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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1119

Filed: 21 July 2020

North Carolina State Bar, No. 19 BCR 1

IN RE: PETITION FOR REINSTATEMENT OF LAW LICENSE OF DAVID SHAWN CLARK.

Appeal by Petitioner David Shawn Clark from order entered 25 October 2019 by the Disciplinary Hearing Commission of the North Carolina State Bar. Heard in the Court of Appeals 29 April 2020.

Sigmon, Clark, Mackie, Hanvey & Ferrell, P.A., by Jason White, for Petitioner-Appellant.

The North Carolina State Bar, by Deputy Counsel David R. Johnson and Counsel Katherine Jean, for Respondent-Appellee.

DILLON, Judge.

David Shawn Clark (“Petitioner”) appeals from an order denying his reinstatement to the North Carolina State Bar (the “Bar”). After careful review, we affirm the Commission’s decision.

I. Background

Petitioner was licensed to practice law in North Carolina in 1997.

In January of 2009, Petitioner was appointed to represent a client (“Client”). During his representation of Client, the two engaged in a sexual relationship. Petitioner tried to withdraw as Client’s counsel, but she would not consent. Thus, representation continued.

Several months later, during the summer of 2009, Petitioner campaigned to be elected as a district attorney. The news of Petitioner’s relationship with Client became public. Petitioner denied the relationship to his wife and to the general public. Several months later, Petitioner asked Client to sign an affidavit denying any inappropriate relationship between them, which she did. Later, though, Client publicly admitted the affair, contradicting her affidavit. Petitioner and Client sued each other over the matter, which ended in a settlement.

The Bar began investigating Petitioner at the time the news of the affair came to the surface. In November 2011, he was criminally indicted and charged with two counts of felonious extortion and one count of felonious obstruction of justice over the false affidavit he procured from his Client. He pleaded guilty to three misdemeanor offenses and was released with a probationary sentence. He then appeared before the Bar’s Disciplinary Hearing Commission (the “DHC”) for a hearing. He admitted to the Bar’s allegations and was, thus, disbarred.

Petitioner petitioned for reinstatement of his law license as soon as he was able to under the Bar’s guidelines. The petition was referred to the DHC, and another

hearing was held. In that hearing, Petitioner stated that he did not intend to obstruct justice with the affidavit, but rather the affidavit was merely meant to deceive his wife. He also testified that he was not guilty of the crimes that he pleaded guilty to and admitted to when he was disbarred. However, the DHC found this testimony not credible, as his testimony was inconsistent with his prior admissions and the affidavit included specific language that could ward off any possible future lawsuits against him. In the end, the DHC found that Petitioner had failed to show that he was remorseful or had taken steps during his disbarment to reform his character.

Petitioner then appealed the DHC order to the State Bar Council (“Council”), which affirmed and adopted the DHC order, denying Petitioner’s petition for reinstatement. Petitioner timely appealed to our Court.¹

¹ Petitioner in his brief claims the right to appeal based on the fact that the Council’s order was a final judgment, citing Sections 7A-26 and 7A-27 of our General Statutes. *See* N.C. Gen. Stat. §§ 7A-26, 27 (2019). We note that the Bar has filed a motion to dismiss Petitioner’s appeal based on a lack of appellate jurisdiction because Petitioner is appealing from an order of the Council and not of the DHC and that there is nothing in Section 7A-27 granting the right to appeal from a decision of the Council. *See* N.C. Gen. Stat. § 7A-27.

It appears that Petitioner has cited the wrong statute, as Section 7A-27 concerns appeals from our *trial* divisions, and not from administrative agencies.

Section 7A-29, though, does grant an appeal of right to our Court from certain administrative agencies including “[f]rom any final order or decision of . . . the North Carolina State Bar under G.S. 84-28[.]” N.C. Gen. Stat. § 7A-29.

Section 84-28 concerns the powers of the Council and the DHC to discipline and disbar attorneys. The Council argues that this Section only provides a right to appeal to our Court from a final decision from the DHC, as subsection (h) of that Section provides the right to appeal to our Court from a “final order of the [DHC],” with no reference to final decisions from the Council itself. N.C. Gen. Stat. § 84-28 (2019). However, subsection (a) of Section 84-28 provides that an attorney is subject to the disciplinary jurisdiction of the Council under the rules that the Council may adopt. And the Council has provided by rule that an attorney may seek review of an order by the DHC denying his petition for reinstatement and that if such review is sought, the DHC order shall not be deemed a “final” order. N.C. Gen. Stat. § 84-28(a). The decision of the Council, though, is a “final” order,

II. Analysis

In reviewing the findings, we look at the whole record to determine whether there was sufficient evidence for the DHC to deny Petitioner's petition. We also review the sanction to ensure that there has been no abuse of discretion in the decision not to reinstate Petitioner's license.

The whole record test "requires the reviewing court to determine if the DHC's findings of fact are supported by substantial evidence in view of the whole record, and whether such findings of fact support its conclusions of law." *North Carolina State Bar v. Talford*, 356 N.C. 626, 632, 576 S.E.2d 305, 309 (2003). Also, "in order to satisfy the evidentiary requirements of the whole-record test in an attorney disciplinary action, the evidence used by the DHC to support its findings and conclusions must rise to the standard of clear, cogent, and convincing[.]" thereby placing the burden of proof on the petitioner. *Id.* at 632, 576 S.E.2d at 310. *See also North Carolina State Bar v. Key*, 189 N.C. App. 80, 84, 658 S.E.2d 493, 497 (2008) (holding that "evidence is substantial if, when considered as a whole, it is such that a reasonable person might accept as adequate to support a conclusion.")

So far, there has only been one case that has addressed when the Council denies the reinstatement of an attorney. *See In re Garrison*, 44 N.C. App. 158, 260

pursuant to rules adopted by the Council under its authority provided by Section 84-28(a). Accordingly, we conclude that we have jurisdiction to hear this appeal pursuant to Section 7A-29, which allows review by our Court of any final decision of the Bar under Section 84-28.

S.E.2d 445 (1979). In that case, the Court held that the “[d]etermination of the satisfaction of the requirement of reformation of character involves an exercise of delicate judgment on the part of those entrusted with the statutory duty.” *Id.* at 162, 260 S.E.2d at 448. “Those entrusted” refers to the Council. Therefore, the decision of the Council must be reviewed for abuse of discretion once the whole record test has been conducted to review its findings. The decision of the Council must be upheld unless there is “a showing that [their] actions are manifestly unsupported by reason . . . [and] so arbitrary that the ruling could not have been the result of a reasoned decision.” *In re Skinner*, 370 N.C. 126, 140, 804 S.E.2d 449, 458 (2017) (internal quotation marks omitted) (citation omitted).

Petitioner contends that the DHC denied his reinstatement because of his criminal convictions and past conduct. The DHC denies this, stating that there was more than enough evidence to deny Petitioner’s reinstatement. Regardless of the standard of review, the conclusion is the same: The Council properly affirmed the DHC’s order denying the petition. The evidence in favor of denial was overwhelming. There was some evidence that weighed in favor of Petitioner; “[h]owever, the mere presence of contradictory evidence does not eviscerate challenged findings, and the reviewing court may not substitute its judgment for that of the committee.” *Key*, 189 N.C. App. at 84, 658 S.E.2d at 497 (citations omitted).

Petitioner challenges various findings made by the DHC; however, each of the challenged findings is corroborated by adequate evidence when reviewing the record as a whole. Specifically, Petitioner challenges the findings that concern Petitioner's denial of his crimes after he pleaded guilty at trial. The DHC's main concern here was that Petitioner's answers were inconsistent from one hearing to the next. He pleaded guilty at trial and admitted he was guilty of the misconduct alleged in his disbarment hearing, but then later told the DHC that he was in fact not guilty in the hearing regarding his reinstatement. The DHC was not concerned with Petitioner's *past* guilt, but rather with his *current* lack of remorse and inconsistency.

Petitioner challenges several other findings that surround his reform and remorse of the inappropriate conduct for which he was disbarred. Nevertheless, there was sufficient evidence, looking at the record as a whole, for the DHC to reach its determinations regarding Petitioner's inadequate reform and remorse. Petitioner did call various colleagues to testify about his character. While these witnesses were able to testify to the great work that he had done before his convictions, there was very little that the witnesses said about his actions after his disbarment. Petitioner contends that in serving his sentence and conducting the community presentations mandated by the court, he has shown remorse and taken steps to improve the morality of his conduct. However, the mere serving of a criminal sentence does not tend to prove the remorse or reform of the criminal. Rather, it only shows that the

criminal can follow the specific mandate of the court. Moreover, the witnesses all claim to have had little to no contact with Petitioner from the time of disbarment until right before Petitioner's petition for reinstatement was filed. Thus, they were unaware of any actions taken on the part of Petitioner to reform his moral character such that he should be reinstated to the practice of law.

Petitioner also challenges the findings based on his psychiatrist's testimony. While the psychiatrist testified that Petitioner was deemed fit to be reinstated, the psychological evaluation that the psychiatrist performed gave evidence to the contrary. Namely, the psychiatrist found that his results may have been "underreported" and that situations involving "high stress" tended to influence his personality characteristics. The report also advised that Petitioner continue to see a mental health professional to continue to make progress with his situation.

Therefore, there is sufficient evidence to support the findings made by the DHC, upheld by the Council, and challenged by Petitioner.

III. Conclusion

After conducting a whole record review and balancing the evidence presented, we hold that the DHC did not abuse its discretion in denying the reinstatement because adequate evidence supported each finding. The Council's decision to adopt and affirm the DHC's order was also not an abuse of discretion. The Council is to be afforded great deference in the matters that come before them, and there was

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sufficient evidence to support a denial of reinstatement, when viewing the whole record.

AFFIRMED.

Judges HAMPSON and YOUNG concur.

Report per Rule 30(e).