

Rendered on January 10, 2012

Michael DeWine, Attorney General, and *Mindy Worly*, for respondent.

{¶1} Terrie Sizemore filed this action in mandamus, seeking a writ to compel the Ohio Veterinary Medical Licensing Board ("OVMLB") to "re-issue the Order of March 2, 2007 properly and in compliance with RC 119.09 requirements." She also seeks an order that OVMLB reimburse her "for this action and all other actions she has failed to perfect

due to the [board's] failure to comply with the agreed journal entry and the Court's decision to remand this matter back to [the board]."

{¶2} In accord with Loc.R. 12, the case was referred to a magistrate to conduct appropriate proceedings.

{¶3} OVMLB filed a motion to dismiss this case, which the magistrate converted to a motion for summary judgment because the motion raised issues outside the four corners of the complaint.

{¶4} Sizemore next filed a motion requesting that the magistrate recuse herself and return the case to a panel of judges.

{¶5} The magistrate did not recuse herself, but granted Sizemore an extension of time to file evidentiary material pertaining to the motion for summary judgment. A panel of this court overruled Sizemore's motion regarding recusal or removal of the magistrate.

{¶6} Sizemore next filed a motion requesting sanctions against a member of the Ohio Attorney General's staff, alleging that the attorney had stated certain facts inaccurately in the motion to dismiss which was subsequently converted. No sanctions were granted.

{¶7} Sizemore also filed a motion requesting "Clarification of Issues" and "Reconsideration to Vacate the April 26, 2011 Order for Summary Judgment." The clarification of issues request was based upon Sizemore's belief that a magistrate cannot rule on a motion for summary judgment. Magistrates do not rule on such motions, but routinely generate magistrate's decisions with recommendations to the appropriate court on how the motion for summary judgment should be considered. Sizemore also failed to

understand that the magistrate had not ruled on the merits of any motion when she converted the motion to dismiss to a motion for summary judgment.

{¶8} The parties eventually filed evidentiary material and the magistrate rendered a magistrate's decision including detailed findings of fact and conclusions of law which is appended to this decision. The magistrate's decision includes a recommendation that we refuse to issue the writ and the orders requested by Sizemore.

{¶9} Sizemore has objected to the magistrate's decision. The case is now before the court for a full, independent review.

{¶10} The OVMLB originally issued a finding adverse to Terrie Sizemore in 2007, but did not serve it correctly. After the Supreme Court of Ohio decided *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 2007-Ohio-2877, this became clear. After Sizemore had appealed the adverse finding to the common pleas court and obtained no relief satisfactory to her, she appealed to this court.

{¶11} The mediator of this court, Sizemore and a representative of the Ohio Attorney General's Office, all understood that the original adverse finding needed to be appropriately served to have full legal effect. Thus, the appellate case was sent back to the trial court with instructions to remand the case to OVMLB. This was eventually done.

{¶12} OVMLB decided not to reissue the original adverse finding, but instead to drop the charges against Sizemore. Apparently Sizemore is discontented with the dismissal of the charges. Instead, she wants the adverse order, the order finding she had been guilty of misconduct, reissued.

{¶13} We do not believe that Sizemore has the right to compel a governmental agency to issue an order which the agency no longer feels is appropriate. The agency,

especially an agency which serves as an adjudicating authority, has the inherent power to dismiss charges against an individual who has had claims of misconduct levied against her or him.

{¶14} Stated more specifically, Sizemore does not have a clear right to force OVMLB to issue an order finding her guilty of misconduct. Since she has no such clear legal right, she has no right to a writ of mandamus. Since she has no right to a writ of mandamus, she is not entitled to the other relief she requests.

{¶15} The objections to the magistrate's decision are overruled.

{¶16} The findings of fact and conclusions of law in the magistrate's decision is adopted. The request for a writ of mandamus is denied.

Objections overruled; writ denied.

BROWN, P.J., and DORRIAN, J., concur.

A P P E N D I X
 IN THE COURT OF APPEALS OF OHIO
 TENTH APPELLATE DISTRICT

State ex rel. Terrie Sizemore, D.V.M.,	:	
Relator,	:	
v.	:	No. 11AP-298
Ohio Veterinary Medical Licensing Board,	:	(REGULAR CALENDAR)
Respondent.	:	

M A G I S T R A T E ' S D E C I S I O N

Rendered on August 16, 2011

Terrie Sizemore, pro se.

Michael DeWine, Attorney General, and Mindy Worly, for respondent.

IN MANDAMUS
 ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

{¶17} Relator, Dr. Terrie Sizemore ("Dr. Sizemore"), has filed this original action requesting that this court issue a writ of mandamus ordering respondent, the Ohio Veterinary Medical Licensing Board ("the board"), "to re-issue the Order of March 2, 2007 properly and in compliance with RC 119.09 requirements."

Findings of Fact:

{¶18} 1. On February 21, 2007, the board met to determine whether or not disciplinary action should be taken against relator's veterinary medical license for violations of "R.C. 4741.22(AA) and O.A.C. 4741-1-21(1) and (3) and O.A.C. 4741-1-03(B)(6)(a)." Ultimately, the board concluded that relator did violate the provisions and found against her in an order dated March 2, 2007. That order provides:

* * * The Board hereby orders that Dr. Sizemore receive pay a fine of \$250.00 for the first violation and \$1,000.00 for the second violation for a total of \$1,250.00 within sixty days of the date of this Order. The Board further orders that Dr. Sizemore pay the costs of the hearing pursuant to R.C. 4741.22 in the amount of \$1,458.50 within sixty days of the date of this Order.

{¶19} 2. Relator appealed the board's decision to the Franklin County Court of Common Pleas.

{¶20} 3. The board filed a motion to dismiss relator's appeal for her failure to comply with the requirements of R.C. 119.12 in the filing of the appeal.

{¶21} 4. In a decision and entry dated June 25, 2007 and filed June 26, 2007, the court granted the board's motion and dismissed relator's appeal for lack of subject-matter jurisdiction.

{¶22} 5. Relator filed a notice of appeal from the trial court's entry in this court.

{¶23} 6. After participating in mediation, the parties agreed to dismiss the appeal, vacate the trial court's decision and remand the matter back to the board.

{¶24} 7. This court's journal entry of dismissal, filed August 28, 2007, states:

The parties having filed on August 20, 2007, what is construed as an agreed motion to dismiss and remand, this appeal is hereby dismissed and the matter remanded to the

trial court for consideration of the parties' joint request that its decision be vacated and the matter remanded to the Ohio Veterinary Medical Licensing Board to re-issue a final order pursuant to the Ohio Supreme Court's decision in *Hughes v. Ohio Dept. of Commerce* (2007), 114 Ohio St.3d 47.

{¶25} 8. Thereafter, in a letter dated November 21, 2007, Theresa Stir, Executive Director of the board, informed relator of the following:

The Ohio Veterinary Medical Licensing Board ("Board") reviewed your recent correspondence received October 30, 2007 at their November 14, 2007 board meeting. The Board has directed me to send you this letter advising you that after much deliberation they are dismissing the charges against you as filed in case #05-05-067.

{¶26} 9. In spite of her receipt of the November 21, 2007 letter notifying her that the charges against her had been dismissed, relator filed a motion with the trial court's magistrate informing the court that it had not yet acted on this court's judgment entry. Relator asserted that the trial court had not yet remanded the matter back to the board.

{¶27} 10. In an order dated May 19, 2009 and filed May 20, 2009, the trial court vacated its June 26, 2007 order and remanded the matter to the board so that the board could "re-issue a final order."

{¶28} 11. After the board received the trial court's judgment entry and following a hearing, the board again agreed to dismiss the charges against relator and, in a letter dated June 11, 2009, informed relator that:

On or about May 21, 2009, the Ohio Veterinary Medical Licensing Board ("Board") received notification that your case #05-05-067 before the Court of Common Pleas of Franklin County was dismissed with prejudice and the case was remanded back to the Board. At the June 10, 2009 Board meeting, since the Board now had jurisdiction over the matter, the Board moved and approved the dismissal of case #05-05-

067 as they indicated to you they would in a letter dated November 21, 2007.

{¶29} 12. Thereafter, relator filed the instant mandamus action asking this court to order the board to:

* * * [R]e-issue the Order of March 2, 2007 properly and in compliance with RC 119.09 requirements.

Order [the board] to reimburse [her] for this action and all other actions she has failed to perfect due to the [board's] failure to comply with the agreed journal entry and the Court's decision to remand this matter back to [the board] for the re-issuing of the Order against her.

{¶30} 13. Respondent filed a motion to dismiss which the magistrate converted to a motion for summary judgment.

Conclusions of Law:

{¶31} A motion for summary judgment requires the moving party to set forth the legal and factual basis supporting the motion. To do so, the moving party must identify portions of the record which demonstrate the absence of a genuine issue of material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280. Accordingly, any party moving for summary judgment must satisfy a three-prong inquiry showing: (1) that there is no genuine issue as to any material facts; (2) that the parties are entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, which conclusion is adverse to the party against whom the motion for summary judgment is made. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64.

{¶32} The Supreme Court of Ohio has set forth three requirements which must be met in establishing a right to a writ of mandamus: (1) that relator has a clear legal right to the relief prayed for; (2) that respondent is under a clear legal duty to perform the act

requested; and (3) that relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28.

{¶33} Relator cannot demonstrate that she has a clear legal right to have the board "re-issue the Order of March 2, 2007," because the board was not ordered to issue any specific order. Instead, this court ordered the board to "re-issue *an order*." (Emphasis added.) Here the board dismissed all charges against relator in a letter and not in an order. Relator could be entitled to writ of mandamus ordering the board to formalize its decision by issuing an order instead of a letter, but relator is not entitled to any specific order.

{¶34} Because relator cannot demonstrate that she has a clear legal right to have any specific order issued, it is this magistrate's decision that this court should grant respondent's motion for summary judgment and this case should be dismissed.

/s/Stephanie Bisca Brooks
STEPHANIE BISCA BROOKS
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).