

ORIGINAL

IN THE SUPREME COURT OF OHIO

Dr. Terrie Sizemore RN DVM

Relator-Appellant

The Ohio Veterinary Medical
Licensing Board.

Respondent-Appellees

Case No: 12-0176

On Appeal from the
Court of Appeals
Tenth Appellate District
Case no. 11AP-298

Regular Calendar

NOTICE OF APPEAL OF RELATOR-APPELLANT DR. TERRIE SIZEMORE
RN DVM

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Pro se

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SUPREME COURT OF OHIO

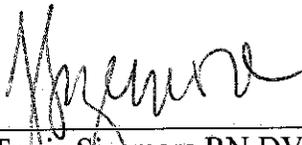
FILED
JAN 30 2012
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL OF APPELLANT, DR. TERRIE SIZEMORE RN DVM

Relator-Appellant, Dr. Terrie Sizemore RN DVM, gives notice of appeal to the Supreme Court of Ohio from the judgment of the Franklin County Court of Appeals, Tenth Appellate District, entered in Court of Appeals case no. 11AP-298 on January 10, 2012.

This is an appeal of right and Relator's original action in Mandamus originated in the Court of Appeals.

Respectfully submitted,



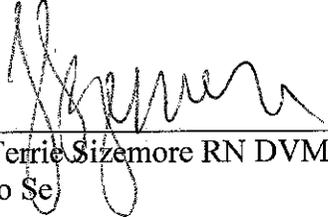
Dr. Terrie Sizemore RN DVM/Pro se
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CERTIFICATE OF SERVICE

A true and accurate copy of this foregoing "Notice of Appeal of Relator-
Appellant Dr. Terrie Sizemore RN DVM" has been served, via regular U.S. Mail on this
26th day of January, 2012 upon the following:

Ms. Mindy Worly (0037395)
Ohio Assistant Attorney General
30 East Broad Street 26th Floor
Columbus, Ohio 43215

Attorney for the Respondent OVMLB



Dr. Terrie Sizemore RN DVM
Pro Se

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

2012 JAN 10 PM 12:37
CLERK OF COURTS

State ex rel. Terrie Sizemore, D.V.M., :

Relator, :

v. :

No. 11AP-298

Ohio Veterinary Medical Licensing Board, :

(REGULAR CALENDAR)

Respondent. :

D E C I S I O N

Rendered on January 10, 2012

Terrie Sizemore, pro se.

Michael DeWine, Attorney General, and Mindy Worly, for respondent.

IN MANDAMUS
ON OBJECTIONS TO MAGISTRATE'S DECISION

TYACK, J.

{¶1} Terrie Sizemore filed this action in mandamus, seeking a writ to compel the Ohio Veterinary Medical Licensing Board ("OVMLB") to "re-issue the Order of March 2, 2007 properly and in compliance with RC 119.09 requirements." She also seeks an order that OVMLB reimburse her "for this action and all other actions she has failed to perfect due to the [board's] failure to comply with the agreed journal entry and the Court's decision to remand this matter back to [the board]."

{¶2} In accord with Loc.R. 12, the case was referred to a magistrate to conduct appropriate proceedings.

{¶3} OVMLB filed a motion to dismiss this case, which the magistrate converted to a motion for summary judgment because the motion raised issues outside the four corners of the complaint.

{¶4} Sizemore next filed a motion requesting that the magistrate recuse herself and return the case to a panel of judges.

{¶5} The magistrate did not recuse herself, but granted Sizemore an extension of time to file evidentiary material pertaining to the motion for summary judgment. A panel of this court overruled Sizemore's motion regarding recusal or removal of the magistrate.

{¶6} Sizemore next filed a motion requesting sanctions against a member of the Ohio Attorney General's staff, alleging that the attorney had stated certain facts inaccurately in the motion to dismiss which was subsequently converted. No sanctions were granted.

{¶7} Sizemore also filed a motion requesting "Clarification of Issues" and "Reconsideration to Vacate the April 26, 2011 Order for Summary Judgment." The clarification of issues request was based upon Sizemore's belief that a magistrate cannot rule on a motion for summary judgment. Magistrates do not rule on such motions, but routinely generate magistrate's decisions with recommendations to the appropriate court on how the motion for summary judgment should be considered. Sizemore also failed to understand that the magistrate had not ruled on the merits of any motion when she converted the motion to dismiss to a motion for summary judgment.

{¶8} The parties eventually filed evidentiary material and the magistrate rendered a magistrate's decision including detailed findings of fact and conclusions of law which is appended to this decision. The magistrate's decision includes a recommendation that we refuse to issue the writ and the orders requested by Sizemore.

{¶9} Sizemore has objected to the magistrate's decision. The case is now before the court for a full, independent review.

{¶10} The OVMLB originally issued a finding adverse to Terrie Sizemore in 2007, but did not serve it correctly. After the Supreme Court of Ohio decided *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 2007-Ohio-2877, this became clear. After Sizemore had appealed the adverse finding to the common pleas court and obtained no relief satisfactory to her, she appealed to this court.

{¶11} The mediator of this court, Sizemore and a representative of the Ohio Attorney General's Office, all understood that the original adverse finding needed to be appropriately served to have full legal effect. Thus, the appellate case was sent back to the trial court with instructions to remand the case to OVMLB. This was eventually done.

{¶12} OVMLB decided not to reissue the original adverse finding, but instead to drop the charges against Sizemore. Apparently Sizemore is discontented with the dismissal of the charges. Instead, she wants the adverse order, the order finding she had been guilty of misconduct, reissued.

{¶13} We do not believe that Sizemore has the right to compel a governmental agency to issue an order which the agency no longer feels is appropriate. The agency, especially an agency which serves as an adjudicating authority, has the inherent power to

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dismiss charges against an individual who has had claims of misconduct levied against her or him.

{¶14} Stated more specifically, Sizemore does not have a clear right to force OVMLB to issue an order finding her guilty of misconduct. Since she has no such clear legal right, she has no right to a writ of mandamus. Since she has no right to a writ of mandamus, she is not entitled to the other relief she requests.

{¶15} The objections to the magistrate's decision are overruled.

{¶16} The findings of fact and conclusions of law in the magistrate's decision is adopted. The request for a writ of mandamus is denied.

Objections overruled; writ denied.

BROWN, P.J., and DORRIAN, J., concur.

requested; and (3) that relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28.

{¶33} Relator cannot demonstrate that she has a clear legal right to have the board "re-issue the Order of March 2, 2007," because the board was not ordered to issue any specific order. Instead, this court ordered the board to "re-issue an order." (Emphasis added.) Here the board dismissed all charges against relator in a letter and not in an order. Relator could be entitled to writ of mandamus ordering the board to formalize its decision by issuing an order instead of a letter, but relator is not entitled to any specific order.

{¶34} Because relator cannot demonstrate that she has a clear legal right to have any specific order issued, it is this magistrate's decision that this court should grant respondent's motion for summary judgment and this case should be dismissed.

/s/Stephanie Bisca Brooks
STEPHANIE BISCA BROOKS
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

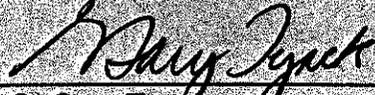
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OHIO
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CLERK OF COURTS

State ex rel. Terrie Sizemore, D.V.M., :
Relator, :
v. : No. 11AP-298
Ohio Veterinary Medical Licensing Board, : (REGULAR CALENDAR)
Respondent. :

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on January 10, 2012, the objections to the decision of the magistrate are overruled, the decision of the magistrate is approved and adopted by the court as its own, and it is the judgment and order of this court that the requested writ of mandamus is denied. Costs shall be assessed against relator.

Within three (3) days from the filing hereof, the clerk of this court is hereby ordered to serve upon all parties not in default for failure to appear notice of this judgment and its date of entry upon the journal.



Judge G. Gary Tyack



Judge Susan Brown, P.J.



Judge Julia L. Dorian