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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 20-245

Filed: December 1, 2020

Wake County, No. 18 DHC 46

THE NORTH CAROLINA STATE BAR, Plaintiff,

v.

ERICA MARIE ERICKSON, Defendant.

Appeal by Defendant from order entered 20 September 2019 by the Disciplinary Hearing Commission of the North Carolina State Bar. Heard in the Court of Appeals 21 October 2020.

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

*Crumpler Freedman Parker & Witt, by Dudley A. Witt, for Defendant-Appellant.*

INMAN, Judge.

Erica Marie Erickson (“Defendant”) appeals from an Order of Discipline (“Order”) entered by the Disciplinary Hearing Commission (the “DHC”) of the North Carolina State Bar (“State Bar”) disbarring her from the practice of law after determining that she violated several North Carolina Rules of Professional Conduct. After a thorough review of the record and applicable law, we affirm.

**I. FACTUAL & PROCEDURAL BACKGROUND**

Defendant was admitted to the State Bar in 2015. She initially worked at a law firm but was discharged in May 2018 following suspension of her notary license and the filing of grievances against her with the State Bar. Defendant then began a solo practice in Brevard, North Carolina.

On 19 October 2018, the State Bar filed a complaint against Defendant alleging misconduct in four separate matters in violation of the North Carolina Rules of Professional Conduct. Evidence presented before the DHC tended to show the following:

The Browne and Regier Matters

In September 2016, Defendant represented Tennessee Browne pro bono in a special proceeding to sell the home of her deceased husband after she was appointed as the administrator of his estate. Defendant sought to notify Browne's children and to obtain their consent to a sale. In a meeting concerning the sale, Ms. Browne presented to Defendant a man she claimed to be her son Davey, who signed two required documents. A few months after filing the documents, Defendant learned that the man who signed the documents was not, in fact, Ms. Browne's son.

In 2017, Defendant counseled and represented Carol and Lloyd Regier in their estate planning. She helped them draft documents such as wills, powers of attorney, and trust documents. Defendant advised the Regiers that they would need to place

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their real property in trust, and as a result they would need to notarize deeds. The Regiers signed the deeds and dropped them off at Defendant's office. Defendant notarized the deeds without personally witnessing the signing and then registered them with the Register of Deeds.

In March 2019, Defendant pled guilty to two counts of performing a notarial act without the principal appearing in violation of N.C. Gen. Stat. § 10B-60(c) (2019). As a result, Defendant lost her notary license.

The Harkness Matter

In December 2016, Defendant began representing Jason Jones, the son of Karen Harkness. Ms. Harkness had recently revoked Jones's power of attorney and accused him of stealing from her. Jones sought Defendant's assistance in reinstating his power of attorney. Defendant accompanied Jones and visited Ms. Harkness at her home. Defendant did not introduce herself as Jones's attorney or otherwise explain her presence. Defendant advised Ms. Harkness to reinstate Jones as her agent.

The Hombordy Matter

In January 2017, sisters Jane Sessions and Ann Hombordy contacted Defendant to help them acquire authority to manage the affairs and bank accounts of their father, Edward Hombordy, either as his attorneys-in-fact or through an incompetency proceeding. Defendant accompanied them to Mr. Hombordy's home

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with blank power of attorney forms and a notary. A contentious discussion followed and the sisters threatened to report Mr. Hombordy's caretaker to the police for exploitation. Mr. Hombordy agreed to sign the documents to ensure his care continued. The next day, Defendant filed a petition to have Mr. Hombordy declared incompetent and to appoint his daughters as guardians. Defendant later met with Mr. Hombordy and informed him that the signed powers of attorney were invalid and that she had shredded them. Based on Defendant's representations to the sisters, they asserted their attorney-in-fact status and froze several of Mr. Hombordy's bank accounts.

On 19 October 2018, the State Bar initiated disciplinary proceedings and alleged that Defendant had violated the North Carolina Rules of Professional Conduct. Specifically, the State Bar alleged that Defendant had violated Rules 1.2(a), 1.16(a)(1), 3.1, 3.3(a), 4.3 , and 8.4(b), (c), and (d), prohibiting dishonest, deceitful, or misrepresentative conduct that reflects adversely on a lawyer's honesty, trustworthiness, or fitness and that is prejudicial to the administration of justice; providing legal advice to an unrepresented individual; and knowingly engaging in fraudulent conduct.

The charges against Defendant were heard by a panel of the North Carolina State Bar's Disciplinary Hearing Commission in August 2019. The panel disbarred

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Defendant by Order of Discipline filed 20 September 2019. Defendant timely appealed to this Court.

On appeal, Defendant asserts that seven “additional findings of fact” entered by the DHC were not supported by adequate evidence:

8. Defendant had a dishonest motive in misleading her clients’ elderly relatives about her role.

9. As officers of the court, attorneys have a duty to avoid conduct that undermines the integrity of the adjudicative process. . . . Here, Defendant’s knowing submission of the falsely notarized Petition and Consent Judgment caused significant potential harm to the administration of justice by causing the court to order the sale of the land when there was no legal or factual basis upon which to do so. It caused significant harm to the administration of justice because it was necessary for the court to utilize resources to set aside the fraudulent consent judgment.

10. Defendant’s client T.B. suffered significant harm due to Defendant’s actions. She was removed as administrator of the Browne estate, and the administration of the estate—which was very stressful for T.B.—was protracted.

. . .

14. Defendant’s conduct with respect to K.H. and E.H.—going to their homes with her clients (the adult child(ren) of K.H. and E.H.), feigning disinterest, and giving legal advice to K.H. and E.H. when she knew or should have known about the conflicts of interest that existed between them and her clients—is precisely the abuse of power prohibited by Rule 4.3. Defendant testified that this was a pattern of conduct in which Defendant routinely engaged.

15. K.H. and E.H., and other unknown victims of the misconduct described in paragraph 14 above were elderly

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people, already particularly vulnerable to exploitation, K.H. and E.H. experienced significant harm in the form of emotional distress, confusion, escalation of family conflict, and the additional stress and expense of involvement with the legal system.

16. Defendant has acknowledged that her notary misconduct violated the Rules of Professional Conduct. Defendant has not acknowledged that any of her other conduct violated the Rules of Professional Conduct. Defendant has not accepted responsibility for her misconduct and its consequences, has not expressed any remorse, and has not demonstrated any insight into her serious departures from the forthrightness and integrity required of those who have the privilege of practicing law.

17. In the non-legal community, Defendant has a reputation as a good citizen and a passionate advocate for her clients. In contrast, the members of the legal community who participated in this proceeding described Defendant as not trustworthy and as someone who believes that the ends justify the means and that the rules do not apply to her.

## II. ANALYSIS

We employ the whole record test to review disciplinary decisions of the DHC. *N.C. State Bar v. Talford*, 356 N.C. 626, 632, 576 S.E.2d 305, 309 (2003). 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. Such supporting evidence is substantial if a reasonable person might accept it as adequate backing for a conclusion. . . . Ultimately, the reviewing court must. . .determine whether the decision of

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the lower body, e.g., the DHC, has a rational basis in the evidence.

*Id.* at 632-33, 576 S.E.2d 305, 309-310 (citations and quotations omitted). This test involves a three-pronged inquiry: “(1) Is there adequate evidence to support the order’s expressed finding(s) of fact? (2) Do the order’s expressed finding(s) of fact adequately support the order’s subsequent conclusion(s) of law? and (3) Do the expressed findings and/or conclusions adequately support the lower body’s ultimate decision?” *N.C. State Bar v. Ely*, 257 N.C. App. 651, 655, 810 S.E.2d 346, 350 (2018) (citing *N.C. State Bar v. Sossomon*, 197 N.C. App. 261, 275, 676 S.E.2d 910, 920 (2009)).

The DHC hears all evidence and weighs its credibility in making its decision. *N.C. State Bar v. Adams*, 239 N.C. App. 489, 495, 769 S.E.2d 406, 411 (2015). “[I]t is the prerogative and duty of that administrative body . . . to determine the weight and sufficiency of the evidence and the credibility of the witnesses, to draw inferences from the facts, and to appraise conflicting and circumstantial evidence.” *N.C. State Bar v. Ethridge*, 188 N.C. App. 653, 665, 657 S.E.2d 378, 386 (2008) (citation omitted). Contradictory evidence does not “eviscerate challenged findings, and the reviewing court may not substitute its judgment for that of the DHC.” *Adams*, 239 N.C. App. at 495, 769 S.E.2d at 411 (quoting *N.C. State Bar v. Key*, 189 N.C. App. 80, 84, 658 S.E.2d 493, 497 (2008)).

A. *Substantial Evidence for Additional Findings of Fact*

Defendant seeks reversal of her disbarment alleging that “additional findings of fact” eight, nine, ten, fourteen, fifteen, sixteen, and seventeen are not supported by substantial evidence.<sup>1</sup>

Additional Finding of Fact Eight

Defendant argues there was not adequate evidence to demonstrate she acted with a dishonest motive or misled Mr. Hombordy or other elderly relatives of her clients about her role, as determined in additional finding of fact eight.

While Defendant claims she did not have a dishonest motive or specific intent to mislead her clients’ elderly relatives, the circumstantial evidence and Defendant’s own testimony in this case provided adequate evidence to demonstrate a pattern of Defendant going to visit elderly relatives of her clients without disclosing her representation of their children and her subsequent attempts to influence a particular course of conduct on behalf of her clients’ interest.

Additional Finding of Fact Nine

Defendant alleges that there was not substantial evidence that she knew the signature of Ms. Browne’s son was forged as the DHC found in additional finding of fact nine because this finding was contrary to the evidence presented. Defendant

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<sup>1</sup> Defendant also contends that the initial adjudicatory phase findings of fact thirteen, fourteen, sixteen, seventeen, eighteen, nineteen, and twenty are unsupported by the evidence. However, Defendant makes no further substantive argument concerning those findings of fact. Because our review is limited to the issues and arguments presented by the parties in their briefs, N.C. R. App. P. 28(a) (2020), we will discuss only the dispositional phase of the proceedings.



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overlooks that this finding is supported by other findings of fact which she does not challenge.

The DHC's Order specifically found, in findings six through nineteen, that Defendant notarized the signature of a person presented to her as David Browne, who was not personally known to her. Then, Defendant falsely represented to the court in her notarization that she personally knew him. Defendant does not challenge those findings. Additional finding of fact nine simply expands upon the harm that occurred as a result of Defendant's knowing submission of a falsely notarized document. The submission was knowingly false regardless of whether Defendant knew the documents were forged; it was false because she knew the documents were signed by a man not personally known to her and whose identity she did not verify as required by her oath and duty as a notary.

Despite Defendant's insistence that she did not know she had notarized forged documents, the DHC's additional finding of fact regarding the harm resulting from Defendant's misconduct was rationally based on the evidence and we will not substitute our judgment. *Ethridge*, 188 N.C. App. at 665, 657 S.E.2d at 386 (holding that when there are contradictory statements, the administrative agency has authority to weigh the credibility of a witness in its decision).

Additional Finding of Fact Ten

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With regard to additional finding of fact ten, Defendant argues that there was not adequate evidence that her conduct caused significant harm to Ms. Browne. Defendant focuses on the fact that Ms. Browne was not particularly upset and may have even played her own part in her removal as administrator of the estate. However, the DHC based its finding on evidence that Ms. Browne was removed from her role of administrator. It also cited Defendant's own deposition testimony that "there's all sorts of harm because they had to—they cancelled the whole—all the work that we did to get that house thrown into the estate . . . and they essentially had to go through the process all over again." This evidence supports DHC's finding of significant harm.

Additional Finding of Fact Fourteen

Defendant also argues that there was not adequate evidence to support additional finding of fact fourteen that she routinely feigned disinterest and gave legal advice to persons she knew or should have known had legal conflicts with her own clients, as prohibited by Rule 4.3. Defendant admitted that she routinely accompanied her clients to their relatives' homes, did not identify herself as an attorney, and observed their conversations in order to assess the relatives' mental capacity. This evidence was sufficient to support the DHC's finding.

Additional Finding of Fact Fifteen

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Defendant further argues that there was not adequate evidence of “unknown other victims” or that Defendant caused emotional distress, confusion, escalation of family conflicts, and other stresses upon Ms. Harkness or Mr. Hombordy to support the DHC’s additional finding of fact fifteen. Defendant admitted that it was her routine practice to visit elderly relatives of her clients and to conduct interviews in the same manner as she did in those matters. We conclude that this evidence was sufficient to support the DHC’s finding that Defendant caused harm to other elderly victims. *See Talford*, 356 N.C. at 632-33, 576 S.E.2d at 309-10.

Additional Finding of Fact Sixteen

Defendant claims she has taken responsibility for her actions and demonstrated reflection and insight regarding the four matters, contrary to additional finding of fact sixteen. Defendant primarily, and perhaps exclusively, took responsibility for her notary misconduct. She has since halted her practice of visiting elderly relatives of clients at their homes, but she maintains that the misconduct allegations against her are a product of a conspiracy and the result of others’ actions rather than her own actions. We hold the evidence sufficient to support this finding.

Additional Finding of Fact Seventeen

Lastly, Defendant challenges additional finding of fact seventeen describing negative views of Defendant among members of the legal community. This finding was entered following the presentation of conflicting evidence which the DHC heard and weighed. While Defendant brought forth two attorney witnesses who testified in

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her favor, five additional attorney witnesses testified that Defendant was untrustworthy and unfit for the practice of law. Those attorneys testified that Defendant acted as if “the ends justify the means,” felt she was not bound by the rules, and shifted the responsibility for her mistakes onto others. We will not substitute our judgment regarding witness credibility and the weight of evidence for that of the DHC.

Because there was substantial evidence to support each additional finding of fact, and the findings of fact as a whole provide adequate support for the Order’s conclusions of law that Defendant violated particular Rules of Professional Conduct, the record reflects a rational basis for the DHC decision. Defendant has failed to demonstrate that her discipline was contrary to applicable law.

*B. Sanctions*

After the adjudicatory phase, the DHC determines the appropriate disciplinary action in light of the misconduct during the dispositional phase. *Talford*, 356 N.C. at 639, 576 S.E.2d at 314. To support the punishment of disbarment, in particular, our Supreme Court has held

there must be a clear showing of how the attorney's actions resulted in significant harm or potential significant harm to the entities listed in the statute, and there must be a clear showing of why ‘suspension’ and ‘disbarment’ are the only sanction options that can adequately serve to protect the public from future transgressions by the attorney in question.

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*Id.* at 638, 576 S.E.2d at 313; *see* N.C. Gen. Stat. § 84-28(c) (2019).

In *North Carolina State Bar v. Leonard*, this Court held the DHC's decision to disbar defendant had a rational basis in evidence because a violation of Rule 8.4(b) and (c) implied "a determination that [the attorney's] misconduct poses a significant potential harm to clients." 178 N.C. App. 432, 446, 632 S.E.2d 183, 191 (2006). Again, in *North Carolina State Bar v. Ethridge*, this Court held there was "adequate and substantial" evidence to support the attorney's disbarment where Defendant misappropriated his elderly client's funds, engaging in dishonest and deceitful conduct. 188 N.C. App. at 669-70, 657 S.E.2d at 388-89.

Here, as in *Leonard*, the DHC found Defendant violated Rules 8.4(b) and (c), concluding the false notarizations in the Browne and Regier(s) matters represented a false statement of material fact to a court or tribunal which rose to the level of conduct that involves dishonesty, fraud, deceit, or misrepresentation. The DHC also determined that Defendant's actions to obtain Mr. Hombordy's signature involved untrustworthiness and misrepresentation, much like the misappropriations in *Leonard* and *Ethridge*, and constituted conduct worthy of disbarment.

After carefully reviewing the whole record, we hold that the evidence, findings, and conclusions of the DHC adequately support the decision to disbar Defendant. *See Talford*, 356 N.C. at 632-33, 576 S.E.2d at 309-10. Defendant has failed to demonstrate that the DHC did not weigh all necessary factors before concluding that

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any sanction less than disbarment would not sufficiently protect the public or acknowledge the seriousness of the misconduct. We hold that the DHC's ultimate sanction of Defendant had a rational basis in the evidence. *See id.*

**III. CONCLUSION**

For the reasons stated above, we affirm.

**AFFIRMED.**

Judges DILLON and YOUNG concur.

Report per Rule 30(e).