2013 IL App (2d) 121288-U
No. 2-12-1288
Order filed May 15, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

GLENN L. SONNTAG, Plaintiff-Appellee, v. JAY STEWART, in his capacity as Director of the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation; BRENT E. ADAMS, in his capacity as the Department's Secretary; SADZI M. OLIVA, in her capacity as an administrative law judge for the Department; AMY B. QUINT, in her capacity as chair of the Illinois Certified Shorthand Reporters Board of the Department's Division of Professional Regulation; and CAROL A. BARTKOWICZ, MELISSA CLAGG, TANA J. HESS, BERNICE E. RADAVICH, WILLIAM A. SUNDERMAN, and BARBARA A. WICHMANN, in their capacities as members of the Illinois Certified Shorthand Reporters Board, Defendants-Appellants.	)	Appeal from the Circuit Court of Kane County. No. 12-MR-331 Honorable Thomas E. Mueller, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in granting the plaintiff's motion for a stay.

¶ 2 This is an interlocutory appeal from an order of the circuit court of Kane County granting the motion of the plaintiff, Glenn Sonntag, to stay enforcement of the revocation of his certified shorthand reporter's license pending administrative review. The plaintiff's license was revoked by the Director of the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation (the Department), because the Director determined that the conduct underlying the plaintiff's felony conviction for possession of child pornography violated several provisions of the Illinois Certified Shorthand Reporters Act (225 ILCS 415/1 *et seq.* (West 2010)) (the Reporters Act), and that revocation of his license was necessary to protect the public. The trial court granted the plaintiff's request for a stay, and the defendants (officers of the Department or the Department) appealed. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 On September 25, 1978, the plaintiff was licensed to practice shorthand in Illinois. On May 12, 2004, the Attorney General's office executed a search warrant in the plaintiff's office in connection with an investigation into allegations that the plaintiff was in possession of child pornography. On February 7, 2005, the plaintiff was charged with three counts of possession of child pornography (720 ILCS 5/11-20.1(a)(6) (West 2004)). On March 7, 2007, the plaintiff pled guilty to those three counts. He was subsequently sentenced to 24 months' probation and fined $1,185. He was also ordered to undergo counseling and register as a sex offender. In March 2009, he successfully completed his probation, and his sentence was discharged. The plaintiff continued to work as a shorthand reporter following his arrest and conviction.

¶ 5 In January 2010, the Department filed an administrative complaint against the plaintiff for his violation of the Reporters Act. As subsequently amended, the Department's complaint alleged that, as a result of his conviction and the underlying misconduct, the plaintiff was no longer considered to be of good moral character and thus satisfied the grounds for disciplinary action under the Reporters Act.

¶ 6 In December 2011, an administrative law judge (ALJ) conducted a hearing on the Department's complaint. The Department presented: (1) the records of the plaintiff's criminal proceedings and the police reports pertaining to the evidence seized under the search warrant; (2) the testimony of the Geneva police officer responsible for executing the search warrant; and (3) the plaintiff's testimony as an adverse witness.

¶ 7 In his defense, the plaintiff testified and proposed to present the testimony of 16 character witnesses, but the ALJ limited oral testimony to five witnesses. The plaintiff chose five witnesses with whom he had previously worked: (1) Judge Timothy Sheldon, the judge who had sentenced him in his criminal case; (2) Melanie Humphrey-Sonntag, his sister-in-law and the current owner of the family court-reporting business; (3) Attorney Kate McCracken; (4) John Clifford, an administrative law judge with the Illinois Labor Relations Board; and (5) Jill Layton, a court reporter. The remainder of the witnesses were allowed to testify by affidavit, except the plaintiff's psychologist, whose letter was rejected because he would not be subject to cross-examination.

¶ 8 The plaintiff testified that he had completed every duty required by his sentence and that he considered himself completely rehabilitated. He said that he begun counseling as soon as possible after execution of the search warrant in May 2004 and that he had never used child pornography again since that date. He understood that child pornography was wrong and that it harmed children.

He realized that he had viewed it because he was depressed and under stress about certain relationship issues. He was certain that he would not engage in such conduct again because he was in a much better place in his life. He was no longer depressed, and while he continued to see his psychologist for coaching on other issues, it was not necessary to discuss his former interest in child pornography. Furthermore, he believed that it would be his "death" to view child pornography again because he did not want to "spend 20 years in jail."

¶ 9 The plaintiff's witnesses testified that he was a valued and needed member of his profession. They considered his use of child pornography as a temporary lapse or a "mistake" that he had overcome.

¶ 10 On January 18, 2012, the ALJ issued her recommended decision that the plaintiff's certified shorthand reporter's license be revoked. The ALJ found that the Department had proven its factual allegations by clear and convincing evidence, and that a "severe discipline" was necessary to carry out the purposes of the Act. The ALJ explained that it had considered, but rejected, the plaintiff's argument that he had already served his criminal sentence, that he was of currently good moral character, that his conduct did not affect his practice of his profession, and that losing his license would result in tremendous financial hardship.

¶ 11 On March 30, 2012, the Illinois Certified Shorthand Reporters Board, in its recommended decision to the Director, adopted the ALJ's decision in its entirety. The plaintiff subsequently moved for rehearing, which the Director denied. On May 25, 2012, the Director revoked the plaintiff's license.

¶ 12 On June 29, 2012, the plaintiff filed a complaint for administrative review, and sought a stay of enforcement of the Director's decision. The plaintiff argued that a stay was necessary to preserve

the status quo because he could not support himself and his dependents except by shorthand reporting, and that the stay presented no danger to the public because his past conduct had occurred in private, and he had been completely rehabilitated. He argued that a stay was not against public policy because the Department had allowed him to work during the pendency of his administrative proceedings. Further, he believed that he had a reasonable likelihood of success on the merits because he had completed his sentence and there was no other evidence that, since the time of his arrest, he lacked good moral character.

¶ 13 In response, the Department argued the plaintiff's conduct did not demonstrate good moral character, as required by the Reporters Act, and that permitting the stay would harm the public by eroding public confidence in the shorthand-reporting profession. In his reply, the plaintiff argued that, pursuant to *Kafin v. Division of Professional Regulation*, 2012 IL App (1st) 111875, his discipline was too harsh. In that case, the reviewing court reversed the administrative revocation of the license of a psychiatrist who had an inappropriate relationship with a 19-year-old patient.

¶ 14 On October 31, 2012, following a hearing, the trial court granted the plaintiff's motion for a stay. The court explained that there was no danger to the public in granting the stay because there was no evidence that the plaintiff was continuing to view child pornography and other concerns were outweighed by the plaintiff's interest in maintaining a career that he had pursued for all of his adult life. The trial court found that its decision was consistent with *Kafin* as well as a recent and similar case that it remembered in which an attorney had been disciplined for his possession of child pornography by the Illinois Attorney Registration and Disciplinary Commission (ARDC). Following the trial court's ruling, the Department filed a timely notice of interlocutory appeal.

¶ 15 ANALYSIS

¶ 16 The Department argues that the trial court abused its discretion in granting the plaintiff's motion for a stay. The defendants contend that the trial court's decision was "arbitrary and unreasonable because it exalts the court's sympathy for [the plaintiff's] loss of his livelihood over public policy and the purposes of the Act."

¶ 17 Section 3-111(a)(1) of the Administrative Review Law provides:

> "(a) The Circuit Court has power:
>
> (1) with or without requiring bond (except if otherwise provided in the particular statute under authority of which the administrative decision was entered), and before or after answer filed, upon notice to the agency and good cause shown, to stay the decision of the administrative agency in whole or in part pending the final disposition of the case. For purposes of this subsection, 'good cause' requires the applicant to show (i) that an immediate stay is required in order to preserve the status quo without endangering the public, (ii) that it is not contrary to public policy, and (iii) that there exists a reasonable likelihood of success on the merits[.]" 735 ILCS 5/3-111(a)(1) (West 2010).

¶ 18 The trial court has broad discretion to stay an administrative decision pending review. *Marsh v. Illinois Racing Board*, 179 Ill. 2d 488, 498 (1997). Accordingly, our standard of review is highly deferential and the trial court's decision to grant or deny a stay will be reversed only upon a finding of an abuse of discretion. *Metz v. Department of Professional Regulation*, 332 Ill. App. 3d 1033, 1035 (2002). An abuse of discretion occurs only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *Parikh v. Division of Professional Regulation of the Department of Financial and Professional Regulation*, 2012 IL App (1st) 121226, ¶ 24. A reviewing court looks to the sufficiency of the evidence only for

the limited purpose of ascertaining whether the circuit court abused its discretion in entering the interlocutory order. *Id.* The party seeking the stay bears the burden of proving adequate justification for the relief sought. *Kenny v. Kenny Industries Inc.*, 406 Ill. App. 3d 56, 65 (2010).

¶ 19 We first observe that the trial court's order preserves the status quo. The plaintiff is currently working as a shorthand reporter. The trial court's order does not disrupt the plaintiff's ability to do that.

¶ 20 As to whether the stay endangers the public and violates public policy, we agree with the Department that the two concepts merge and therefore our analysis would be the same. The Department argues that the public policy behind the Reporters Act is that people who exhibit poor moral character should be excluded from practice. The Department notes that the Act is prefaced by a declaration that the practice of shorthand reporting "affect[s] the public health, safety and welfare," and is "subject to regulation and control in the public interest." 225 ILCS 415/1 (West 2010). The Department argues that by violating the Reporters Act, the plaintiff violated the public trust. The Department further argues that the public has a strong interest in protecting children and protecting the standing of the judicial system. The Department insists that because sex offenders have a high rate of recidivism (see *People v. Nichols*, 2012 IL App (2d) 100028, ¶ 79) and because there was no expert testimony that the plaintiff did not pose a risk of reoffending, the judicial system would be diminished in the eyes of the public if the plaintiff was not removed from practice.

¶ 21 We note that there is an important competing policy to the one that the Department articulates. That is, once a person has served his sentence and is considered rehabilitated and not a threat to the public, he should be reintegrated into society. See *People v. Palmer*, 2 Ill. App. 3d 934, 937 (1971) (the basic assumption underlying sentencing is that sentence should be aimed to

reintegrate the defendant into society). Here, the Department did not initiate proceedings against the plaintiff to have his license revoked until after he had already successfully completed his sentence. The Department's actions thus thwart the policy annunciated in *Palmer* that once a person is rehabilitated, his attempts to be reintegrated into society should be encouraged.

¶ 22 In balancing these competing policies, the trial court's decision reflects that it placed greater weight on the public policy advocating that the plaintiff be reintegrated into society. We cannot say that the trial court's decision constituted an abuse of discretion. In so ruling, we reject the Department's argument that the reputation of the judicial system will be diminished if the plaintiff's license to work as a certified shorthand reporter is not immediately revoked. Again, the Department's argument would be more persuasive if it had sought to revoke the plaintiff's license shortly after he was arrested or convicted. As the Department allowed the plaintiff to work during that period, the Department's failure to initiate proceedings sooner calls into question whether the integrity of the judicial system will be lessened if the plaintiff is allowed to maintain his license.

¶ 23 Furthermore, we emphasize that the trial court's ruling was only as to whether the Department's decision should be stayed. Although the Department argues that the plaintiff should have presented additional evidence that he was rehabilitated, such as expert testimony, the Department will be able to raise this argument at the hearing on whether its decision to revoke the plaintiff's license should be affirmed.

¶ 24 As to whether the plaintiff will likely succeed on the merits of his case, we note that the Director's decision to revoke the plaintiff's license will ultimately be reviewed to determine if it was (1) unrelated to the purpose of the statute or (2) overly harsh in view of the mitigating circumstances. *Kafin*, 2012 IL App (1st) 111875, ¶ 42. The Department argues that the purpose of the statute is to

protect the public health, safety, and welfare. The question again emerges, however, that if the public health, safety, and welfare was at such risk, why did the Department allow the plaintiff to continue to work after he was charged and then wait almost five years after he was charged to seek to revoke his license?

¶ 25 As to whether the Department's decision to revoke the plaintiff's license was unduly harsh, the Department contends that this court should be cautious about relying on past disciplinary decisions because "society is currently evolving toward an increasing recognition of the seriousness of sex offenses" and "even decisions from the fairly recent past may fail to reflect the current view of what is necessary to protect the public from such conduct." We find implicit in the Department's argument an acknowledgment that under current precedent, its decision to revoke the plaintiff's license may indeed be considered "harsh" and therefore erroneous.

¶ 26 One recent decision that suggests that the Department's decision was harsh is *Kafin*. In *Kafin*, the plaintiff was a psychiatrist who was licensed by the Department in 1980. On May 14, 2007, the Department received a mandatory report that the plaintiff caused emotional distress to his patient, L.F., by providing negligent counseling. The report was filed with the Department after L.F. filed a lawsuit against the plaintiff. Four months later, on September 28, 2007, the Department filed a formal complaint against the 58-year-old plaintiff, alleging that he had violated the Medical Practice Act of 1987 (225 ILCS 60/1 to 63 (West 2006)) by engaging in a personal and sexual relationship with L.F., a 19-year-old patient. The Department asserted that the plaintiff's actions constituted (1) "gross negligence in practice;" (2) "dishonorable, unethical, or unprofessional conduct or character likely to deceive, defraud or harm the public;" and (3) "immoral conduct." The

Department sought that the plaintiff's medical license be revoked or suspended. *Kafin*, 2012 IL App (1st) 111875, ¶¶ 4-5.

¶ 27 At an administrative hearing, L.F., the plaintiff, and a psychiatrist who evaluated the plaintiff testified. L.F. testified as to the emotional trauma that her relationship with the plaintiff had caused her. The plaintiff acknowledged that his relationship with L.F was unprofessional. He explained that it was a result of poor judgment. He disputed many of the allegations that L.F had made against him. He also testified that he had not complied with the recommendations of the team that had evaluated his mental health and his fitness as a psychiatrist because he did not "respect the process." Dr. John Larson testified that he had led the team that had assessed the plaintiff. The team found that the plaintiff had no insight into the egregious nature of his behavior with L.F. and at "no point did he acknowledge the harm he may have done" to her. Nonetheless, the team concluded that he would be fit to practice provided that he complied with certain recommendations. *Id.* ¶¶ 15-22.

¶ 28 At the close of the hearing, the ALJ recommended that the plaintiff's medical license be indefinitely suspended for at least three years and that the plaintiff be fined $5,000. The Board adopted the ALJ's recommendation. However, the Director determined that the plaintiff's medical license should be revoked. The Director explained that the "egregious nature of the plaintiff's conduct, coupled with his lack of candor and seemingly indifferent attitude towards the seriousness of his actions, warrants a proportionately severe discipline." The circuit court subsequently affirmed the Director's decision. *Id.* ¶¶ 25-27.

¶ 29 On appeal, the plaintiff argued that the penalty assessed was too severe. The reviewing court agreed. The reviewing court found that, even though the plaintiff's conduct was egregious, in similar cases, the penalty imposed had been less. *Id.* ¶ 50 (citing *Reddy v. Department of Professional*

Regulation, 336 Ill. App. 3d 350, 354 (2002) (imposing six-month suspension) and *Pundy v. Department of Professional Regulation*, 211 Ill. App. 3d 475, 479 (1991) (same)). The reviewing court therefore reversed the circuit court's order confirming the Director's decision to revoke the plaintiff's medical license and remanded the cause "with instructions for the Department to reexamine its overly severe punishment." *Id.* ¶ 53.

¶ 30 In the case herein as well as in *Kafin*, the plaintiffs engaged in bad conduct. The Department's actions in *Kafin* suggested it believed that the plaintiff's conduct therein was more egregious because it initiated proceedings against him more quickly (four months after filing of civil complaint) than it did herein (almost five years after the filing of criminal charges). The plaintiff in *Kafin* seemed to merit a more severe penalty because he exhibited little remorse for his conduct and demonstrated an unwillingness to comply with the recommendations that his peers believed were necessary for him to work as a psychiatrist again. Conversely, in the instant case, the plaintiff did demonstrate remorse and a willingness to comply with those recommendations that would allow him to continue to work as a court reporter.

¶ 31 The Department argues that an important distinction between the two cases was that in *Kafin* there was expert testimony that the plaintiff did not have a mental illness and that he could return to work. The Department points out that in the instant case there was no such expert testimony. We do not believe that this distinction is as significant as the Department suggests. In *Kafin*, the plaintiff was reviewed by his peers, fellow psychiatrists. In the instant case, the plaintiff presented the testimony of people that he worked with—fellow court reporters, an attorney, an ALJ, and a circuit court judge. They all testified that they believed he was a valued and needed member of the shorthand profession.

¶ 32 The Department further argues that the cases are different because in *Kafin* there was no possible effect on the court system. Although that is true, we do not believe that in itself undermines the other similarities between the two cases. Overall, based on the foregoing discussion, we cannot say that the trial court abused its discretion in relying on *Kafin* to determine that the stay should be granted because the plaintiff had a reasonable likelihood of succeeding on the merits of his claim.

¶ 33 In so ruling, we need not address whether the trial court erred in considering "a very similar factual" case that arose in Kane County regarding an attorney who was disciplined by the ARDC for his possession of child pornography. However, both parties may raise the applicability of that case at the hearing of whether the Department's decision should be affirmed.

¶ 34 Finally, we stress that our decision relates only to the propriety of the trial court's order granting a stay. We do not address in anyway the merits of the underlying dispute. See *Estate of Bass ex rel. Bass v. Katten*, 375 Ill. App. 3d 62, 68 (2007).

¶ 35 CONCLUSION

¶ 36 For the foregoing reasons, we affirm the imposition of the stay and remand the case to the trial court.

¶ 37 Affirmed and remanded.