

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002335-MR

WILLIAM POIRIER, M.D.

APPELLANT

v. APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE LEWIS D. NICHOLLS, JUDGE
ACTION NO. 03-CI-00494

OUR LADY OF BELLEFONTE HOSPITAL, INC.

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, DYCHE, AND MINTON, JUDGES.

BARBER, JUDGE: Appellant, William Poirier, M.D. (Poirier), appeals the Greenup Circuit Court dismissal of his complaint against the Appellee, Our Lady of Bellefonte Hospital, Inc., (Bellefonte Hospital). We find no reversible error in the circuit court's dismissal of the complaint.

Dr. Poirier is a physician who practiced in Russell County, Kentucky. Dr. Poirier was given temporary staff privileges at Bellefonte Hospital on August 23, 2001. The hospital alleges that during the six month period in which Dr. Poirier had temporary privileges at Bellefonte Hospital, he displayed a recurring pattern of unacceptable and unprofessional

behavior. This behavior was not in relation to medical ability, but in relation to interpersonal skills. The record contains extensive documentary evidence showing that Dr. Poirier had meetings with supervisory personnel regarding improper comments made to and about staff persons. Despite several meetings on this issue, complaints regarding Dr. Poirier's verbal actions continued.

On December 18, 2001, Dr. Poirier treated an autistic ten year old child. During the course of treatment Dr. Poirier allegedly acted and spoke in an unprofessional manner. Complaints against Dr. Poirier were made by support staff. Charges were brought against Dr. Poirier under Section 6.4 of the Medical Staff Bylaws. On January 24, 2002, Bellefonte Hospital notified Dr. Poirier that his temporary privileges were again suspended due to allegations regarding his treatment of a minor patient. The patient was a special needs autistic child who was brought in by daycare providers. The child had pencil erasers in both ear canals. Dr. Poirier was charged with having used excessive restraint of the child while attempting to treat the child. Dr. Poirier was also accused of using unprofessional remarks to and about the patient, namely referring to the child as "retarded." Note was also made of prior allegations of unprofessional language by Dr. Poirier, one statement having

been of a sexual nature, and the other having been of a political nature.

Dr. Poirier was denied continuing staff privileges by Bellefonte Hospital after internal hearings were conducted on May 8 and May 13, 2003. On June 3, 2003 the panel denied Dr. Poirier staff privileges.

Dr. Poirier testified at the hearing regarding his potential denial of privileges. Another physician and Dr. Poirier's office staff member testified at the hearing on Dr. Poirier's behalf. Dr. Poirier testified that the child was anxious and difficult to treat. For this reason, Dr. Poirier scheduled an emergency surgery so that the child could be sedated prior to treatment. Dr. Poirier contends that scheduling an emergency procedure so late in the day angered the surgical staff. Dr. Poirier alleges that the child was not properly supervised in the surgical waiting room. He admitted making comments about the lack of supervision of the child, both at the time he managed to put the erasers in his ears, and in the waiting room.

After review of the complaints against Dr. Poirier, and the testimony given in his defense, the Board denied Dr. Poirier staff privileges. Dr. Poirier appealed the decision, and the appeal was denied.

Dr. Poirier then filed a civil complaint in circuit court. In the complaint Dr. Poirier asserted both that he was improperly denied privileges by the hospital, and also that the denial of privileges was an attempt to gain financial leverage over Dr. Poirier. After briefing by both parties and a hearing on the issues presented, the trial court dismissed Dr. Poirier's complaint. Dr. Poirier asserts that the dismissal was in error because he was not permitted to make discovery regarding whether the hospital was acting in a reasonable manner to further the quality of health care at the hospital.

The Medical Staff Bylaws require physicians practicing at Bellefonte Hospital to use a generally recognized professional level of quality. Bylaws, Section 1.2. The Bylaws provide, at Section 2.2, that a grant of temporary privileges does not ensure an award of regular staff privileges. Privileges may be granted or denied by the Board. Bylaws, Section 2.1. If privileges are denied, the affected physician may request a fair hearing. Bylaws, Section 6.7. Before the denial of privileges, Dr. Poirier had his temporary privileges suspended twice due to staff claims of improper comments and conduct by Dr. Poirier. Supervisory hospital personnel testified that they had met with Dr. Poirier and cautioned him to amend his behavior so that his statements would not cause offense to his co-workers.

The law provides that members of a hospital review board are immune from claims for monetary damages by the Health Care Quality Improvement Act of 1986, 42 U.S.C Section 11111 if the action taken by the board is reasonable, and a fair hearing is provided to the affected physician. Meyers v. Columbia/HCA Health Care Corp., 341 F.3d 461 (6th Cir. 2003). The findings of an administrative body cannot be set aside unless the evidence presented by the plaintiff is so persuasive that the determination must be made in favor of the plaintiff. Kentucky Unemployment Insurance Commission v. Murphy, 539 S.W.2d 293, 294 (Ky. 1976). That was not the case here. The record shows that the hospital conducted a hearing; that Dr. Poirier was permitted to make a defense to the charges against him, and that Dr. Poirier was permitted to appeal the adverse determination. At every level of the proceedings evidence supported a finding that Dr. Poirier had made the remarks attributed to him, and that those remarks created a negative work environment for other employees.

The trial court's Order of Dismissal stated that:

Upon appeal from an administrative agency, charged with the duty of fact finding, a reviewing court is not free to substitute its judgment for that of the agency unless the latter acted in an arbitrary or capricious manner. Piper v. The Singer Company, 663 S.W.2d 761, 763 (Ky.App. 1984) . . . The reviewing court is limited to review the record made before the

MEC panel and Board, and, where it has found against Dr. Poirier, the findings of fact of the panel will not be disturbed unless the evidence is so persuasive that one would have no choice but to find for Dr. Poirier. Johnson v. Galen health Care, Inc., 39 S.W.3d 828 (Ky.App. 2001) . . . The Court does not find the evidence submitted by the Plaintiff, Dr. Poirier, to be persuasive.

Id. An administrative determination may be upheld even where contrary evidence has been presented, so long as substantial evidence supports the administrative decision. Kentucky Unemployment Ins. Commission v. Landmark Community Newspapers of Kentucky, Inc., 91 S.W.3d 575, 578 (Ky. 2002).

The Courts use a three pronged test to determine whether the administrative decision should be upheld. This includes a review of the scope of the administrative powers; whether or not the affected employee was permitted to exercise his due process rights, and whether substantial evidence supported the final determination. In this case the administrative body acted within the powers permitted it by the hospital Bylaws. Dr. Poirier was permitted a due process hearing. Lastly, substantial evidence supported the final decision. Under such circumstances this Court may not substitute its judgment for that of the administrative body. For the foregoing reasons, the decision must stand as written. We find no reversible error in the trial court's dismissal of Dr. Poirier's complaint.

ALL CONCUR.

BRIEF FOR APPELLANT:

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