

NINETEENTH JUDICIAL DISTRICT COURT

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

DR. TRUDY BOND : Number 569, 127
: :
: :
v. : Section 24
LOUISIANA STATE BOARD OF :
EXAMINERS OF PSYCHOLOGISTS :

**PLAINTIFF'S OPPOSITION TO
PEREMPTORY EXCEPTION OF NO RIGHT OF ACTION**

I. INTRODUCTION

Either by attempted – but failed – cunning or unwitting – and fatal – oversight, the Louisiana State Board of Examiners of Psychologists (the “Board,” or the “LSBEP”), in its peremptory exception, omits any reference whatsoever to the very rule that controls the outcome of this dispute: Section 1503(B) of the Louisiana Administrative Code. This provision unambiguously allows any licensed psychologist – or, for that matter, any person – to bring a professional complaint against a Louisiana psychologist. As a licensed psychologist – and a person – Dr. Bond was fully authorized to have brought her complaint against the Board. Accordingly, the Board’s sole claim in its peremptory exception, i.e., that Dr. Bond lacked this authority, is wholly without merit and should be dismissed.

II. PROCEDURAL BACKGROUND

Dr. Bond filed an administrative action on February 29, 2008 before the Board, pursuant to Louisiana Administrative Code 46: LXIII, Section 1503 (2008). In that filing, Dr. Bond alleged that military psychologist Dr. Larry C. James violated his professional and ethical obligations by mistreating detainees at the United States military detention facility in Guantanamo Bay, Cuba during January to mid-May 2003 and by repeating this mistreatment subsequently at the military detention center at Abu Ghraib, Iraq. The Board, without making any factual findings whatsoever, ruled that Dr. Bond’s complaint was not timely filed.

Dr. Bond subsequently petitioned this Court for a declaratory judgment pursuant to Louisiana Code of Civil Procedure, Articles 1871 et seq., ruling that the complaint against Dr. James was timely filed within the statute of limitations enunciated in La. R.S. 37:21 (A)(2). Dr. Bond further petitioned this Court to remand the case to the Board for a full and complete investigation and hearing, or, in the alternative, to order discovery regarding the issue of timeliness in conformity with the Louisiana Constitution, the Code of Civil Procedure and La. R.S. 49:964. The Board then filed the peremptory exception of no right of action that is currently before this Court (the “Peremptory Exception”). Dr. Bond now responds that she was authorized both to bring a complaint before the Board and to have petitioned this Court, pursuant to La. R.S. 37:2353 (2008), for review of the Board’s erroneous dismissal of her complaint.

Accordingly, Dr. Bond respectfully requests that the Court: (1) dismiss the Board’s Motion; (2) render a declaratory judgment ruling that Dr. Bond’s complaint was timely filed consistently with La. R. S. 37:21A(2); and (3) remand for a full investigation and hearing before the Board. See Petition at 9.

II. LAW AND ARGUMENT

A. Standard of Review

The Court should dismiss the Board’s Peremptory Exception because Dr. Bond can amply demonstrate an interest in the litigation before this Court. “An exception of no right of action questions whether the plaintiff has a real and actual interest that [s]he is asserting.” La. Code Civ. Proc. Art. 681; Greenbriar Nursing Home, Inc. v. Pilley, 637 So. 2d 429, 434 (La. 1994). The central question is whether the “plaintiff belongs to the particular class in whose exclusive favor the law extends the remedy for which the cause of action exists. . . .” Greenbriar, 637 So. 2d at 434; Morris v. Rental Tools, Inc., 435 So. 2d 528, 531 (La. App. 5th Cir. 1983) (same). Plaintiff has an interest in the subject matter of this suit and the legal capacity to proceed, and the Board has not – and indeed could not – present legal or factual authority to the contrary. See McPherson v. Foster, 889 So.2d 282 (holding defendant must establish that plaintiff does not possess an interest in the matter); Morris, 435 So. at 531 (noting “burden of proof on an exception of no right of action is on the exceptor”). Moreover, in reviewing the Board’s Exception, Plaintiff’s petition and attached documents are controlling and “[a]bsent evidence to the

contrary, the allegations of fact set forth in the pleadings are taken as true.” Morris, 435 So. 2d at 531, citing Clarke v. Clarke, 377 So. 2d 544, 546 (La. App. 3d Cir. 1979); Waterworks Dist. of Rapides Parish v. Alexandria, 236 La. 804, 807-08 (La. 1959).

B. Dr. Bond has Standing Based on Unambiguous Administrative and Legislative Authority.

Section 1503(B) of the Louisiana Administrative Code unambiguously authorized Dr. Bond’s complaint to the Board. The section states that “[c]omplaints may be initiated by the Board, by any licensed psychologist or by any other person.” (emphasis added). Dr. Bond has standing in not one, but two ways.

First, Dr. Bond is a psychologist licensed in Ohio. Petition at ¶ 1. This fact was set forth in Dr. Bond’s initial complaint to the Board and, again, in her Petition to this Court. The fact that Dr. Bond is licensed in Ohio and not Louisiana is of no moment here. The controlling rule omits any qualification that a complaining psychologist must be from Louisiana, which would have been inserted if such was the intention of the state. Its exclusion is clear and unambiguous. The only requirement is to be a licensed Psychologist. Dr. Bond uncontrovertibly has standing based on this ground. She also has standing as a “person” under the rule. Under La. R.S. 37:2352 (4), a “person” is defined “as an individual, firm, partnership, association, or corporation.” Dr. Bond is an individual, and, as such, she satisfied this additional, independent basis for standing.

Finally, the action that Dr. Bond brought before the Board is a “complaint,” as defined by the Louisiana Administrative Code. A “complaint,” under Section 1503(A), is defined as the “receipt of any information by the Board that there may be grounds for disciplinary action against a psychologist. . . .” (emphasis added). Dr. Bond’s complaint did not merely provide some information of grounds for disciplinary action, it was replete with such information. See Petition at ¶¶ 5-9, 13-19. For example, the complaint alleges that between January and May, 2003, Dr. James assisted, supervised, authorized, facilitated, condoned and participated in interrogation tactics of Guantanamo detainees that included sleep deprivation, sexual humiliation, “noise stress,” and desecration of religious materials. Dr. Bond’s complaint further described an interrogation tactic known as “walling,” in which a cloth is wrapped around a person’s neck to eliminate whiplash while repeatedly pushing a person into a wall. See Petition at ¶13(b). Dr. Bond also

alleged that Dr. James' unethical and illegal conduct involved his conveyance of confidential medical information regarding the mental health and vulnerabilities of detainees to interrogators and the Guantanamo Behavioral Science Consultation Team. Thus, the Petition leaves no question that the allegations regarding Dr. James' misconduct may render him subject to disciplinary action upon a complete investigation and hearing by the Board.

By the express, unambiguous terms of the controlling code provision, Dr. Bond had standing to bring her complaint before the Board.

C. Plaintiff has a right to judicial review because she has been aggrieved by the Board's decision.

Dr. Bond was fully authorized to bring her complaint before the Board and was likewise well within her rights to petition this Court for review of the Board's erroneous and unsupported dismissal of her action. It is, in fact, inconceivable that Dr. Bond could have – at once – been authorized to have brought her complaint before the Board but not to petition this Court for review of the Board's erroneous decision. It would be difficult to imagine a less just scenario. Not surprisingly, the Board offers no apposite authority to support its position. None exists.

Louisiana Revised Statute 37:2353(E) provides that “any person aggrieved by an action of the Board may seek judicial review in the district court for the parish of East Baton Rouge in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.” In Browning-Ferris, Inc. v. New Orleans, the Louisiana Court of Appeals interpreted the meaning of the phrase “person aggrieved” appearing in La. R.S. 30:2024(C). That provision provides, similarly to La. R.S. 37:2353(E) here, that “[a]ny person aggrieved by a final decision or order” of the at-issue department may appeal to certain designated courts. The court in Browning-Ferris ruled that a “party aggrieved” pursuant to La. R.S. 30:2024(C) is one that has a “real and actual interest which is or may be adversely affected” by a decision of the subject department. 627 So. 2d 246, 251 (La. App. 4th Cir. 1993).

Here, the fact that Section 1503(B) unambiguously authorized Dr. Bond to bring her complaint before the Board leads inescapably to the conclusion that she was aggrieved by the Board's erroneous dismissal of her complaint. As the First Circuit Court of Appeal recently held under similar circumstances:

It is clear from a review of the record herein that [complainant] was an aggrieved taxpayer who timely appealed the Department [of Revenue's] assessment to the Board. Thereafter, [complainant] sought judicial review in the 19th Judicial District Court of the Board's decision. Thus, [complainant] properly preserved her right to litigate the legality of the assessment. Legality includes the constitutionality of the assessment. La. R.S. 47:290, et [Pg 7] seq., as amended. Accordingly, we conclude the trial court committed legal error below and reverse the court's judgment maintaining the Department's exception raising the objection of no right of action.

Orillion v. Crawford, 964 So. 2d 950, 955 (La. App. 1st Cir. 2006); see also Guidry v. Dufrene, 687 So. 2d 1044, 1046 (La. App. 1st Cir. 1996) (noting "standing is satisfied if it can be said that the plaintiff has an interest at stake in the litigation which can be legally protected"). Dr. Bond has an interest protected by Section 1503(B). She therefore has a right to review by this Court.

Dr. Bond is also aggrieved by the Board's unfounded dismissal of her complaint inasmuch as the dismissal prevents her from meeting her ethical obligations as a psychologist under the Ethics Code of the American Psychological Association ("APA"). The Board has adopted the standards of the APA. See § 1301 (A). APA Ethics Code 1.05 states that "if an apparent ethical violation has substantially harmed or is likely to substantially harm a person or organization, psychologists are required to report said event to the appropriate authorities." Dr. Bond filed her complaint, in part, because her own ethical duties as a psychologist require that she do so. The Board's dismissal of her complaint interferes with those duties such that she is aggrieved by the dismissal.

The Board cites no authority to the contrary. None of the appealed underlying actions that are at issue in the cases cited by the Board originated before administrative boards. See Def's Memo. in Support at 1-2. And no appellants in the cases cited by the Board had been expressly authorized by rule or statute to bring their underlying actions. For example, in League of Women Voters of New Orleans v. City of New Orleans, plaintiff, a nonprofit corporation, appealed the denial of a petition for a writ of mandamus directing government agencies and officials to comply with Act 617 of 1977, which the League of Women Voters (the "League") alleged would increase tax revenue. 381 So.2d 441 (La. 1980). Members of the League alleged that as taxpayers, voters, and citizens of New Orleans, they established standing to seek governmental compliance with Act 617. League, 381 So.2d at 443-444. Act 617, however, provided no means by which the League could present its grievances. Accordingly, the League initiated its complaint in a

trial court. Id. at 445. The League attempted but failed to establish standing by asserting that its claims fell within an exception to the requirement of a “particular or special interest.” Id. at 447. Therefore, the court determined that the League had no special interest apart from the general public and upheld the defendants’ exception of no right of action. Id. at 447-448.

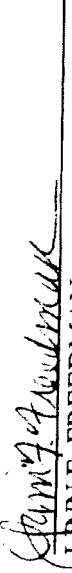
In stark contrast to the facts of League, here, a rule – Section 1503(B) – and a statute – La. R.S. 37:2353(E) – expressly provide that a party situated as Dr. Bond is and was may, respectively, first file a complaint before the Board and then petition for review of the Board’s disposition of that complaint. The Board’s contention that the holding in League should guide this Court’s decision on Dr. Bond’s petition does not withstand scrutiny. Dr. Bond has demonstrated that she holds a special interest in the performance of the LSBEP because of Section 1503(B)’s express authorization of her complaint and because of her ethical obligations as a licensed psychologist. Moreover, Dr. Bond’s interest is codified in the language of the administrative code.

Dr. Bond has exhausted all of her administrative remedies. Her petition is properly before this Court.

III. CONCLUSION

For all of the foregoing reasons, Defendant’s Peremptory Exception of No Right of Action should be dismissed and Plaintiff should receive a declaratory judgment stating the filing of her complaint before the LSBEP was timely, along with a remand for a full investigation and hearing.

Respectfully submitted,



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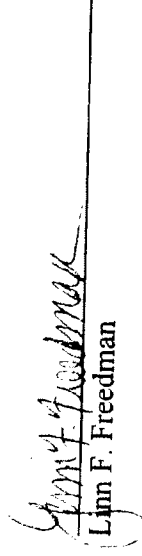
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Opposition to
Peremptory Exception of No Right of Action has been forwarded via U.S. Mail, postage
prepaid, to all counsel of record as follows:

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Providence, Rhode Island, this 12th day of June, 2009


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