

SUPREME COURT OF NORTH DAKOTA

Burr v. North Dakota State Board of Dental Examiners

Burr v. N.D. State Board of Dental Examiners, 2021 ND 31 (2021) · No. 20200219 · Decided February 18, 2021

SUMMARY

The North Dakota Supreme Court affirmed dismissal of Rebecca Burr's complaint against the North Dakota State Board of Dental Examiners. The court held that the notice-of-claim requirement did not deprive the district court of subject matter jurisdiction, but that the Board was entitled to discretionary immunity for its decision not to investigate or pursue disciplinary action against a former dentist.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Jerod E. Tufte, Justice; Jon J. Jensen, C.J.; Gerald W. VandeWalle; Daniel J. Crothers; Lisa Fair McEvers; Jerod E. Tufte
JURISDICTION	North Dakota
DECIDED	February 18, 2021
DOCKET	20200219
DISPOSITION	affirmed
PROCEDURAL POSTURE	Burr appealed the district court's dismissal of her complaint against the North Dakota State Board of Dental Examiners for lack of jurisdiction and failure to state a claim, based on quasi-judicial and discretionary immunity.
STANDARD OF REVIEW	The Supreme Court reviewed the Rule 12(b)(6) dismissal de novo, construing the complaint in the light most favorable to Burr and accepting well-pleaded allegations as true. Subject matter jurisdiction was addressed as a threshold issue before the merits.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Rebecca N. Burr v. North Dakota State Board of Dental Examiners

TOPICS

- administrative law
- medical licensing
- motions to dismiss
- subject matter jurisdiction
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court lacked subject matter jurisdiction because Burr failed to serve the Office of Management and Budget with notice of her claim within 180 days of discovering or reasonably discovering the alleged injury.
2. Whether the Board's decision not to proceed with disciplinary action or hold a hearing was protected by discretionary-function immunity.
3. Whether the Board had a statutory duty to investigate a complaint against a former dentist, notify that person, require a response, and create an administrative record.

HOLDINGS

1. The notice-of-claim requirement did not deprive the district court of subject matter jurisdiction because Burr's alleged injury in this action arose from the Board's denial of her complaint without investigation in October 2019, and her January 2020 notice was served within 180 days.
2. The Board was entitled to discretionary immunity for its decision not to proceed with a disciplinary action under chapter 28-32 and therefore not to hold a hearing.
3. The Board was entitled to discretionary immunity for choosing not to investigate Burr's complaint against a person who was no longer a licensed dentist, and the cited statutes did not impose the alleged duties to notify the former dentist, require a response, or create an administrative record in these circumstances.

KEY QUOTATIONS

“The test we apply when determining governmental liability and discretionary acts distinguishes between immune discretionary acts and non-immune ministerial acts.” (¶ 7)

“This discretionary-function exception respects the constitutional separation of powers by preventing judicial interference with policymaking of the executive and legislative branches.” (¶ 10)

FACTUAL BACKGROUND

In 2019, Rebecca Burr filed a disciplinary complaint with the North Dakota State Board of Dental Examiners concerning alleged injuries caused by a dentist in 1989. The Board determined there was no reasonable basis to believe a statutory or regulatory violation had occurred and dismissed the complaint without action. Burr alleged that the Board had a mandatory duty to investigate, notify the former dentist, and require a response, and claimed that the failure to do so caused her additional harm. She served a notice of claim in January 2020 and filed suit after the claim was denied.

PROCEDURAL HISTORY

Burr complained to the Board that a formerly licensed dentist had injured her in 1989. The Board dismissed the complaint without investigation after determining there was no reasonable basis to believe a violation had

occurred. Burr later served a notice of claim on the Office of Management and Budget, which denied the claim, and then sued the Board. The Burleigh County District Court dismissed the action, and the North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Ramirez v. Walmart, 2018 ND 179, ¶ 7, 915 N.W.2d 674
- Franciere v. City of Mandan, 2019 ND 233, ¶ 12, 932 N.W.2d 907
- The Perry Ctr., Inc. v. Heitkamp, 1998 ND 78, ¶ 29, 576 N.W.2d 505
- Olson v. City of Garrison, 539 N.W.2d 663, 665-67, 669 n.3 (N.D. 1995)
- Berkovitz v. United States, 486 U.S. 531, 536-37 (1988)
- United States v. Gaubert, 499 U.S. 315, 325 (1991)

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