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NO. COA04-1417

NORTH CAROLINA COURT OF APPEALS

Filed: 2 August 2005

ROSALYN HARRIS-OFFUT,
Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. TA-17028

NORTH CAROLINA BOARD OF
LICENSED PROFESSIONAL
COUNSELORS,
Defendant.

Appeal by plaintiff from an order entered 19 March 2004 by the Full Commission in the Industrial Commission. Heard in the Court of Appeals 18 May 2005.

Attorney General Roy Cooper, by Special Deputy Attorney General William H. Borden, for the State.

King V. Cheek and Romallus O. Murphy, for plaintiff.

HUDSON, Judge.

On 15 January 1997, plaintiff Roslyn Harris-Offut commenced this state tort claim by filing an affidavit, and on 25 January 2001, filed a voluntary dismissal without prejudice. On 31 May 2001, plaintiff filed a second affidavit. On 25 September 2002, plaintiff filed a motion to amend her affidavit. Deputy Commissioner Douglas E. Berger heard plaintiff's claim in September and November 2002, and denied the motion to amend and plaintiff's claim by order filed 29 April 2003. Plaintiff appealed to the Full Commission. The transcript was filed 21 July 2003, but was not received by plaintiff until 7 November 2003. On 9 September 2003, defendant

moved to dismiss the appeal as not timely filed. Plaintiff prepared a response to defendant's motion and filed a brief to the Full Commission without benefit of the transcript. On 13 November 2003, the Full Commission gave plaintiff ten days to modify her brief to include transcript references. On 25 February 2004, the Full Commission denied plaintiff's claim for damages. Plaintiff appeals. For the reasons discussed below, we affirm.

On 1 June 1986, the North Carolina Board of Registered Practicing Counselors ("RPC Board") registered plaintiff as a registered practicing counselor ("RPC"). On 1 July 1994, pursuant to the Licensed Professional Counselors Act ("LPC Act"), all RPC certifications were replaced by licensed professional counselor ("LPC") certifications. N.C. Gen. Stat. Chap. 90, Art. 24 (1994). The LPC Act also created defendant LPC Board to review and regulate applicants and licensees. Applicants for LPC certification who had practiced counseling before 1 July 1993 and applied to the RPC Board before 1 January 1996 were exempt from a statutory requirement of having a graduate degree. N.C. Gen. Stat. §90-333 (1994). Plaintiff met these requirements and was certified 1 July 1995.

Pursuant to N.C. Gen. Stat. §90-340, defendant could suspend or revoke an LPC license for various violations of the articles or rules of defendant, ethical standards adopted by the Board, or for "[p]rocurring or attempting to procure a license by fraud, deceit, or misrepresentation." N.C. Gen. Stat. §90-343 requires every LPC to furnish clients with a Professional Disclosure Statement ("PDS") prior to receiving any payment for services. The PDS must list various information about the licensee, including details about the highest degree earned by a licensee. Defendant used press releases to major media outlets to notify the public of any suspensions or revocations.

In September 1995, the general counsel to the Teachers' and State Employees' Comprehensive Major Medical Plan notified defendant that plaintiff had refused repeated requests for information about plaintiff's purported master's degree. Mary Edith Watkins, the chair of defendant RPC Board contacted Mott Community College for verification of plaintiff's registered nursing degree. On 2 October 1995, Watkins also wrote to plaintiff asking for verification of her purported nursing and master's degrees. Watkins spoke to plaintiff via telephone on 5 October 1995, and received faxed documents from her. On 12 October 1995, Watkins requested via certified mail that plaintiff provide certified transcripts and verification of her nursing license. This letter and another sent 31 October were returned unclaimed. On 4 January 1996, another letter from Watkins was hand-delivered to plaintiff's office notifying her that defendant would take disciplinary action at its 9-10 February 1996 meeting unless plaintiff requested a formal hearing within thirty days. This letter was also returned unopened, but was again sent to plaintiff's office and finally accepted by her on 9 January 1996. Plaintiff made no attempt to contact defendant.

On 19 February 1996, Watkins notified plaintiff by letter of two possible grounds for disciplinary action: the lack of official transcripts documenting the degrees and training described in her PDS, and her refusal to accept or open the three previous letters from defendant. Watkins also notified plaintiff that she could request a quasi-judicial evidentiary hearing within thirty days and was entitled to submit additional evidence to defendant. Plaintiff refused to accept the letter until April when a process server was hired to deliver it to her office. Plaintiff made no attempt to contact defendant.

On 1 June 1996, defendant suspended and revoked plaintiff's license on the two grounds previously discussed. Plaintiff received notification of these actions later that month. On 11 June

1996, defendant issued a press release regarding its actions in suspending and revoking plaintiff's license. Plaintiff petitioned for judicial review, and the superior court in Wake County stayed the suspension and revocation. On 18 July 1996, plaintiff then provided a certified transcript to defendant, which resulted in the rescinding of her suspension. On 4 October 1996, defendant rescinded the revocation of plaintiff's license, and by letter of 22 October 1996, W. Robert Iddings, defendant's new chair, notified plaintiff of a 6 December hearing on allegations of false and misleading information in her PDS. Defendant issued a press release describing the rescinding of plaintiff's license suspension and revocation. On 4 December 1996, the superior court dismissed as moot plaintiff's petition for judicial review of the revocation. Plaintiff's action in the Industrial Commission followed.

Plaintiff first assigns error to the Industrial Commission's refusal to reconsider the ruling made by the Deputy Commissioner on the Appellant's Motion to Amend her affidavit. We disagree.

We note that while the majority of this portion of her brief actually contends that the Deputy Commissioner erred in denying her motion, rather than arguing error in the Commissioner's refusal to reconsider the Deputy Commissioner's ruling, the nexus between the argument and the assignment of error is sufficiently close for us to address this issue. "The standard of review on appeal from the trial court's denial of [a motion to reconsider] is whether the trial court abused its discretion." *Lorbacher v. Housing Auth.*, 127 N.C. App. 663, 671, 493 S.E.2d 74, 79 (1997). "Leave of court to amend a pleading is left within the trial court's discretion, and such decision is not reversible absent a showing of abuse of discretion." *Draughon v. Harnett County Bd. of Educ.*, 166 N.C. App. 464, 467, 602 S.E.2d 721, 724 (2004). One of the grounds for denying a motion to amend is undue delay. *Id.*

Here, plaintiff was on notice from 21 February 1997, when defendant served a motion to dismiss, that defendant contended that she needed to specifically name an officer, agent, or employee of defendant in her affidavit. Plaintiff served a response on 3 March 1997, asserting that she had already identified the negligent individuals. Although she voluntarily dismissed the affidavit that was the subject of that motion, her second affidavit, filed on 7 June 2001, was substantially the same as the first and resulted in a second motion to dismiss by defendant. Again, plaintiff contended that her affidavit was sufficient and made no attempt to amend the affidavit. The motion was not filed until 25 September 2002, the first day of the hearing before the deputy commissioner. Under these circumstances, the denial of the motion to amend and the failure to reconsider that denial were not abuses of discretion.

Plaintiff also argues that the Commission erred in concluding that the appellee was immune from the action brought against it by appellant. We disagree.

In this section of her brief, plaintiff argues that the court erred in concluding that defendant board was immune from the action she brought by asserting that the Commission failed to make certain findings of fact, which in turn would have required a different conclusion. Our review is limited to considering: “(1) whether competent evidence exists to support the Commission’s findings of fact, and (2) whether the Commission’s findings of fact justify its conclusions of law and decision.” *Simmons v. North Carolina DOT*, 128 N.C. App. 402, 406, 496 S.E.2d 790, 793 (1998). Defendant does not argue that the Commission’s findings are unsupported by competent evidence or that those findings fail to support its conclusion; she merely contends that the Commission should have made different or additional findings. While the Commission must make specific findings of fact sufficient to enable it to determine the rights

of the parties, exhaustive findings on every piece of evidence presented are not required. See *Bailey v. North Carolina Dep't of Mental Health*, 272 N.C. 680, 685, 159 S.E.2d 28, 31 (1968).

Affirmed.

Judges HUNTER and GEER concur.

Report per Rule 30(e).