[Cite as *Prince-Paul v. Ohio Bd. of Nursing*, 2015-Ohio-3984.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Maryjo Prince-Paul, R.N., C.M.S., C.T.P.,	:	
Appellant-Appellant,	:	
		No. 15AP-62
v.	:	(C.P.C. No. 2014CV-13231)
Ohio Board of Nursing,	:	(ACCELERATED CALENDAR)
Appellee-Appellee.	:	

D E C I S I O N

Rendered on September 29, 2015

Collis, Smiles & Collis, LLC, and *Elizabeth Y. Collis*, for appellant.

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

APPEAL from the Franklin County Court of Common Pleas

SADLER, J.

{¶ 1} Appellant-appellant, Maryjo Prince-Paul, appeals from a judgment of the Franklin County Court of Common Pleas, in favor of appellee-appellee, Ohio Board of Nursing ("board"), denying appellant's motion to stay the board's adjudication order. For the reasons that follow, we affirm.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} Appellant has been licensed as a registered nurse in Ohio since 1991 and holds a certificate of authority as a clinical nurse specialist. Her nursing practice has focused on end-of-life issues. Appellant earned both a Master's degree in nursing from Case Western Reserve University ("Case Western") in 1995 and a Ph.D. in 1997. She completed a post-doctoral fellowship in 2008. Thereafter, Case Western employed

appellant as a tenure-track assistant professor in the school of nursing. In addition to teaching three Masters' level courses and practicing nursing at the Hospice of the Western Reserve inpatient facility, in 2013, appellant became a principal investigator in a research project funded by the National Institute of Health. During that same period of time, appellant authored published works in her field and belonged to a number of private organizations and professional associations.

{¶ 3} On April 3, 2013, appellant drove her vehicle through a stop sign and into a vehicle containing three occupants. On the day of the accident, appellant had planned to meet her husband at their daughter's softball game which was a 30-minute drive from their home. Due to a series of stressful events, appellant found herself still at home around 4:15 p.m. Her daughter's game was to start at 4:00 p.m., and she knew she would be late. Though appellant testified that she does not normally drink alcohol, she poured some bourbon in a cup of Dr. Pepper and took both the cup and the bottle of bourbon with her when she left the house.

{¶ 4} Appellant arrived at the game at around 4:45 p.m. Although appellant has admitted that she drank bourbon before she arrived at the game, she did not believe she was intoxicated. Appellant's husband testified that he did not believe his wife was intoxicated when she was at the softball game. Appellant left the game around the sixth inning because she had to pick up her son at his friend's house, about a 45-minute drive from the ball field. On her way to pick up her son, appellant ran the stop sign and "T-boned" the other vehicle. (Sept. 9, 2014 Tr. 113.) The driver of the other vehicle suffered a broken clavicle and a child in the rear seat suffered a minor laceration.

{¶ 5} When a local police officer arrived at the scene, he detected a strong odor of alcohol about the vehicle, and he found appellant's eyes to be "glassy and blood shot." (Police Report, exhibit No. 6.) The bottle of bourbon had spilled in the car. Appellant told the officer that she had a drink of vodka earlier in the day. Appellant subsequently failed a field sobriety test, and she was arrested on charges of aggravated vehicular assault and operating a motor vehicle under the influence of alcohol.

{¶ 6} On November 4, 2013, appellant pleaded guilty to aggravated vehicular assault, a fourth-degree felony, in violation of R.C. 2903.08(A)(2)(b). The Cuyahoga County Court of Common Pleas convicted appellant of the offense and sentenced

appellant to one year of community control, a fine of $3,000, and court costs. The sentencing court also ordered appellant to attend AA, NA, or CA meetings twice a week, to obtain a sponsor, and to provide proof of compliance to her supervising officer.

{¶ 7} On March 21, 2014, the board notified appellant of its intention to take disciplinary action against her nursing license based on the 2013 felony conviction of aggravated vehicular assault. Appellant timely requested a hearing on the matter. A board hearing officer conducted an evidentiary hearing on the matter and issued a report and recommendation including findings of fact and conclusions of law. The hearing officer concluded that "[t]he Board has the authority to take disciplinary action against Maryjo Prince-Paul's license to practice nursing pursuant to R.C. 4723.28(B)(4), because she pleaded guilty and was convicted of an offense that constitutes a felony." (Report and Recommendation, 31.) The hearing officer recommended a short license suspension or, in the alternative, a three-year probation.

{¶ 8} On November 21, 2014, the board issued an adjudication order adopting the hearing officer's findings of fact and conclusions of law but modifying the hearing officer's recommendation. The board placed appellant's license to practice nursing on probation for a period of three years with specified treatment, monitoring, and reporting requirements, including a psychological evaluation and random drug and alcohol screening, as well as restrictions on her employment as a nurse and nurse educator. The order was made effective immediately.

{¶ 9} On December 11, 2014, appellant appealed the adjudication order to the Franklin County Court of Common Pleas pursuant to R.C. 119.12. On December 18, 2014, appellant filed a "motion to stay" seeking an order suspending execution of the board's order pending her appeal. On December 31, 2014, the trial court denied appellant's motion to stay finding that appellant failed to demonstrate that she would suffer an "unusual hardship" if execution of the adjudication order were not suspended during the administrative appeal. (Dec. 31, 2014 Entry, 2.) R.C. 119.12.

{¶ 10} Appellant filed a timely notice of appeal to this court on January 29, 2015. On January 30, 2015, the trial court issued a journal entry staying the case "pending the conclusion of the appeal."

II. ASSIGNMENT OF ERROR

{¶ 11} Appellant asserts the following assignment of error:

> The Court of Common Pleas, Franklin County, Ohio abused its discretion by denying Appellant's Motion to Stay the Nursing Board Adjudication Order pending appeal.

III. STANDARD OF REVIEW

{¶ 12} "[W]hen reviewing whether a trial court properly granted or denied a motion to stay an administrative order, the standard of review employed is an abuse of discretion." *Bob Krihwan Pontiac-GMC Truck, Inc. v. Gen. Motors Corp.*, 141 Ohio App.3d 777, 782 (10th Dist.2001), citing *Carter Steel & Fabricating Co. v. Danis Bldg. Constr. Co.*, 126 Ohio App.3d 251, 254 (3d Dist.1998). A trial court abuses its discretion when it acts in an unreasonable, arbitrary, or unconscionable manner. *Id.*, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

IV. LEGAL ANALYSIS

{¶ 13} R.C. 119.12 allows the court to "grant a suspension" of an agency order pending appeal if the court determines that "unusual hardship" will result to appellant. The parties do not dispute that our prior decision in *Krihwan* provides the test for determining whether to suspend an agency order execution of the agency's order pending determination of an R.C. 119.12 appeal. In *Krihwan*, this court set forth the following factors that a trial court must weigh in determining whether the execution of an adjudication order should be suspended during the pendency of the administrative appeal:

> Although R.C. 119.12 does not set forth or proscribe the factors the court may consider in determining whether to suspend operation of an administrative order, those factors have been refined by the courts. The Sixth Circuit, in addition to many other courts, has repeatedly relied upon the following factors as logical considerations when determining whether it is appropriate to stay an administrative order pending judicial review. Those factors are: (1) whether appellant has shown a strong or substantial likelihood or probability of success on the merits; (2) whether appellant has shown that it will suffer irreparable injury; (3) whether the issuance of a stay will cause harm to others; and (4) whether the public interest would be served by granting a stay.

Id. at 783. Courts applying these factors in determining whether a stay is appropriate have stated that the factors are not prerequisites that must be met but are interrelated considerations that must be balanced together. *Serv. Emps. Internatl. Union Local 1 v. Husted*, 698 F.3d 341, 343 (6th Cir.2012); *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir.1991). Appellant contends that the trial court abused its discretion when it found that appellant failed to prove that she would suffer an unusual hardship if the adjudication order were not suspended pending the determination of her R.C. 119.12 appeal. We disagree.

A. Undue Hardship or Irreparable Injury

{¶ 14} Irreparable harm is defined as "an injury 'for the redress of which, after its occurrence, there could be no plain, adequate and complete remedy at law, and for which restitution in specie (money) would be impossible, difficult or incomplete.' " *Dimension Serv. Corp. v. First Colonial Ins. Co.*, 10th Dist. No. 14AP-368, 2014-Ohio-5108, quoting *Union Twp. v. Union Twp. Professional Firefighters' Local 3412*, 12th Dist. No. CA99-08-082 (Feb. 14, 2000), citing *Cleveland v. Cleveland Elec. Illuminating Co.*, 115 Ohio App.3d 1, 12 (1996), *appeal dismissed*, 78 Ohio St.3d 1419 (1997). Though the term "unusual hardship" is not defined in R.C. 119.12, we note that federal courts applying the concept of "undue hardship" in determining whether a stay is appropriate in bankruptcy proceedings have defined the term as being "more than mere unpleasantness or 'garden-variety' difficulty." *In re Windland*, 201 B.R. 178, 181 (Bankr.N.D.Ohio 1996), citing *In re Gammoh*, 174 B.R. 707, 709 (Bankr.N.D.Ohio 1994). In such cases, proof of an undue hardship "usually requires some extraordinary circumstances." *Id*.

{¶ 15} Appellant alleges that she will suffer the following injury should the execution of the adjudication order not be suspended during her appeal: (1) continued damage or destruction of her reputation among colleagues and the community as a whole, (2) embarrassment and humiliation, (3) consternation over the forced abandonment of her nursing students, (4) severe emotional distress, (5) lost income, (6) loss of scholarship to her daughter, and (7) deprivation of her constitutional rights.

{¶ 16} Appellant argues that the restrictions on her ability to be employed as a nurse educator will result in a severe economic hardship. We note, however, that the restrictions placed on appellant's work as a nurse educator are expressly limited to pre-

licensure courses. Ohio Adm.Code 4723-5. Thus, appellant may still be employed as a nurse educator during her probationary period. Similarly, while the board order limits appellant's ability to practice nursing in her chosen specialty during the probationary period, appellant is not otherwise prevented from working as a nurse. The board elected not to suspend appellant's nursing license, and appellant acknowledges that "Case Western supports [her] continued employment." (Appellant's Brief, 13.) In a letter dated January 2, 2014, Case Western informed appellant that she could "return to [her] faculty duties immediately." (Respondent's exhibit J-1.) This being the case, to the extent that her daughter's eligibility for a scholarship depends on appellant's continued employment with Case Western, appellant has not shown that the loss of her daughter's scholarship will necessarily result from the board order.

{¶ 17} Appellant next contends that she has suffered unusual and irreparable harm in the form of damage or destruction of her reputation among colleagues and the community as a whole, embarrassment and humiliation, and severe emotional distress as a result of the board's adjudication order. Appellant's argument overlooks the fact that the cause of these injuries was her own regrettable behavior on April 3, 2013, and her subsequent criminal conviction. Appellant acknowledged in her motion to stay that many of the treatment, monitoring, and reporting requirements imposed on her by the board order had been previously imposed on her by the sentencing court. Appellant does not dispute that she is precluded by her felony conviction from obtaining hospital credentials and acting as a principal investigator on research projects funded by the National Institute of Health. During the pendency of the criminal proceedings, appellant voluntarily resigned from the tenure-track at Case Western and from some of the professional organizations and associations to which she belonged. Thus, the record shows that any emotional or reputational harm to appellant in this case arises directly from the April 3, 2013 accident and appellant's criminal conviction, not the board's adjudication order.

{¶ 18} With regard to appellant's claim that she has been stripped of her constitutional right of due process by the immediate imposition of the three-year probation and the continued imposition of such sanctions during the pendency of her appeal, as noted above, appellant was provided with notice and an opportunity to be

heard in proceedings before the board. Following an evidentiary hearing, a board hearing officer issued a 34-page report and recommendation, including findings of fact and conclusions of law. Following an independent review of the transcript, exhibits, and the hearing officer's report and recommendation, the board adopted the hearing officer's findings of fact and conclusions of law but modified the penalty. Appellant's R.C. 119.12 appeal remains pending in the court of common pleas and that case is stayed during this appeal.

{¶ 19} The record shows that appellant has received all legal process to which she is entitled. Moreover, given the fact that the board opted for a three-year probation, rather than a short-term license suspension, there is little chance that the issues raised by appellant's R.C. 119.12 appeal will be rendered moot by the mere passage of time between execution of the board order and the end of the probationary period. We perceive no due process violations arising from the trial court's failure to suspend execution of the adjudication order during the pendency of appellant's R.C. 119.12 appeal.

{¶ 20} Based on the foregoing, we find that appellant has not shown that she will suffer an unusual or irreparable injury as a result of the immediate execution of the adjudicatory order.

B. Strong or Substantial Likelihood or Probability of Success on the Merits

{¶ 21} Appellant cites *In re Eastway*, 95 Ohio App.3d 516 (10th Dist.1994) ("*Eastway I*"), in support of her contention that the court of common pleas may overturn a condition of probation imposed by the board where the imposition of such a condition is not supported by reliable, probative, and substantial evidence in the record. In *Eastway I*, this court concluded that the State Medical Board could not legally require drug, alcohol, and psychiatric treatment as a condition for reinstatement of a suspended medical license when it had not charged the physician with being mentally impaired due to substance abuse. *Id*. *See also Krain v. State Med. Bd. of Ohio*, 10th Dist. No. 97APE08-981 (Oct. 29, 1998). In a subsequent decision, following remand, this court held that the trial court abused its discretion by re-imposing drug, alcohol, and psychiatric treatments as conditions of probation following reinstatement after this court had determined that the evidence did not support the imposition of drug, alcohol, and

psychiatric treatments as reasonable conditions for reinstatement. *In re Eastway*, 10th Dist. No. 95APE12-1662 (June 20, 1996) ("*Eastway II*").

{¶ 22} The board argues that *Eastway I* is legally and factually distinguishable from the instant case. We agree.

{¶ 23} The issue in *Eastway I* was whether conditions for reinstatement of a suspended medical license met the requirements of Ohio Adm.Code 4731-13-6. The conditions of probation following reinstatement were a collateral issue in the case. *See Eastway II*. Conversely, this case involves a license probation imposed by the State Medical Board due to appellant's felony conviction for aggravated vehicular assault. R.C. 4723.28(B)(4). This case does not involve conditions for reinstatement following a license suspension. Moreover, there is no dispute in this case that appellant's abuse of alcohol was a fact underlying her conviction. Although the charge of operating a motor vehicle while under the influence of alcohol was ultimately dismissed as a result of appellant's plea agreement, appellant's sentence includes alcohol-related treatment, monitoring, and reporting requirements. Thus, this case is legally and factually distinguishable from *Eastway I*.

{¶ 24} The board contends that this case is governed by *Henry's Café v. Bd. of Liquor Control*, 170 Ohio St. 233 (1959), wherein the Supreme Court of Ohio held that courts of law are without authority to review a penalty imposed by an administrative agency if the agency had the authority to impose that penalty. *Id.* at paragraph three of the syllabus. Appellant has acknowledged that the underlying felony conviction provides the board with a legal basis to take disciplinary action against her license, including a three-year suspension with conditions. Appellant does not contend that the board may never impose treatment, monitoring, and reporting requirements as a condition of a license probation.

{¶ 25} This court in *Eastway I* acknowledged the rule of law in *Henry's Café* when it stated that "the common pleas court has no authority to modify a penalty that the agency was authorized to and did impose on the ground that the agency abused its discretion." *Eastway I*, citing *Henry's Café* at paragraph three of the syllabus. This court has consistently applied the rule of law in *Henry's Café* in reviewing appeals from adjudication orders. *See, e.g., Richmond v. Ohio Bd. of Nursing*, 10th Dist. No. 12AP-

328, 2013-Ohio-110, ¶ 16; *Ross v. State Med. Bd.*, 10th Dist. No. 03AP-971, 2004-Ohio-2130, ¶ 13; *Coniglio v. State Med. Bd. of Ohio*, 10th Dist. No. 07AP-298, 2007-Ohio-5018, ¶ 11. Given the circumstances of this case and the longstanding rule of law in *Henry's Café*, we find that *Eastway I* does not provide appellant with a substantial likelihood or probability of success on the merits.

C. Remaining *Krihwan* Factors

{¶ 26} Appellant makes no argument that the remaining two *Krihwan* factors weigh in favor of her claim of undue hardship. We find that, under the particular facts of this case, neither the harm to others resulting from suspension of the adjudication order nor the public interest in granting a stay carries any weight in the determination of appellant's claim of unusual hardship.

{¶ 27} For the foregoing reasons, we find that appellant has not shown that "an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal." R.C. 119.12. Accordingly, we hold that the trial court did not abuse its discretion by refusing to suspend execution of the adjudication order. Appellant's sole assignment of error is overruled.

V. CONCLUSION

{¶ 28} Having overruled appellant's sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK and LUPER SCHUSTER, JJ., concur.

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