

SUPREME COURT OF KENTUCKY

Kentucky Bar Association v. Carl Wayne Gibson

Kentucky Bar Association v. Gibson · No. 2017-SC-000247-KB · Decided September 7, 2017

SUMMARY

The Kentucky Supreme Court adopted a trial commissioner’s findings that Carl Wayne Gibson violated four Kentucky Rules of Professional Conduct provisions in handling an uncontested divorce, including duties of diligence, communication, and honesty. The Court imposed a thirty-day suspension, ordered Gibson to refund \$250 of the client fee, and assessed \$252.02 in disciplinary costs.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	All sitting
JURISDICTION	Kentucky
DECIDED	September 7, 2017
DOCKET	2017-SC-000247-KB
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding submitted to a trial commissioner. Neither the Kentucky Bar Association nor Carl Wayne Gibson filed a notice of appeal, so the Supreme Court of Kentucky declined further review and entered a final order adopting the commissioner's findings and recommended sanctions.
STANDARD OF REVIEW	Upon the absence of a notice of review, the Court conducted a full examination of the record but declined further review and adopted the trial commissioner’s findings and recommended sanctions under SCR 3.370(9).
PRECEDENTIAL VALUE	Published disciplinary opinion

TOPICS

appellate procedure

family law procedure

divorce

remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Gibson violated SCR 3.130(1.3) by failing to act with reasonable diligence and promptness in handling Dove's divorce.
2. Whether Gibson violated SCR 3.130(1.4)(a)(3) by failing to keep Dove reasonably informed about the status of the matter.
3. Whether Gibson violated SCR 3.130(1.4)(a)(4) by failing to promptly comply with Dove's reasonable requests for information.
4. Whether Gibson violated SCR 3.130(8.4)(c) by making dishonest, deceitful, or misleading representations concerning filings and the status of the divorce.
5. Whether the trial commissioner's recommended sanctions should be adopted as a final order when neither party filed a notice of appeal.

HOLDINGS

1. Gibson violated the duty to act with reasonable diligence and promptness by delaying the filing of the divorce documents and failing to place the matter on the court's docket.
2. Gibson violated the duty to keep his client reasonably informed by repeatedly failing to respond to Dove's status inquiries and by providing false information about the status of the divorce.
3. Gibson violated the duty to promptly comply with reasonable requests for information.
4. Gibson violated the professional-misconduct rule prohibiting dishonesty, fraud, deceit, or misrepresentation.
5. When neither party files a notice of review, the Supreme Court of Kentucky may enter a final order adopting the trial commissioner's decision under SCR 3.370(9), after examining the record and declining further review.

KEY QUOTATIONS

"If no notice of review is filed by either of the parties, or the Court...the Court shall enter an order adopting the decision of the Board or the Trial Commissioner, whichever the case may be, relating to all matters." (at 2)

"A lawyer shall act with reasonable diligence and promptness in representing a client." (at 3)

"A lawyer shall keep the client reasonably informed about the status of the matter." (at 3)

"A lawyer shall promptly comply with reasonable requests for information." (at 3)

"It is professional misconduct for a lawyer to engage in dishonesty, fraud, deceit or misrepresentation." (at 4)

FACTUAL BACKGROUND

Carl Wayne Gibson was retained in March 2014 to represent Michael Todd Dove in an uncontested divorce and was paid approximately \$680, including a \$500 legal fee and a filing fee. Although the divorce paperwork was signed, Gibson did not file documents with the Clark Circuit Court until June 5, 2014, did not file a motion placing the matter on the docket, and failed to respond adequately to Dove's repeated requests for status information. Gibson also told Dove that he had filed a motion and that the matter was proceeding toward finalization when no such motion had been filed. Dove eventually retained new counsel, and the divorce was finalized on September 24, 2014.

PROCEDURAL HISTORY

The Inquiry Commission charged Gibson with four violations of the Kentucky Rules of Professional Conduct arising from his handling of an uncontested divorce. Gibson admitted the factual allegations but denied violating the rules. The trial commissioner found violations, recommended a thirty-day suspension, a \$250 fee refund, and payment of costs, and issued a report on April 25, 2017. Because neither party appealed, the Supreme Court adopted the findings and sanctions under SCR 3.370(9).

DISPOSITION

other

OPINION

Kentucky Bar Association v. Carl Wayne Gibson

PER CURIAM.

TO BE PUBLISHED

Supreme Court of Kentucky, 2017-sc-000247-KB DATE 11/13/17. Mmm. 11/13/17.
KENTUCKY BAR ASSOCIATION MOVANT v. CARL WAYNE GIBSON RESPONDENT
opinion AND ORDER The Inquiry Commission issued a four-count charge against Carl Wayne Gibson on June 12, 2015, alleging he violated Supreme Court Rules (SCR) 3.130(1.3), 3.130(1.4)(a)(3), 3.130(1.4)(a)(4), and 3.130(8.4)(c). Gibson filed an Answer admitting to the factual allegations but denying that he violated any rules of professional conduct. His case was submitted to a Trial Commissioner, who recommended the following sanctions: (1) a thirty-day suspension from the practice of law; (2) refunding fees to his client for failing to perform the agreed-upon legal services; and (3) payment of the costs of the disciplinary proceedings. 1 Gibson's mailing address is 47 South Main Street, Suite 201, Winchester, Kentucky 40391, and his KBA Member No. 89467. The Trial Commissioner issued his report on April 25, 2017. Under SCR 3.360(4), either party may file a notice of appeal with the Disciplinary Clerk. If no notice is timely filed, the record is forwarded to the Supreme Court for entry of final order under SCR 3.370(9), which provides that "If no notice of review is filed by either of the parties, or the Court...the Court shall enter an order adopting the decision of the Board or the Trial Commissioner, whichever the case may be, relating to all matters." Neither Gibson nor the KBA filed a notice of appeal from the Trial Commissioner's report, and upon a full examination of the

record, this Court declines to take further review. So, under the terms of SCR 3.370(9), we now adopt the Commissioner's findings of fact and recommended sanctions verbatim.

FINDINGS OF FACT

1. The Respondent, Carl Wayne Gibson, was admitted to the Kentucky Bar Association on October 11, 2002.
2. Mr. Michael Todd Dove hired the Respondent in March of 2014 and paid the Respondent approximately \$680.00 to represent him in an uncontested divorce action. Such fee paid by Mr. Dove included \$500.00 for legal services and a \$176.00 filing fee.
3. Mr. v Dove and his now ex-wife finalized and signed all necessary paperwork pertaining to the divorce by May 5, 2014.
4. The Respondent text messaged with Mr. Dove regarding the proceedings On April 11, 2014, the Respondent texted Mr. Dove and stated that, "Judge has it for review. His clerk will call if he has questions. If not, he will have it wrapped up soon." The Respondent apologized to Mr. Dove via text message on April 22, 2014 and advised Mr. Dove that he was in Court at the moment and would stop by the Judge's office that day to check the status of the matter. Mr. Dove requested status updates via text message on April 24, May 1, May 6, and May 19, 2014. The only response to those text messages by the Respondent was on May 19, 2014, at which time the Respondent stated he would try to get in and see the Judge and stated, "If not, I will just go on and put it on the calendar."
5. The Respondent did prepare a Petition for Dissolution of Marriage, which was signed by Mr. Dove and his now ex-wife and an Entry of Appearance and Waiver of Service which was signed by his now ex-wife which were finally filed with the Clark Circuit Court on or about June 5, 2014. No documents were filed in the divorce action prior to June 5, 2014.
6. On June 5, 2014, the Respondent advised Mr. Dove via text message that he had filed a Motion to be heard on July 8, 2014. The Respondent has provided no explanation as to what Motion he filed that was to be heard on July 8th and the Court record from the divorce action reveals that no Motion was filed by the Respondent,
7. On July 8, 2014 and July 9, 2014, Mr. Dove and the Respondent communicated by text message, at which time the Respondent indicated to Mr. Dove that "everything went fine," that the Judge did not "indicate any issues" and that "I will know for sure in the next day or so."
8. Mr. Dove attempted further communications with the Respondent and attempted to get updates and reports regarding the status of his divorce from the Respondent throughout July and early August, without any response from the Respondent.
9. Mr. Dove contacted the Clark Circuit Court Clerk several times on his own and was advised that a couple of additional items were still needed in order for the divorce to be finalized. Mr. Dove then retained new counsel to finish his divorce.

10. The Court granted Mr. Dove's new counsel's Motion to

Substitute Counsel and signed and entered Findings of Fact, Conclusions of Law and Decree for Dissolution of Marriage on September 24, 2014. 1 SCR 3.130(1.3) provides, "A lawyer shall act with reasonable diligence and promptness in representing a client." Despite the fact that Mr. Dove and his now ex-wife finalized and signed the necessary paperwork for the divorce action by March 5, 2014,² the Respondent did not file any of the divorce documents with the Clark Circuit Court Clerk until June 5, 2014. Thereafter, the Respondent never filed any Motion to put the divorce action on the Court's docket in order for a Decree of Dissolution of Marriage to be entered. Such delays and inaction constitute a violation of SCR 3.130(1.3). '

12. SCR 3.130(1.4)(a)(3) provides that, "A lawyer shall keep the client reasonably informed about the status of the matter." As found and outlined above, the Respondent repeatedly failed to . respond in a timely manner to inquiries made by his client and often failed to respond to him at all. Eventually, inquiries had to be made by the Respondent's client to the Circuit Court Clerk 2 We acknowledge the conflicting dates in the findings of fact, but given the limited record presented to the Court, we are not in a position to correct these findings. 3 due to the failure of the Respondent to respond to his client. In addition, when the Respondent did respond to his client's inquiries, his responses were often false, particularly when the Respondent indicated to his client that he had filed a Motion to put the matter on the Court's docket in order to be finalized on . July 8, 2014 when no Motion had ever actually been filed and when the matter clearly was not going to be finalized by that date. Such actions and inactions by the Respondent constitute violations of SCR 3.130(1.4)(a)(3).

13. SCR 3.130(1.4)(a)(4) provides that, "A lawyer shall promptly comply with reasonable requests for information." Again, as specifically found and stated in the preceding paragraph and as outlined in the paragraphs above, the Respondent repeatedly failed to respond to his client's requests for information in a timely manner, often failed to respond at all and on other occasions responded with false information. Such actions and inactions by the Respondent constitute violations of SCR 3.130(1.4)(a)(4). '

14. SCR 3.130(8.4)(0) provides that, "It is professional misconduct for a lawyer to engage in dishonesty, fraud, deceit or misrepresentation." As outlined in the paragraphs above, the Respondent not only represented to his client that all matters had been filed with the Court pertaining to his divorce when they had not yet been filed, but then further represented to him that he had filed a Motion to place the divorce action on the Court's docket on July 8, 2014 in order to finalize the divorce at that point when the Respondent had not done so and, therefore, the divorce could not have been finalized by that date. Such actions constitute violations of SCR 3.130(8.4)(0). The Trial Commissioner determined that the record establishes by a preponderance of the evidence that Gibson violated all four disciplinary rules. SCR 3.-380 describes the degree of discipline available, ranging from private reprimand to permanent disbarment After careful review of KBA disciplinary precedent and discipline imposed for similar

violations, the Trial Commissioner recommended that Gibson be suspended from the practice of law for thirty days, that he refund \$250.00 of Mr. Dove's fee, and that he pay the costs associated with this disciplinary proceeding. Because Gibson failed to appeal from the Commissioner's report, we now consider it appropriate to adopt these recommendations as a final order of this Court. Accordingly, the Court ORDERS that: 1) Carl Wayne Gibson is guilty of violating SCR 3.130(1.3), SCR ' 3.130(1.4)(a)(3), SCR 3.130(1.4)(a)(4), and SCR 3.130(8.4)(c), for which he is suspended from the practice of law for thirty days from the date of this Opinion and Order; 2) Gibson must also refund \$250 of the \$500 fee that he was paid by Mr. Dove based on his failure to complete the divorce; AND 35 In accordance with SCR 3.450, Gibson is directed to pay all costs associated with these disciplinary proceedings, the sum of \$252.02, for which execution may issue from this Court upon finality of this Opinion and Order. All sitting. All concur. ENTERED: August 24, 2017. sTicE JoHN_ ' D. MiNToN, J . \-_-',._