

0A345 - A37

FILED
COURT OF APPEALS
10th DISTRICT
2012 MAR 30 PM 1:11
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Miami-Jacobs Career College,	:	
	:	
Appellant-Appellee,	:	
	:	No. 11AP-544
v.	:	(C.P.C. No. 11CVF-01-1089)
	:	
The Ohio Board of Nursing,	:	(REGULAR CALENDAR)
	:	
Appellee-Appellant.	:	

D E C I S I O N

Rendered on March 30, 2012

Collis, Smiles & Collis, LLC, and Elizabeth Y. Collis, for appellee.

Michael DeWine, Attorney General, and Melissa L. Wilburn, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶ 1} Appellee-appellant, the Ohio Board of Nursing ("the Board"), appeals from a judgment of the Franklin County Court of Common Pleas vacating the Board's adjudication order that withdrew conditional approval status for the practical nursing program of appellant-appellee, Miami-Jacobs Career College ("MJCC"), and remanding the matter to the Board for further proceedings. For the reasons that follow, we dismiss the appeal.

{¶ 2} In 2006, the Board granted MJCC conditional approval to offer a practical nursing program at several of its campuses. The record indicates that, between 2007 and 2009, the Board identified various deficiencies in the program and that MJCC entered into a consent agreement with the Board that allowed MJCC to continue operating the

0A345 - A38

No. 11AP-544

2

program on a conditional basis. On March 19, 2010, the Board issued a Notice of Opportunity for Hearing alleging certain deficiencies in the program. Thereafter, on July 30, 2010, the Board issued a second Notice of Opportunity for Hearing alleging additional deficiencies in the program. The Board appointed a hearing examiner, and the allegations contained in the hearing notices were considered at a consolidated hearing held on October 13 through 15, 2010.

{¶ 3} The hearing examiner issued a report and recommendation on November 15, 2010. She concluded that MJCC was not in compliance with several rules during the Board's survey visits and that it violated the terms of its consent agreement with the Board. She further concluded that the Board had authority to deny full approval to the program and continue conditional approval or to withdraw conditional approval. Ultimately, the hearing examiner made a "reluctant recommendation" that the program remain on conditional approval for an additional year but noted that she deferred to the Board's expertise to determine whether the violations had been sufficiently corrected or whether they compromised the program's ability to graduate well-trained and prepared students.

{¶ 4} The Board considered the matter at its regular meeting held on January 20 and 21, 2011. On the morning of January 20, 2011, the Board held the "open forum" portion of its meeting. During the open forum, the Board accepted comments from four individuals regarding the nursing program at MJCC. The speakers were a state representative, two former students in the MJCC nursing program, and the father of one of the former students. Later that afternoon, representatives of MJCC and the Board's counsel spoke to the Board regarding the conditional approval issue. On January 21, 2011, the Board voted to withdraw the conditional approval status of the program and to deny full approval status.

{¶ 5} MJCC appealed the Board's order withdrawing conditional approval and denying full approval of its nursing program to the Franklin County Court of Common Pleas pursuant to R.C. 119.12. The lower court concluded that the Board violated MJCC's right to procedural due process. The court vacated the Board's order and remanded the matter to the Board for further proceedings.

0A345 - A39

No. 11AP-544

3

{¶ 6} The Board appeals from the lower court's order, assigning three errors for this court's review:

[1.] The Trial Court Erred in Finding a Violation of MJCC's Fourteenth Amendment Due Process Rights Due to Financial Bias.

[2.] The Trial Court Erred in Finding the OBN Order Invalid Because the OBN Did Not Deliberate During An Open Meeting.

[3.] The Trial Court Abused its Discretion in Failing to Determine Reliable, Probative and Substantial Evidence Supported the OBN Order.

{¶ 7} Before considering the merits of the Board's appeal, we must determine whether the Board has the authority to bring the appeal and whether we have jurisdiction to consider the appeal. MJCC asserts that, under R.C. 119.12, the Board may not appeal the lower court's decision in this case.

{¶ 8} R.C. 119.12 provides for appeals from the decision of the court of common pleas:

The judgment of the court [of common pleas] shall be final and conclusive unless reversed, vacated, or modified on appeal. * * * An appeal by the agency shall be taken on questions of law relating to the constitutionality, construction, or interpretation of statutes and rules of the agency, and, in the appeal, the court [of appeals] may also review and determine the correctness of the judgment of the court of common pleas that the order of the agency is not supported by any reliable, probative, and substantial evidence in the entire record.

{¶ 9} The Supreme Court of Ohio has concluded that this provision "allows an agency the right to appeal *only* on questions of law pertaining to state statutes as well as rules and regulations which were promulgated by the agency." (Emphasis added.) *Miller v. Dept. of Indus. Relations*, 17 Ohio St.3d 226, 226-27 (1985). See also *Katz v. Dept. of Liquor Control*, 166 Ohio St. 229, 232 (1957) (concluding that the amendment adding this sentence to the statute "was intended to extend to the agency the right to appeal only on 'questions of law relating to the constitutionality, construction or interpretation of

0A345 - A40

No. 11AP-544

4

statutes and rules and regulations of the agency' "). Moreover, "it is not enough that there be a final order, nor is it enough that the appeal be on 'questions of law' as is true for the ordinary litigant." *Mentor Marinas, Inc. v. Bd. of Liquor Control*, 1 Ohio App.2d 219, 222 (10th Dist.1964). "The key is that the trial court actually rule on a question of law that pertains to the constitutionality, construction or interpretation of a statute or agency rule." *Enertech Electrical, Inc. v. W. Geauga Bd. of Edn.*, 10th Dist. No. 96AP-370, 1996 WL 506825, *2 (Sept. 3, 1996). See also *Wolff v. Ohio Dept. of Job & Family Servs.*, 165 Ohio App.3d 118, 2006-Ohio-214 (10th Dist.), ¶ 9 ("[T]he mere application of the law to the facts does not constitute 'interpretation' within the meaning of R.C. 119.12. There must be a genuine question presented and a specific finding by the trial court as to the meaning of the statute or rule.").

{¶ 10} MJCC argues that the Board lacks authority under R.C. 119.12 to pursue this appeal. We dismissed an administrative agency's appeal based on lack of jurisdiction in a similar situation in *Ramey v. Ohio State Bd. of Chiropractic Examiners*, 10th Dist. No. 94APE10-1512, 1995 WL 458957 (Aug. 3, 1995). In *Ramey*, the Board of Chiropractic Examiners suspended a practitioner's license based on its determination that he had violated his obligations to a patient under the applicable regulations. On appeal, the court of common pleas reversed the suspension order, finding that there had never been a physician-patient relationship between the practitioner and the individual. The Board of Chiropractic Examiners appealed the common pleas court's decision to this court. We concluded that the existence of a physician-patient relationship was a question of law but that it did not involve the constitutionality, construction, or interpretation of a statute or agency rule. Further, even though the court of common pleas discussed arguments regarding administrative regulations, it did not base its decision on those matters. Accordingly, we found that, under R.C. 119.12, we lacked jurisdiction and dismissed the appeal.

{¶ 11} In the present case, the lower court concluded that the Board violated MJCC's right to procedural due process by taking comments about MJCC during the open forum portion of the Board's public meeting before voting on the case against MJCC and by failing to give MJCC prior notice that it would take comments at the meeting. The court also found that the Board violated due process by not affording MJCC an

0A345 - A41

No. 11AP-544

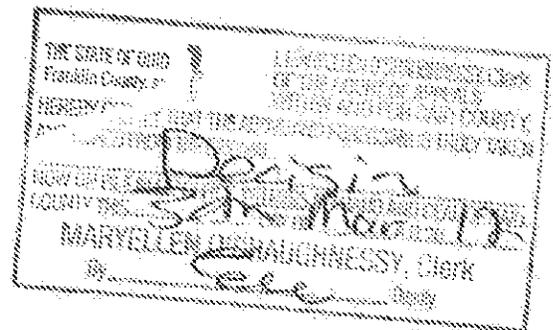
5

opportunity to cross-examine the commenters and by not putting the commenters under oath, as well as by accepting newspaper articles critical of MJCC that were submitted at the public meeting. The court indicated that the Board's decision should have been based solely on the testimony and evidence introduced at the hearing, the hearing examiner's report and recommendation, and the parties' responses to that report and recommendation. The court admitted that it could not conclude with absolute certainty that members of the Board relied on the comments or newspaper articles submitted at the Board meeting but also found that the Board could not prove that its members disregarded these "extraneous influences." We note that the lower court referred to the statute requiring the Board to conduct a formal hearing when considering conditional or full approval of nursing programs, but the court's decision did not turn on construing or interpreting that statute.

{¶ 12} Thus, in this case, as in *Ramey*, the lower court's decision was clearly based on a question of law. However, in both cases, the question of law on which the lower court's decision relied did not involve the constitutionality, construction, or interpretation of a statute or agency rule. Because this appeal does not involve a question of law relating to the constitutionality, construction, or interpretation of a statute or rule, the Board lacks authority under R.C. 119.12 to bring this appeal and we lack jurisdiction to consider it. Therefore, the Board's appeal is sua sponte dismissed.

Appeal dismissed.

SADLER and CONNOR, JJ., concur.



0A345 - A42