

SUPREME COURT OF TENNESSEE

Nathan E. Brooks v. Board of Professional Responsibility

No. E2018-00125-SC-R3-BP · No. No. E2018-00125-SC-R3-BP · Decided May 7, 2019

SUMMARY

Justice Sharon G. Lee concurs in the Tennessee Supreme Court's dismissal of Nathan E. Brooks's petition to reinstate his law license because he failed to pay the advance cost deposit required by Tennessee Supreme Court Rule 9, section 30.4(d)(9). She agrees that Brooks's due process claim lacks merit but does not join the Court's extended procedural due process analysis, concluding that Brooks inadequately presented that claim and that the Court should not have developed arguments not raised by the parties.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Sharon G. Lee
JURISDICTION	Tennessee
DECIDED	May 7, 2019
DOCKET	No. E2018-00125-SC-R3-BP
DISPOSITION	dismissed
PROCEDURAL POSTURE	Direct appeal from the Hamilton County Chancery Court's affirmance of a Board of Professional Responsibility hearing panel's dismissal without prejudice of Brooks's petition for reinstatement of his law license.
PARTIES	Nathan E. Brooks v. Board of Professional Responsibility

QUESTIONS PRESENTED

1. Whether Brooks was entitled to proceed as a pauper instead of paying the advance cost deposit required for a law-license reinstatement petition.
2. Whether Brooks adequately presented a due process claim based on the required cost deposit.
3. Whether the Court should address an extensive procedural due process analysis when the appellant failed to identify and adequately brief such a claim.

HOLDINGS

1. Tennessee Supreme Court Rule 9, section 30.4(d)(9) requires an advance cost deposit for a petition to reinstate a law license, and Brooks was not entitled to avoid that requirement by filing a pauper's oath and indigency affidavit.
2. Brooks's due process claim lacked merit and was inadequately presented because he did not specify whether he asserted substantive or procedural due process and offered only a vague and generalized argument.
3. The Court should not fill gaps in a party's inadequate briefing by undertaking a protracted analysis of issues the party failed to identify and support; its discretion under Tennessee Rule of Appellate Procedure 13(b) to consider unpresented issues should be exercised sparingly.

KEY QUOTATIONS

“The premise of our adversarial system is that appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters” (2)

FACTUAL BACKGROUND

Nathan E. Brooks sought reinstatement of his law license. Rather than pay the advance cost deposit required for a reinstatement petition, he filed a pauper's oath and indigency affidavit. The Board of Professional Responsibility hearing panel dismissed the petition without prejudice, and the trial court agreed with that disposition.

PROCEDURAL HISTORY

Brooks petitioned for reinstatement of his law license but did not pay the advance cost deposit required by Tennessee Supreme Court Rule 9, section 30.4(d)(9). Instead, he filed a pauper's oath and indigency affidavit. The Board hearing panel dismissed the petition without prejudice, and the Hamilton County Chancery Court affirmed. The Tennessee Supreme Court denied relief and dismissed the petition; Justice Lee concurred in that result but did not join the Court's procedural due process analysis.

DISPOSITION

dismissed

OPINION

PER CURIAM.

05/07/2019 IN THE SUPREME COURT OF TENNESSEE AT KNOXVILLE September 6, 2018
Session NATHAN E. BROOKS v. BOARD OF PROFESSIONAL RESPONSIBILITY Direct
Appeal from the Chancery Court for Hamilton County No. 17-0506 Jeffrey F. Stewart, Chancellor

No. E2018-00125-SC-R3-BP
SHARON G. LEE, concurring in part and not joining
in part.

Nathan E. Brooks petitioned to have his law license reinstated. Rather than pay an advance cost deposit under Tennessee Supreme Court Rule 9, section 30.4(d)(9), Mr. Brooks filed a pauper's oath and indigency affidavit. A Board of Professional Responsibility hearing panel dismissed the petition without prejudice, giving Mr. Brooks the opportunity to refile the petition with a cost deposit.

The trial court agreed with the hearing panel and, now, so does the Tennessee Supreme Court. The Court properly denies relief to Mr. Brooks because Rule 9, section 30.4(d)(9) requires an advance cost deposit for a reinstatement petition, and Mr. Brooks' due process claim lacks merit. Mr. Brooks' due process claim was vague and generalized. He failed to specify whether he asserted a substantive or procedural due process claim, or both.

Mr. Brooks' brief, consisting of four pages of argument, had a single issue: "Whether The Trial Court Erred When It Affirmed The Order Of The Board Dismissing Appellant's Petition To Reinstatement Solely On The Ground That Appellant Was Not Entitled To Proceed As A Pauper?" Mr. Brooks first argued that "Boddy [sic] v. Connecticut [sic] 401 U.S. 371 (1971) is four corners on point in this cause and is dispositive." Later in his brief, Mr. Brooks stated that the "application of the holding in Boddy [sic] to the case at bar is lucid," and "Boddy [sic] lucidly holds that where only one forum is available to a litigant, due process requires that he may not be refused access because he is a pauper." The gist of Mr. Brooks' argument was that based on the due process analysis in *Boddie v. Connecticut*, 401 U.S. 371 (1971), attorneys facing quasi-criminal disciplinary proceedings are entitled to "procedural due process and an opportunity to be heard." *Boddie*, however, involved a litigant's interest in obtaining a divorce—a very different interest than Mr. Brooks' desire to have his law license reinstated.

A law license, unlike a divorce, is a privilege, not a right. *Smith v. Bd. of Prof'l Responsibility*, 551 S.W.3d 712, 726 (Tenn. 2018) (citing *Hughes v. Bd. of Prof'l Responsibility*, 259 S.W.3d 631, 641 (Tenn. 2008)). Besides, this is an attorney reinstatement case, not a disciplinary case filed by the Board of Professional Responsibility.

In short, Mr. Brooks failed to adequately make a procedural due process claim; at most, he only hinted at such a claim. That should have ended the discussion. Yet the Court engaged in a protracted and unnecessary discussion of the responsibilities of and funding for the Board of Professional Responsibility. A party, not the Court, should identify the issues and provide adequate legal authority and argument.

Tenn. R. App. P. 13(b). When a party fails to do so, it is not the Court's role to step in and fill in the gaps. Although the Court has the discretion under Rule 13(b) to consider issues not identified by the parties for reasons such as preventing needless litigation, injury to the public interests, or prejudice to the judicial process, none of these considerations are present here.

The Court's discretion under Rule 13(b) should be exercised sparingly. Tenn. R. App. P. 13(b) advisory comm'n cmt. Our judicial system works best when the Court considers the issues raised by the parties after input and briefing on the issues presented. See *State v. Northern*, 262 S.W.3d 741, 767 (Tenn. 2008) (Holder, J., concurring and dissenting) (quoting *Carducci v. Regan*, 714 F.2d 171, 177 (D.C.

Cir. 1983)) (“The premise of our adversarial system is that appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters of legal questions presented and argued by the parties before them.”).

For the reasons stated, I concur in the Court's decision that Mr. Brooks' petition should be dismissed because he failed to pay an advance cost deposit as required by Tennessee Supreme Court Rule 9, section 30.4(d)(9) and that Mr. Brooks' due process claim had no merit. I do not join in the Court's procedural due process analysis. _____

SHARON G. LEE, JUSTICE 2