

SUPREME COURT OF TENNESSEE

William B. Penn v. Board of Professional Responsibility

No. W2010-01250-SC-R3-BP · No. W2010-01250-SC-R3-BP · Decided April 25, 2011

SUMMARY

The Tennessee Supreme Court dismissed William B. Penn's appeal from a disciplinary sanction because his petition for a writ of certiorari was neither sworn nor accompanied by a statement that it was the first application for the writ. Applying *Board of Professional Responsibility v. Cawood*, the Court held that these defects deprived the trial court of jurisdiction, vacated the trial court's order, and directed the Board to submit the Hearing Panel's order for review because the sanction exceeded a three-month suspension.

CASE DETAILS

COURT	Supreme Court of Tennessee
JURISDICTION	Tennessee
DECIDED	April 25, 2011
DOCKET	W2010-01250-SC-R3-BP
DISPOSITION	dismissed
PROCEDURAL POSTURE	Direct appeal from the Shelby County Circuit Court's order affirming a Board of Professional Responsibility hearing panel's attorney-discipline sanction; the Board moved to dismiss for lack of subject matter jurisdiction because the petition for writ of certiorari was not sworn and did not state that it was the first application for the writ.
STANDARD OF REVIEW	The Supreme Court reviewed the record to determine whether the petition for writ of certiorari satisfied the statutory requirements necessary to confer subject matter jurisdiction on the trial court.
PRECEDENTIAL VALUE	Published Tennessee Supreme Court per curiam order; precedential value not otherwise specified in the opinion.
PARTIES	William B. Penn v. Board of Professional Responsibility

TOPICS

writ of certiorari subject matter jurisdiction appellate procedure administrative law civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Penn's petition for a writ of certiorari conferred subject matter jurisdiction on the trial court despite not being sworn.
2. Whether the petition conferred subject matter jurisdiction despite not stating that it was the first application for the writ.
3. What disposition was required after determining that the trial court lacked jurisdiction to review the disciplinary hearing panel's decision.

HOLDINGS

1. A petition for writ of certiorari seeking judicial review of a Board of Professional Responsibility hearing panel decision must comply with Tennessee Code Annotated section 27-8-106 by being sworn and stating that it is the first application for the writ; failure to satisfy those requirements deprives the trial court of subject matter jurisdiction.
2. The appeal must be dismissed, the trial court's order must be vacated, and because the disciplinary sanction exceeded a three-month suspension and no appeal was properly perfected, the Board must file the Hearing Panel's order for review by the Supreme Court under Tennessee Supreme Court Rule 9, section 8.4.

KEY QUOTATIONS

“Because Mr. Penn’s petition failed to conform to Tennessee Code Annotated section 27-8-106, in that it was neither “sworn to” nor included language assuring that “it is the first application for the writ,” the trial court lacked jurisdiction to hear and decide his petition.” (-2)

FACTUAL BACKGROUND

A Hearing Panel of the Board of Professional Responsibility suspended Penn's law license for three years, with all but twelve months suspended, conditioned on payment of \$36,040 in restitution and disciplinary costs before reinstatement. Penn sought judicial review, but his petition for a writ of certiorari was neither sworn nor accompanied by a statement that it was his first application for the writ. The Supreme Court concluded that these defects deprived the trial court of jurisdiction.

PROCEDURAL HISTORY

A Hearing Panel suspended Penn's law license for three years, with all but twelve months suspended subject to payment of restitution and costs. The Chancery Court for Shelby County affirmed the sanction on December 1, 2009. On appeal, the Supreme Court determined that Penn's petition for review did not satisfy the statutory requirements for a writ of certiorari, dismissed the appeal, vacated the trial court's order, and directed the Board to file the hearing panel's order for review under Tennessee Supreme Court Rule 9, section 8.4.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

The Board is directed to file a copy of the Hearing Panel's order for review by the Supreme Court under Tennessee Supreme Court Rule 9, section 8.4. The trial court's December 1, 2009 order and the Supreme Court's March 31, 2011 supplemental-briefing order are vacated.

CASES CITED

- Bd. of Prof'l Responsibility v. Cawood, 330 S.W.3d 608, 609 (Tenn. 2010)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF TENNESSEE AT JACKSON April 7, 2011 Session WILLIAM B. PENN v. BOARD OF PROFESSIONAL RESPONSIBILITY Direct Appeal from the Circuit Court for Shelby County No. CT-004970-08 Donald P. Harris, Senior Judge No. W2010-01250-SC-R3-BP - Filed April 25, 2011 ORDER On June 9, 2008, a Hearing Panel of the Board of Professional Responsibility suspended Mr. Penn's license to practice law for three years, with all time suspended except twelve months, upon the condition that prior to reinstatement Mr. Penn pay restitution in the total amount of \$36,040 and also pay the costs of the disciplinary proceeding.

On December 1, 2009, the Chancery Court for Shelby County affirmed the punishment imposed by the Hearing Panel. Mr. Penn appealed to this Court from the trial court's order, and the parties argued this matter before the Court in Jackson on April 7, 2011. Mr. Penn asked the trial court to review the Hearing Panel's decision pursuant to Tennessee Supreme Court Rule 9, section 1.3, which provides that a party dissatisfied with the decision of a hearing panel may obtain judicial review by filing a petition for a writ of certiorari in accordance with Tennessee Code Annotated sections 27-9-101 through -114 (2000 & Supp. 2010).

Tennessee Code Annotated section 27-8-106 (2000) requires that a petition for a writ of certiorari be "sworn to" and state that "it is the first application for the writ." Recently, this Court held that a petitioner's failure to satisfy these requirements deprives trial courts of jurisdiction to review a hearing panel's decision. Bd. of Prof'l Responsibility v. Cawood, 330 S.W.3d 608, 609 (Tenn.

2010). On February 9, 2011, the Board, citing Cawood, filed a motion to dismiss Mr. Penn's appeal for lack of subject matter jurisdiction because Mr. Penn's petition for writ of certiorari filed on October 8, 2008 was neither sworn to nor contained a statement that it was the first application for the writ.

On February 15, 2011, this Court entered an order taking the Board's motion under advisement. On March 8, 2011, the Board filed a motion seeking a reconsideration of the Court's February 15 order. Mr. Penn filed a reply in opposition to that motion on March 30, 2011.

On March 31, 2011, this Court granted Mr. Penn's request for additional time to file a supplemental brief addressing materials in the supplemental record and ordered him to file such brief, or a notice that no supplemental brief will be filed, on or before April 22, 2011.

We have reviewed the record to determine whether Mr. Penn's petition for writ of certiorari satisfied the requirements identified in Cawood as necessary to confer subject matter jurisdiction upon the trial court. Because Mr. Penn's petition failed to conform to Tennessee Code Annotated section 27-8-106, in that it was neither "sworn to" nor included language assuring that "it is the first application for the writ," the trial court lacked jurisdiction to hear and decide his petition.

For these reasons, the Board's motion to dismiss Mr. Penn's appeal is hereby granted, and the trial court's December 1, 2009 order is vacated. This Court's March 31, 2011 order allowing supplemental briefing is also vacated.

Because the sanction imposed by the Hearing Panel exceeds a three-month suspension and because no appeal was properly perfected, the Board is directed to file a copy of the Hearing Panel's order for review by this Court in accordance with Tennessee Supreme Court Rule 9, section 8.4.

The costs of this appeal are taxed to William J. Bryan Penn, for which execution may issue if necessary. It is so ORDERED. PER CURIAM -2-