IN THE UTAH COURT OF APPEALS

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Antone R. Thompson, Petitioner, v. Department of Commerce, Division of Occupational & Professional Licensing, Respondent.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20050894-CA F I L E D (March 22, 2007) 2007 UT App 97

Original Proceeding in this Court

Attorneys: Antone R. Thompson, Cedar City, Petitioner Pro Se
Mark L. Shurtleff and Annina M. Mitchell, Salt Lake City, for Respondent

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Before Judges Billings, Orme, and Thorne.

ORME, Judge:

"As a general rule, a party who represents himself will be held to the same standard of knowledge and practice as any qualified member of the bar[.]" Nelson v. Jacobsen, 669 P.2d 1207, 1213 (Utah 1983). "At the same time, . . . 'because of [their] lack of technical knowledge of law and procedure[, pro se appellants] should be accorded every consideration that may reasonably be indulged.'" Id. (quoting Heathman v. Hatch, 13 Utah 2d 266, 372 P.2d 990, 991 (1962)). Thus, even though appellate courts are "generally . . . lenient with pro se litigants," those litigants must still follow the appellate rules. Lundahl v. Quinn, 2003 UT 11,¶4, 67 P.3d 1000.

Parties "may obtain judicial review of final agency action[s]" if they "exhaust[] all administrative remedies available." Utah Code Ann. § 63-46b-14(1),(2) (2004). "This requirement "serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency," by allowing an agency to correct its own mistakes and apply its expertise in resolving conflict and by creating a factual record for judicial review, respectively." Culbertson v.

Board of County Comm'rs, 2001 UT 108,¶28, 44 P.3d 642 (quoting McCarthy v. Madigan, 503 U.S. 140, 145 (1992)). Thompson did not timely appeal the 1999 order on the grounds of misconduct. See Utah Code Ann. §§ 63-46b-12(1)(a), -13(1)(a), -14(3)(a) (2004). Therefore, this issue is not properly before us.

Additionally, with regard to his argument that the Department violated his Due Process rights by withholding the 1999 hearing transcript, Thompson fails to indicate when he first requested the transcript, fails to point to any evidence that the Department intentionally withheld this information from him, and fails to establish preservation of this issue for appeal by indicating when and if he brought this allegation before the Department, much less the Division. See generally Badger v. Brooklyn Canal Co., 966 P.2d 844, 847 (Utah 1988). Thus, this issue is insufficiently briefed for us to consider it. See Utah R. App. P. 24(a)(9); State v. Thomas, 961 P.2d 299, 304-05 (Utah 1998).

As to his argument that the Department should have rescinded the stipulation because the Department violated the "Two-Day Rule," Thompson has failed to show how he was substantially prejudiced by the Department's failure to abide by its own policy. See Utah Code Ann. § 63-46b-16(4)(e) (2004). He does not provide any evidence showing that if he had not signed the stipulation, or if the hearing had taken place, his license would not have been revoked that day. Furthermore, the record shows that the parties had repeatedly contemplated entering into a stipulation during the months prior to the hearing, including on two separate occasions when Thompson was represented by an attorney. The stipulation was simply not sprung on Thompson at the eleventh hour. Thus, this case does not present a situation where a petitioner signed a stipulation on the day of a scheduled hearing having never seen or discussed signing a stipulation. Because Thompson failed to present evidence showing that he was substantially prejudiced by the Department's failure to follow its own policy, we affirm the Department's decision not to set the stipulation aside.

Thompson also asserts that he "was medicated on [P]ercocet for a toothache" when he signed the stipulation and that he "was under threat, duress and coercion" because one of the Department's representatives stated that if they went forward with the hearing, Thompson's license would likely be revoked. Thompson did not raise the Percocet issue during the hearing on his request to rescind the stipulation, and the administrative law judge did not address it. We can only assume, however, that he took this potent medication knowing he was about to attend a hearing that would determine whether his license would be

revoked. During the hearing, Thompson mentioned that he felt pressured into signing the stipulation, but the administrative law judge made factual findings regarding this issue and concluded that he entered into the stipulation voluntarily. Thompson has failed to marshal the evidence supporting this finding and to show why such a finding was not supported by the evidence. See Utah R. App. 24(a)(9); Utah Admin. Code R151-46b -12(3)(c) (Supp. 2005). We therefore do not address this issue further.

Additionally, Thompson's argument that the Department violated his constitutional rights under Article I, Section 10 of the United States Constitution is without merit. Although the Department admittedly breached the terms of the stipulation, such action does not amount to a law that impaired the obligation of a contract, as prohibited by the United States Constitution. See U.S. Const. art 1, § 10. The Department determined in its February 2005 order that the breach was simply a clerical error and did not warrant setting aside the stipulation. Furthermore, Thompson has not demonstrated that the breach justified such relief, nor has he shown why the determination was an abuse of discretion or was otherwise arbitrary or capricious. See Utah Code Ann. § 63-46b-16(4)(h) (2004). Finally, Thompson has not shown that any findings of fact on which the administrative law judge based his decision were "not supported by substantial evidence when viewed in light of the whole record before the court." Id. § 63-46b-16(4)(g).

Lastly, the Department did not deny Thompson's request for a stay; rather, it properly entered a conditional stay, see Utah Admin. Code R151-46b-12(4)(c), subject to Thompson meeting certain requirements. The applicable provision is as follows:

> In determining whether to grant a request for a stay or a motion opposing that request, the department shall review the division's or committee's findings of fact, conclusions of law and order to determine whether granting a stay would, or might reasonably be expected to, pose a significant threat to the public health, safety and welfare. The department may also issue a conditional stay by imposing terms, conditions or restrictions on a party pending agency review.

Id. In this case, Thompson requested a stay of action pending agency and appellate review, and the Department granted a conditional stay. In its Order Regarding Stay Request, the Department noted the Division's concerns regarding Thompson's

conduct and decided that "a complete stay would not be in the best interests of the public." The Department also considered "[Thompson's] livelihood" and found "that the public could be adequately protected with a conditional stay . . . with appropriate measures to monitor his practice." Accordingly, we see no error in the Department's decision to conditionally grant the stay under section R151-46b-12(4)(c).

Affirmed.

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Gregory K. Orme, Judge

WE CONCUR:

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Judith M. Billings, Judge

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William A. Thorne Jr., Judge