DPI "has committed reversible error, obstructed justice, withheld evidence, [and] intimidated a witness[.]" Petitioner goes into extensive allegations concerning DPI's alleged misconduct.

It is not, however, the role of this Court to engage in a trial on the merits. Ours is an error correcting court. Inasmuch as petitioner alleges misconduct by DPI, instead of error committed by the trial court or ALJ, we decline to address such arguments, and dismiss them.

III. Additional Allegations

In his remaining arguments, petitioner raises several additional contentions, which we shall condense for purposes of clarity and ease of reading: (1) the ALJ committed various errors of law and procedure in hearing and deciding the petition; and (2) the trial court committed various errors of law and procedure in reviewing the matter on appeal. For the following reasons, we disagree.

A. Office of Administrative Hearings

Petitioner contends that the ALJ erred in failing to rule on motions or consider petitioner's opposition to same, failing to execute a subpoena, failing to recuse

himself, denying summary judgment in favor of petitioner, and granting summary judgment in favor of DPI.

With regard to the failure to rule on motions or consider petitioner's opposition to same, the ALJ's order addresses this. Specifically, in the ALJ's order granting summary judgment in favor of DPI, the ALJ held that "[t]he dispositive decision on this motion resolves or renders moot all issues raised in the motions that accumulated while this case was before the appellate courts." As such, the ALJ did, in fact, address petitioner's outstanding motions. Moreover, petitioner has already exhausted the appropriate avenue for relief in this matter, in that petitioner previously sought a writ of mandamus from this Court to compel the ALJ to rule on his motions; this Court denied petitioner the writ.

With regard to the subpoena, on 23 May 2016, petitioner sought to subpoena Dr. Atkinson to appear and produce a list of documents. On 3 June 2016, DPI filed its objection to the subpoena, noting that the requested documents were part of discovery, and that DPI had already responded and objected appropriately to these requests.

Per Rule 45 of the North Carolina Rules of Civil Procedure, a party may file a written objection to a subpoena under certain circumstances. N.C.R. Civ. P. 45(c)(3). If objection is made, the party serving the subpoena "shall not be entitled to compel the subpoenaed person's appearance . . . except pursuant to an order of the court."

N.C.R. Civ. P. 45(c)(4). The party serving the subpoena may, at any time, move to compel appearance. *Id.* In the instant case, once DPI properly filed its objection, the burden was on petitioner to file a motion to compel Dr. Atkinson's appearance, over DPI's objection. There is no such motion in the record. It is therefore clear that, pursuant to Rule 45 of the North Carolina Rules of Civil Procedure, petitioner's subpoena was not effective to compel Dr. Atkinson's appearance, and the trial court did not err in declining to give effect to the subpoena.

With regard to the ALJ's failure to recuse, during the OAH proceeding, petitioner moved for the recusal of the ALJ. The ALJ denied this motion, noting that petitioner's motion was premised upon the ALJ's recommendation that petitioner attend his own deposition, and holding that there was no substantial evidence to demonstrate "a personal bias, prejudice, or interest on the part of this judge that he would be unable to rule impartially."

On appeal, petitioner summarily states that the ALJ "failed to recuse himself even after showing his inability to rule impartially." However, petitioner offers no evidence to support this conclusory allegation. The burden is on petitioner, in making the allegation, to demonstrate the existence of said bias. *See Crump v. Bd. of Educ. of Hickory Admin. School Unit*, 326 N.C. 603, 617-18, 392 S.E.2d 579, 586 (1990). Nowhere does petitioner offer any actual evidence which might show bias, aside from the allegation itself.

With regard to the ALJ's denial of summary judgment in favor of petitioner, and its grant of summary judgment in favor of DPI, the facts of this case are a matter of record. These issues were extensively litigated by petitioner previously, and collateral estoppel applies.

> Under the doctrine of res judicata or "claim preclusion," a final judgment on the merits in one action precludes a second suit based on the same cause of action between the same parties or their privies. *State ex rel. Tucker v. Frinzi,* 344 N.C. 411, 413, 474 S.E.2d 127, 128 (1996); *Hales v. North Carolina Ins. Guar. Ass'n,* 337 N.C. 329, 333, 445 S.E.2d 590, 594 (1994). The doctrine prevents the relitigation of "all matters ... that were or should have been adjudicated in the prior action." *McInnis,* 318 N.C. at 428, 349 S.E.2d at 556. Under the companion doctrine of collateral estoppel, also known as "estoppel by judgment" or "issue preclusion," the determination of an issue in a prior judicial or administrative proceeding precludes the relitigation of that issue in a later action, provided the party against whom the estoppel is asserted enjoyed a full and fair opportunity to litigate that issue in the earlier proceeding. *McInnis,* 318 N.C. at 433-34, 349 S.E.2d at 560; *Bradley v. Hidden Valley Transp., Inc.,* 148 N.C. App. 163, 166, 557 S.E.2d 610, 613 (2001), *aff'd per curiam,* 355 N.C. 485, 562 S.E.2d 422 (2002). Whereas res judicata estops a party or its privy from bringing a subsequent action based on the "same claim" as that litigated in an earlier action, collateral estoppel precludes the subsequent adjudication of a previously determined issue, even if the subsequent action is based on an entirely different claim. *Hales,* 337 N.C. at 333, 445 S.E.2d at 594. The two doctrines are complementary in that each may apply in situations where the other would not and both advance the twin policy goals of "protecting litigants from the burden of relitigating previously decided matters and promoting judicial economy by preventing needless litigation." *Bockweg,* 333 N.C. at 491, 428 S.E.2d at 161.

Whitacre P'ship v. Biosignia, Inc., 358 N.C. 1, 15-16, 591 S.E.2d 870, 880 (2004).

In the instant case, petitioner had the opportunity and motivation to litigate the facts of the October 2014 incidents, extensively, in the previous proceeding concerning his termination from employment. Under the doctrine of collateral estoppel, he is now precluded from relitigating those facts, even though the instant case concerns the revocation of his teaching license, an entirely different claim. Because there were no genuine issues of material fact, the ALJ did not err in granting summary judgment. And given the facts not at issue, namely petitioner's conduct during the October 2014 incidents, we cannot say that the ALJ erred in granting summary judgment in favor of DPI.

In light of all of these factors, and pursuant to our whole record review, we hold that the ALJ did not err in declining to recuse, declining to execute petitioner's subpoena, granting summary judgment in favor of DPI, denying summary judgment in favor of petitioner, and dismissing petitioner's remaining motions as moot.

B. Trial Court

Petitioner contends that the trial court erred in failing to vacate the ALJ's order and in granting DPI's motion to dismiss.

First, petitioner contends that it was error to revoke his teaching license five years after the incidents at issue, especially given that his license is inactive. However, he offers no basis which would preclude DPI from seeking revocation.

Rather, he contends that he should have been given due process to review the matter. Petitioner conveniently ignores the fact that this entire proceeding – his hearing before the Board, the proceedings in the OAH, and the proceedings in the trial court below – has all been due process. He further contends that he is in "civil double jeopardy," yet offers no basis for explanation as to what that entails.

In essence, and without offering any basis to support his argument or extend existing law, petitioner appears to argue either that he could not both be fired from his job and have his license revoked for the same conduct, or that it was somehow inappropriate to do the latter several years after the former. However, again, despite offering occasional citations to administrative codes or unrelated cases, he fails to offer legal support for his position. As such, we hold that he has not shown that the trial court – or, for that matter, the ALJ – was precluded from addressing this issue.

Petitioner also challenges the use of collateral estoppel. Again, as we held above, collateral estoppel was properly applied in this case, and it was not error to rely upon it.

Petitioner next challenges the dismissal of both petitioner's complaint and his petition for judicial review. With regard to the former, the trial court granted DPI's motion to dismiss pursuant to Rules 12(b)(1) and (6) of the North Carolina Rules of Civil Procedure. With regard to the latter, the trial court dismissed the petition for judicial review.

An examination of petitioner's complaint before the trial court reveals that petitioner alleged a number of incidents of misconduct, but did not in fact raise a single actionable claim. He simply enumerated his allegations, then requested trial by jury, generalized injunctions, and damages. Nowhere did petitioner state a claim upon which relief could be granted. As such, the trial court correctly dismissed the complaint pursuant to Rule 12(b)(6), which provides that a party may move to dismiss for "[f]ailure to state a claim upon which relief can be granted[.]" N.C.R. Civ. P. 12(b)(6).

With regard to the petition for judicial review, DPI, in its motion to dismiss the petition, argued that the petition failed to comply with N.C. Gen. Stat. § 150B-46. This statute provides that a petition for judicial review "shall explicitly state what exceptions are taken to the decision or procedure and what relief the petitioner seeks." N.C. Gen. Stat. § 150B-46 (2017). Again, an examination of petitioner's petition for judicial review reveals a lack of both. Although a very liberal reading might reveal an allegation that genuine issues of material fact precluded summary judgment, or that petitioner believed the ALJ's decision was the result of bias, these arguments are not explicit. The petition as a whole does not "explicitly state what exceptions are taken to the decision or procedure[,]" and as such, petitioner's petition did not overcome the procedural hurdle necessary to receive judicial review. The trial court therefore correctly dismissed the petition for judicial review.

Petitioner further contends that DPI was not entitled to sovereign immunity, and thereby dismissal pursuant to Rule 12(b)(1). In support of his argument, defendant cites numerous cases from outside of this jurisdiction, which are not binding upon this Court. More importantly, however, he broadly contends that sovereign immunity does not apply when an official goes beyond the powers of their office, without stating in what way DPI or Dr. Atkinson did so. Indeed, the allegations in petitioner's complaint are similarly conclusory, insisting that Dr. Atkinson acted "with a blatant and total disregard for governing law" without actually showing that she was acting outside of her authority to such a degree that sovereign immunity would not apply. Nor does petitioner, in his complaint, allege that sovereign immunity has somehow been waived by DPI.

We therefore hold that the trial court did not err in granting DPI's motion to dismiss petitioner's complaint, dismissing petitioner's petition for judicial review, and effectively upholding the decision of the ALJ.

AFFIRMED IN PART, DISMISSED IN PART.

Judges STROUD and DILLON concur.

Report per Rule 30(e).