

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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|------------------------|---|---------------------------|
| Paula J. Moore, R.N., | : | |
| Appellant-Appellant, | : | No. 12AP-514 |
| v. | : | (C.P.C. No. 12CVF-01-115) |
| Ohio Board of Nursing, | : | (REGULAR CALENDAR) |
| Appellee-Appellee. | : | |

D E C I S I O N

Rendered on March 12, 2013

Sindell and Sindell, LLP, Steven A. Sindell, and Rachael Sindell, for appellant.

Michael DeWine, Attorney General, and *Henry G. Appel*, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} This is an appeal by appellant, Paula J. Moore, R.N., from a judgment of the Franklin County Court of Common Pleas, affirming an order of appellee, Ohio Board of Nursing ("board"), permanently revoking appellant's nursing license.

{¶2} On April 11, 2000, appellant became licensed to practice nursing in the state of Ohio. In May of 2002, appellant entered a guilty plea in Hamilton County Court of Common Pleas to two counts of theft of drugs. In July of 2002, appellant entered an alternative program for chemically dependent nurses but she was terminated from the

program in May of 2003 for failure to comply with the terms and conditions of the agreement.

{¶3} In January of 2004, appellant entered a guilty plea in Hamilton County Court of Common Pleas to one count of illegal processing of drug documents and one count of deception to obtain dangerous drugs. On March 19, 2004, the board issued a notice of immediate suspension and opportunity for hearing based upon appellant's convictions in Hamilton County, as well as her failure to comply with the terms and conditions of the alternative program. In January of 2005, appellant entered into a consent agreement with the board, at which time her license to practice nursing was suspended for two years; the consent agreement set forth various conditions for reinstatement.

{¶4} On April 23, 2007, appellant entered a guilty plea in Kentucky to one count of robbery and one count of assault; she was found guilty and sentenced to a total term of 13 years imprisonment. On November 19, 2010, the board sent appellant a notice of opportunity for a hearing regarding disciplinary action against her license. The notice indicated that the board had been made aware that appellant entered a guilty plea to one count of robbery and one count of assault in Kentucky during the time she was subject to the 2005 consent agreement.

{¶5} Appellant sent a letter to the board, dated December 10, 2010, indicating her desire "to agree to a hearing." The board scheduled a hearing for August 17, 2011 before a board hearing committee ("hearing committee"). By letter dated July 12, 2011, appellant informed a board member: "I will be unable to attend" the August 2011 hearing "as I am incarcerated in the state of Kentucky and do not anticipate a release until December 1, 2011." Appellant's letter further stated: "Please advise me regarding any changes related to this matter."

{¶6} The matter came for hearing on August 17, 2011 before the hearing committee. During the hearing, in which appellant was not present, the state presented the testimony of Lisa Ferguson-Ramos, the compliance manager for the board, who testified that appellant had previously entered guilty pleas to two counts of theft of drugs, one count of illegal processing of drug documents, and one count of deception to obtain dangerous drugs. The witness identified a consent agreement entered between the board

and appellant, and also identified a certified copy of a final judgment and sentence entered by the Boone Circuit Court of Kentucky in which that court, following appellant's entry of a guilty plea to one count of robbery and one count of assault, imposed a total sentence of 13 years incarceration.

{¶7} On October 24, 2011, the hearing committee issued a report in which it recommended that appellant's license be permanently revoked. No objections were filed to the report. The board adopted the report and recommendation of the hearing committee by action taken November 18, 2011, and the board issued an adjudication order on December 5, 2011 reflecting that action.

{¶8} On January 5, 2012, appellant filed an appeal with the trial court from the order of the board. By decision and entry filed May 17, 2012, the trial court affirmed the board's order.

{¶9} On appeal, appellant sets forth the following assignment of error for this court's review:

It is an abuse of discretion and reversible error contrary to law for the Ohio Board of Nursing ("OBN") to refuse to grant a timely request of a nurse to continue an evidentiary hearing date for 3 1/2 months until she is released from incarceration so that she can personally attend the evidentiary hearing.

{¶10} Under her single assignment of error, appellant argues that the board erred in refusing to reschedule the August 2011 hearing before the hearing committee. Appellant argues that her letter of July 12, 2011 constituted a request for a three-month continuance in order to permit her attendance at the hearing.

{¶11} In considering an administrative appeal filed pursuant to R.C. 119.12, "the trial court reviews an order to determine whether it is supported by reliable, probative, and substantial evidence and is in accordance with the law." *Richmond v. Ohio Bd. of Nursing*, 10th Dist. No. 12AP-328, 2013-Ohio-110, ¶ 7, citing *Levine v. State Med. Bd.*, 10th Dist. No. 10AP-962, 2011-Ohio-3653, ¶ 12. This court's standard of review "is more limited on appeal." *Richmond* at ¶ 8. Specifically, "[i]n reviewing the court of common pleas' determination that the commission's order was supported by reliable, probative, and substantial evidence, this court's role is confined to determining whether the court of common pleas abused its discretion." *Id.*

{¶12} As noted under the facts, appellant sent a letter to the board, dated December 10, 2010, in which she requested that a hearing be set. Appellant's letter states in part as follows:

I am writing in regards to the notification of opportunity for a Hearing in reference to my license and status thereof. I would like to agree to a hearing, once a date has been determined and I have been informed of such I will then determine if I will appear personally or put my contentions in writing, as I am residing in Florence, Kentucky and that is considerable distance from Columbus, Ohio.

{¶13} The trial court noted that the above letter informed the board that appellant "wanted a hearing but that the Appellant's eventual attendance at the hearing was not confirmed." Following appellant's receipt of the board's notice of the August 17, 2011 hearing, appellant submitted her July 12, 2011 letter, which states in part as follows:

I received a letter advising me of my hearing scheduled for August 17, 2011. I am writing to inform you that I will be unable to attend as I am incarcerated in the state of Kentucky and do not anticipate a release until December 1, 2011.

Please advise me regarding any changes related to this matter.

{¶14} Appellant argued before the trial court that the court was required to view the last sentence of the July 12, 2011 letter as a request for a continuance. The trial court rejected appellant's contention, holding in relevant part:

In this case it is clear that the Appellant requested her right to a hearing. Her December 2010 letter is unequivocal. The Appellee complied with the Appellant's request and set the hearing for August 17, 2011. In the Appellant's December 2010 letter, the Appellant made it clear that she was leaving the decision to attend the hearing for a later date. Appellant's July 12, 2011 letter contained no language that this Court could reasonab[ly] interpret to be a request for a continuance.
* * * There exists no mandatory right to a continuance.

Even assuming that someone could find a request for a continuance within the July 12, 2011 letter, * * * the Appellee would not have abused its discretion in denying the request. Furthermore, after the Appellant received notice of the Report and Recommendation, the Appellant failed to file objections

and failed to raise the denial of her alleged continuance request.

This Court holds that there was no apparent, suggested, and/or veiled language within the Appellant's July 12, 2011 letter that would/could/should be read as a request for a continuance. The Appellant's rights were not violated when the Appellee went forward with the hearing as scheduled.

{¶15} Appellant's contention that the trial court erred in failing to find that the board abused its discretion in not granting a continuance is not persuasive. On its face, the July 12, 2011 letter indicates appellant's inability to attend the hearing due to her incarceration and includes a request that she be advised of "any changes related to this matter." We find no error by the trial court in failing to construe this language as a specific request for a three-month continuance.

{¶16} Further, following the issuance of the hearing committee's report and recommendation, the board informed appellant that, pursuant to R.C. 119.09, she was entitled to file objections to the report. However, as noted by the trial court, appellant did not file objections challenging the denial of a continuance, nor did she raise the issue of failure by the hearing committee to construe the letter as a request for a continuance.

{¶17} Finally, even assuming appellant had filed objections, the board would not have been required to grant a continuance. In general, a decision whether to grant a continuance lies within the discretion of the agency. *Korn v. State Med. Bd.*, 61 Ohio App.3d 677, 683 (10th Dist.1988). At the time of the August 2011 hearing, the evidence before the hearing committee indicated that, in 2007, the Boone Circuit Court had sentenced appellant to a total term of imprisonment of 13 years following her convictions for robbery and assault. As noted by the board, apart from appellant's self-serving statement in her letter that she did not "anticipate a release until December 1, 2011," the hearing record contains no independent documentation with respect to appellant's release date from prison. Thus, under this record, we agree with the trial court that the board would not have abused its discretion in denying a continuance request.

{¶18} Based upon the foregoing, the trial court did not err in affirming the order of the board. Accordingly, appellant's single assignment of error is overruled, and the

judgment of the Franklin County Court of Common Pleas, affirming the order of the board, is hereby affirmed.

Judgment affirmed.

SADLER and DORRIAN, JJ., concur.
