

SUPREME COURT OF NORTH CAROLINA

Winkler v. N.C. State Bd. of Plumbing, Heating & Fire Sprinkler Contractors

No. 319PA18 (N.C. June 5, 2020) · No. No. 319PA18 · Decided June 5, 2020

SUMMARY

The Supreme Court of North Carolina addresses whether attorney's fees may be awarded under N.C.G.S. § 6-19.1 in a disciplinary action brought by a licensing board. The court holds that the statute permits such an award but concludes that the Board acted with substantial justification, requiring reversal of the trial court's attorney's-fee award. The decision modifies and affirms the Court of Appeals.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Beasley, Chief Justice
JURISDICTION	North Carolina
DECIDED	June 5, 2020
DOCKET	No. 319PA18
DISPOSITION	other
PROCEDURAL POSTURE	Petitioners sought discretionary review of a unanimous Court of Appeals decision reversing a superior court order awarding attorney's fees and costs under N.C.G.S. § 6-19.1. The Supreme Court also allowed the Board's conditional petition for discretionary review as to additional issues.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. A trial court's decision to award attorney's fees under N.C.G.S. § 6-19.1 is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Dale Thomas Winkler, DJ's Heating Service v. North Carolina State Board of Plumbing, Heating & Fire Sprinkler Contractors

TOPICS

[administrative law](#)[statutory interpretation](#)[judicial review of agency action](#)[remedies](#)[appellate procedure](#)

PRACTICE AREAS

administrative law

statutory interpretation

attorney's fees

professional licensing

appellate procedure

QUESTIONS PRESENTED

1. Whether N.C.G.S. § 6-19.1 permits a trial court to award attorney's fees to a prevailing party in a disciplinary action by a licensing board.
2. Whether the Board acted without substantial justification so that attorney's fees could be awarded under N.C.G.S. § 6-19.1.
3. Whether the trial court abused its discretion by awarding attorney's fees for the administrative and judicial-review proceedings.

HOLDINGS

1. N.C.G.S. § 6-19.1 does not categorically preclude a trial court from awarding attorney's fees in a disciplinary action by a licensing board.
2. The Board acted with substantial justification in asserting that it had authority to discipline Winkler for the pool-heater work, so the statutory prerequisite for an attorney's-fee award was not satisfied.

KEY QUOTATIONS

“Accordingly, we hold that the legislature intended to allow trial courts to award attorney’s fees in a disciplinary action by a licensing board.” (at 13)

“Despite failing to prevail on the merits of its claim, the Board was substantially justified in contending that Winkler engaged in the type of conduct the Board was authorized to discipline.” (at 16)

FACTUAL BACKGROUND

Winkler held a residential HVAC license but examined and turned on a hotel's pool heater despite lacking the appropriate license. He later inspected the pool heater's ventilation system without testing for carbon monoxide and told the hotel that the system appeared to be working. After the hotel reopened the room, additional carbon-monoxide deaths and injuries occurred. The Board disciplined Winkler, and although the Court of Appeals ultimately vacated part of the disciplinary order, the Board maintained that its jurisdictional position was substantially justified.

PROCEDURAL HISTORY

The Board suspended Winkler's license for one year and ordered him to complete courses after determining that he performed work beyond his license qualifications. The superior court affirmed the Board's disciplinary decision. The Court of Appeals later vacated part of the Board's order concerning the pool-heater inspection and remanded for a new order based on other misconduct. The superior court awarded Winkler \$29,347.47 in attorney's fees and costs, but the Court of Appeals reversed that award. The Supreme Court modified and affirmed the Court of Appeals' decision, holding that fees could be legally available in a licensing-board disciplinary action but were not warranted because the Board acted with substantial justification.

DISPOSITION

other

CASES CITED

- City of Charlotte v. McNeely, 281 N.C. 684, 190 S.E.2d 179 (1972)
- Applewood Props., LLC v. New S. Props., LLC, 366 N.C. 518, 742 S.E.2d 776 (2013)
- N.C. Dep't of Corr. v. N.C. Med. Bd., 363 N.C. 189, 675 S.E.2d 641 (2009)
- Diaz v. Div. of Soc. Servs., 360 N.C. 384, 628 S.E.2d 1 (2006)
- Porsh Builders, Inc. v. City of Winston-Salem, 302 N.C. 550, 276 S.E.2d 443 (1981)
- Stephens Co. v. Lisk, 240 N.C. 289, 82 S.E.2d 99 (1954)
- State v. Bell, 184 N.C. 701, 115 S.E. 190 (1922)
- Ocean Hill Joint Venture v. N.C. Dep't of Env't, Health & Nat. Res., 333 N.C. 318, 426 S.E.2d 274 (1992)
- In the Matter of Appeal from the Civil Penalty Assessed for Violations of the SPCA, 324 N.C. 373, 379 S.E.2d 30 (1989)
- Empire Power Co. v. N.C. Dep't of Env't, Health & Nat. Res., 337 N.C. 569, 447 S.E.2d 768 (1994)
- Winkler v. State Bd. of Exam'rs of Plumbing, Heating & Fire Sprinklers Contractors, 249 N.C. App. 578, 790 S.E.2d 727 (2016)
- Winkler v. N.C. State Bd. of Plumbing, Heating & Fire Sprinkler Contractors, 261 N.C. App. 106, 819 S.E.2d 105 (2018)
- Falin v. Roberts Co. Field Servs., 245 N.C. App. 144, 782 S.E.2d 75 (2016)
- High Rock Lake Partners, LLC v. N.C. Dep't of Transp., 234 N.C. App. 336, 760 S.E.2d 750 (2014)
- Nationwide Mut. Fire Ins. Co. v. Bournon, 172 N.C. App. 595, 617 S.E.2d 40 (2005)
- Crowell Constructors v. State ex rel. Cobey, 342 N.C. 838, 467 S.E.2d 675 (1996)
- Pierce v. Underwood, 487 U.S. 552, 108 S. Ct. 2541 (1988)