

SUPREME COURT OF WYOMING

Vollan v. Wyoming Board of Dental Examiners

2007 WY 132 (Wyo. 2007) · No. No. 06-275 · Decided August 16, 2007

SUMMARY

The Supreme Court of Wyoming affirmed summary judgment and an injunction against Gary W. Vollan, holding that his denturist practice constituted the practice of dentistry under Wyoming law. Because Vollan examined patients, created dentures, placed them in patients' mouths, and adjusted them without working at the direction of a licensed dentist, he was practicing dentistry without a license.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Voigt, Chief Justice; Voigt, C.J.; Golden, J.; Hill, J.; Kite, J.; Burke, J.
JURISDICTION	Wyoming
DECIDED	August 16, 2007
DOCKET	No. 06-275
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Wyoming Board of Dental Examiners sought injunctive relief against Gary Vollan, alleging that his denturist practice constituted the unlicensed practice of dentistry. The district court granted summary judgment for the Board and enjoined Vollan from practicing dentistry without a license. Vollan appealed.
STANDARD OF REVIEW	Summary judgment is reviewed de novo under the same standards and materials used by the district court. The record is viewed in the light most favorable to the party opposing summary judgment, with that party receiving the benefit of all favorable inferences. No deference is given to the district court's conclusions on issues of law.
PRECEDENTIAL VALUE	Published Wyoming Supreme Court opinion; precedential.
PARTIES	Gary W. Vollan v. Wyoming Board of Dental Examiners

TOPICS

- medical licensing
- health law
- statutory interpretation
- summary judgment
- injunctions

PRACTICE AREAS

health law

administrative law

professional licensing

civil procedure

QUESTIONS PRESENTED

1. Whether Vollan's denturist activities constituted the practice of dentistry under Wyo. Stat. Ann. § 33-15-114.
2. Whether the statutory exception for dental laboratories or dental technicians applied to Vollan's practice.
3. Whether the district court properly granted summary judgment and enjoined Vollan from practicing dentistry without a license.

HOLDINGS

1. A person practices dentistry under Wyo. Stat. Ann. § 33-15-114(a)(iii) when the person creates oral prosthetics, places them in the human mouth, or attempts to adjust them after placement. Vollan's admitted activities therefore constituted the practice of dentistry.
2. The exception in Wyo. Stat. Ann. § 33-15-114(a)(xii) did not apply because Vollan did not construct the oral prosthetics at the order of a licensed dentist.
3. Summary judgment for the Board and the injunction prohibiting Vollan from practicing dentistry without a license were proper.

KEY QUOTATIONS

“Summary judgment is appropriate when no genuine issue as to any material fact exists and the prevailing party is entitled to have a judgment as a matter of law.” (¶ 5)

“Clearly, the appellant is practicing dentistry in multiple ways under the statute.” (¶ 8)

FACTUAL BACKGROUND

Gary W. Vollan operated a denturist practice in Basin, Wyoming. He personally obtained health questionnaires, examined patients' oral tissues, took impressions, fabricated complete dentures, fitted them, and later adjusted them. He did not construct the dentures at the order of a regularly licensed dentist. The Board alleged that these activities constituted the practice of dentistry without a license under Wyoming law.

PROCEDURAL HISTORY

The Board filed the action in the district court on September 9, 2005. The district court concluded that no material facts were disputed and that Vollan was practicing dentistry without a license as a matter of law, granting the Board summary judgment and injunctive relief. The Wyoming Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Eklund v. PRI Environmental, Inc., 2001 WY 55, ¶ 10, 25 P.3d 511, ¶ 10 (Wyo. 2001)
- Williams Gas Processing-Wamsutter Co. v. Union Pacific Resources Co., 2001 WY 57, ¶ 11, 25 P.3d 1064, ¶ 11 (Wyo. 2001)
- Scherer Constr., LLC v. Hedquist Constr., Inc., 2001 WY 23, ¶ 15, 18 P.3d 645, ¶ 15 (Wyo. 2001)
- Trabing v. Kinko's, Inc., 2002 WY 171, ¶ 8, 57 P.3d 1248, 1252 (Wyo. 2002)
- Paravecchio v. Memorial Hosp. of Laramie Co., 742 P.2d 1276, 1281 (Wyo. 1987)
- Torres v. State ex rel. Wyo. Workers' Safety & Comp. Div., 2004 WY 92, 95 P.3d 794 (Wyo. 2004)
- Hahn v. State, 78 Wyo. 258, 269-70, 322 P.2d 896, 900 (1958)
- State v. Catellier, 63 Wyo. 123, 164-65, 179 P.2d 203, 218 (1947)

OPINION

VOIGT, J.

2007 WY 132 GARY W. VOLLAN, Appellant (Defendant), v. WYOMING BOARD OF DENTAL EXAMINERS, Appellee (Plaintiff). No. 06-275. Supreme Court of Wyoming. APRIL TERM, A.D. 2007. August 16, 2007. Representing Appellant: W. Keith Goody of Alpine, Wyoming. Representing Appellee: Patrick J. Crank, Attorney General; Michael L. Hubbard, Deputy Attorney General; Ryan Schelhaas, Senior Assistant Attorney General; and Kennard F. Nelson, Senior Assistant Attorney General.

Before VOIGT, C.J., and GOLDEN, HILL, KITE, and BURKE, JJ. VOIGT, Chief Justice. [¶1] The district court granted a summary judgment in favor of the Wyoming Board of Dental Examiners (the Board) against the appellant, Gary Vollan.

The appellant now appeals, arguing that his denturist practice in Basin, Wyoming, is not conducted in violation of Wyoming statutes barring individuals from practicing dentistry without a license. We affirm. FACTS [¶2] The appellant is a denturist.

In his words, this practice involves provid[ing] denture care directly on the patient. I do a health questionnaire with the patient. I do an oral exam, recognizing healthy tissue, making sure that everything looks healthy before I start procedures. If something doesn't look healthy, then I refer the patient to either a dentist or an oral surgeon or a medical doctor.

[M]y services include complete dentures.... I take the impressions and I fabricate the denture. I fit the denture. The appellant also later adjusts dentures for his patients. [¶3] On September 9, 2005, the Board filed the complaint in the instant action seeking to enjoin the appellant from practicing as a denturist under the theory that such practice constituted the practice of dentistry under Wyo.

Stat. Ann. § 33-15-114 (LexisNexis 2007) without a license in violation of Wyo. Stat. Ann. § 33-15-124 (LexisNexis 2007). [¶4] The district court granted a summary judgment in favor of the

Board, finding that there was no dispute regarding the material facts and that the appellant was practicing dentistry without a license as a matter of law. This appeal followed.

STANDARD OF REVIEW [¶5] Where an appellant challenges the district court's grant of a summary judgment, we apply the following standard of review: Summary judgment is appropriate when no genuine issue as to any material fact exists and the prevailing party is entitled to have a judgment as a matter of law. *Eklund v. PRI Environmental, Inc.*, 2001 WY 55, ¶ 10, 25 P.3d 511, ¶ 10 (Wyo.

2001); see also W.R.C.P. 56(c). A genuine issue of material fact exists when a disputed fact, if it were proven, would have the effect of establishing or refuting an essential element of the cause of action or defense that has been asserted by the parties. *Williams Gas Processing-Wamsutter Co. v. Union Pacific Resources Co.*, 2001 WY 57, ¶ 11, 25 P.3d 1064, ¶ 11 (Wyo.

2001). We examine the record from the vantage point most favorable to the party who opposed the motion, and we give that party the benefit of all favorable inferences that may fairly be drawn from the record. *Id.* We evaluate the propriety of a summary judgment by employing the same standards and by using the same materials as were employed and used by the lower court.

Scherer Constr., LLC v. Hedquist Constr., Inc., 2001 WY 23, ¶ 15, 18 P.3d 645, ¶ 15 (Wyo. 2001). We do not accord any deference to the district court's decisions on issues of law. *Id.* *Trabing v. Kinko's, Inc.*, 2002 WY 171, ¶ 8, 57 P.3d 1248, 1252 (Wyo. 2002). DISCUSSION [¶6] Wyo. Stat. Ann. § 33-15-114 provides, in pertinent part: (a) Except as provided by paragraph (xii) of this subsection, any person is deemed to be practicing dentistry within the meaning of this act: (iii) Who directly or indirectly by any means or method furnishes, supplies, constructs, reproduces or repairs any prosthetic denture, bridge, appliance or other structure to be worn in the human mouth, or places such appliance or structure in the human mouth or attempts to adjust the same; (xii) A dental laboratory or dental technician is not practicing dentistry within the meaning of this act when engaged in the construction, making, alteration or repairing of bridges, crowns, dentures or other prosthetic or surgical appliances, or orthodontic appliances if the casts or molds or impressions upon which the work is constructed have been made by a regularly licensed and practicing dentist, and if all crowns, bridges, dentures or prosthetic appliances, surgical appliances or orthodontic appliances are returned to the dentist upon whose order the work is constructed.

Wyo. Stat. Ann. § 33-15-128(a)(ii) (LexisNexis 2007) further defines "dentistry" as "the healing art practiced by a dentist which is concerned with the examination, diagnosis, treatment, planning and care of conditions within the human oral cavity and its adjacent tissues and structures[.]" [¶7] The thrust of the appellant's argument is that his practice as a denturist does not violate Wyoming law because he is not engaged in a "healing art."

The appellant argues that he is involved in the "mechanical task" of creating a prosthetic, not in curing disease. He then points us to previous cases in which we have discussed the legislature's intent that medical licensing statutes protect the public from untrained and unskilled individuals practicing "any healing art." See *Paravecchio v. Memorial Hosp. of Laramie Co.*, 742 P.2d 1276, 1281 (Wyo.

1987), overruled in part on other grounds by *Torres v. State ex rel. Wyo. Workers' Safety & Comp. Div.*, 2004 WY 92, 95 P.3d 794 (Wyo. 2004); *Hahn v. State*, 78 Wyo. 258, 269-70, 322 P.2d 896, 900 (1958); *State v. Catellier*, 63 Wyo. 123, 164-65, 179 P.2d 203, 218 (1947). [¶8] The appellant's reliance on the above-referenced cases is misplaced, however, because his argument ignores the fact that his denturist practice violates the clear language of Wyo.

Stat. Ann. § 33-15-114. See supra ¶ 7. As noted above, the appellant admits that he personally examines his customers, creates their dentures, and later adjusts those dentures, if necessary. See supra ¶ 2. Under Wyo. Stat. Ann. § 33-15-114(a)(iii) a person is deemed to be practicing dentistry if he or she creates oral prosthetics, places such prosthetics in the human mouth, or adjusts prosthetics after they have been placed in a mouth.

Clearly, the appellant is practicing dentistry in multiple ways under the statute. Finally, the exception in subsection (a)(xii) does not apply to the appellant's practice because he admittedly does not create the oral prosthetics at the order of a licensed dentist. [¶9] The district court's order granting the Board a summary judgment and enjoining the appellant from practicing dentistry without a license is affirmed.