

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO

PATRICE O. CAROTHERS,	:	O P I N I O N
Appellant,	:	
- vs -	:	CASE NO. 2004-G-2559
OHIO BOARD OF SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY,	:	
Appellee.	:	

Administrative appeal from the Court of Common Pleas, Case No. 03 A 000753.

Judgment: Affirmed.

R. Kevin Kerns, 65 East State Street, Suite 1800, Columbus, OH 43215, *Joseph H. Weiss, Jr.*, May Valley Building, Suite 6-B, 8228 Mayfield Road, Chesterland, OH 44026, and *Alan S. Kopit*, 3300 BP Tower, 200 Public Square, Cleveland, OH 44114 (For Appellant).

Jim Petro, Attorney General, and *Dominic J. Chieffo*, Assistant Attorney General, State Office Tower, 26th Floor, 30 East Broad Street, Columbus, OH 43215 (For Appellee).

WILLIAM M. O'NEILL, J.

{¶1} In this an accelerated calendar case, appellant, Patrice O. Carothers (“Carothers”), appeals the judgment entered by the Geauga County Court of Common Pleas. The trial court affirmed the decision of appellee, Ohio Board of Speech-Language Pathology and Audiology (“the Board”). The Board suspended Carothers’ speech-language pathology license.

{¶2} Carothers originally received her speech-language pathology license in 1979. Prior to 1999, Carothers moved without notifying the Board of her new address, as required by the Ohio Administrative Code. As a result, the renewal application for her license was returned to the Board. Carothers' license expired in December 1998. She did not renew her license for the 1999-2000 or 2001-2002 biannual periods. She applied for renewal of her license in September 2001.

{¶3} The Board sent Carothers a "notice of opportunity for hearing" in November 2002, via certified mail. Carothers did not request a hearing. In May 2003, the Board sent Carothers a letter advising her that the matter would be heard at a public meeting on June 26, 2003, but that she would not be permitted to participate since she did not request a hearing.

{¶4} In July 2003, the Board issued its adjudication. Therein, the Board decided to issue Carothers a new license. However, the Board suspended the license for two years and nine months, with one year and nine months of the suspension stayed, resulting in a net suspension of one year. Pursuant to R.C. 119.12, Carothers appealed the Board's adjudication to the common pleas court. The trial court affirmed the Board's adjudication. Carothers now appeals to this court.

{¶5} Carothers raises the following assignment of error:

{¶6} "The trial court erred in affirming the board's adjudication order because the portion which suspended appellant's speech-language pathology license is contrary to law."

{¶7} "In an administrative appeal under R.C. 119.12, a trial court must determine whether the decision of the administrative board is supported by reliable,

probative and substantial evidence.^[1] The trial court must give due deference to the administrative resolution of evidentiary conflicts and must not substitute its judgment for that of the administrative board or agency.^[2] Appellate review is limited to determining whether the trial court abused its discretion in finding the board's decision supported by reliable, probative and substantial evidence.^[3] Issues of law are reviewed *de novo*.^[4]⁵

{¶8} Carothers asserts the Board did not provide her with proper notice of the nature of the proceedings against her. Specifically, Carothers claims she was not given notice that the Board could suspend her license.

{¶9} Ohio courts have held that the test set forth in *Mathews v. Eldridge* is to be used in administrative proceedings such as this to determine the amount of due process protection a particular situation warrants.⁶ The *Mathews* test requires consideration of the following factors: (1) the individual's interest that will be affected by the action; (2) the risk of error that could arise without providing additional procedural safeguards; and (3) the cost to the government agency to provide the additional procedural safeguards.⁷ In addition, "[p]rocedural due process requires that fair notice be given to an individual as to the precise nature of the charges to be brought forth at a disciplinary hearing."⁸

1. R.C. 119.12; *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571.

2. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111.

3. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621.

4. *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.* (1992), 63 Ohio St.3d 339, 343-344.

5. *Sohi v. Ohio St. Dental Bd.* (1998), 130 Ohio App.3d 414, 421.

6. *Chirila v. Ohio State Chiropractic Bd.* (2001), 145 Ohio App.3d 589, 593, citing *Mathews v. Eldridge* (1976), 424 U.S. 319, 335. See, also, *Doyle v. Ohio Bur. Motor Vehicles* (1990), 51 Ohio St.3d 46, 52.

7. *Mathews v. Eldridge*, 424 U.S. at 335.

8. *In re Morgenstern* (May 28, 1992), 10th Dist. No. 91AP-1018, 1992 Ohio App. LEXIS 2753, at *7, citing *In re Ruffalo* (1968), 390 U.S. 544.

{¶10} We acknowledge that an individual has a protected property interest in a professional license.⁹ However, Carothers entered these administrative proceedings in bad standing, i.e., *without* a license. Therefore, a threshold question arises as to whether Carothers had a property interest in jeopardy. At the time the November letter was sent, Carothers was not licensed in Ohio. Thus, there was no license to suspend. The initial language of the letter indicated the Board would decide whether to refuse to issue her a license. It was only after the Board decided to issue Carothers a new license, that a suspension could occur. However, even though Carothers did not currently have a license, she arguably had at least a diminished property interest, given her status as a former licensee. Thus, we will continue our analysis to determine whether she was afforded sufficient procedural safeguards.

{¶11} The Board must comply with R.C. 119.01, et seq., when determining whether to issue, suspend, or revoke a speech-language pathology license.¹⁰ Carothers contends the Board did not provide her notice of “the charges or reasons for the proposed action” as required by R.C. 119.07. Thus, she asserts, the adjudication is void pursuant to R.C. 119.06.¹¹

{¶12} Initially, in applying the *Matthews* test, we conclude that the November letter provided Carothers with the relevant information regarding her licensure status. Through this letter, Carothers was given an opportunity to be heard, as she could have requested a hearing, at which she could present evidence, call witnesses, and cross-

9. *Chirila v. Ohio State Chiropractic Bd.*, 145 Ohio App.3d at 596, citing *Sohi v. Ohio St. Dental Bd.*, 130 Ohio App.3d at 422.

10. R.C. 4753.10

11. See, also, *Chirila v. Ohio State Chiropractic Bd.*, *supra*, at 594.

examine adverse witnesses. She chose not to exercise this right and did not request a hearing.

{¶13} The crux of the instant appeal is that Carothers claims the November letter did not adequately provide her with notice that the Board could *suspend* her license but, rather, only indicated the Board would determine whether to issue her a new license. Carothers does not contend the November letter failed to inform her of the precise nature of the *charges* against her. Rather, she claims she was not advised that the Board could suspend her license, which is actually a possible *sanction* that could result from charges against her. The Board had the initial task of determining whether to issue Carothers a new license. Had the Board decided not to issue a new license, an inquiry regarding suspension would be irrelevant.

{¶14} Carothers incorrectly asserts that the November letter states that the “sole purpose” of the action was to determine whether the Board would approve or deny her license application. The November letter provides, in pertinent part, the Board “intends to determine whether or not to refuse to issue you a license as a Speech-Language Pathologist for the following reasons[.]” Thereafter, several statutory and administrative code sections are cited, along with individual charges against Carothers. The remainder of the November letter does address the possibility of suspension of licenses, as it states, in part:

{¶15} “Section 4753.10 of the Revised Code States:

{¶16} “In accordance with Chapter 119. of the Ohio Revised Code, the board of speech-language pathology and audiology may reprimand or place on probation a speech-language pathologist or audiologist or *suspend*, revoke, or refuse to issue or

renew the license of a speech-language pathologist or audiologist. Disciplinary actions may be taken by the board for conduct that may result from but not necessarily be limited to:

{¶17} “M. Violating this chapter or any lawful order given or rule adopted by the board.

{¶18} “ ***

{¶19} “Section 4753-3-08(M) of the Ohio Administrative Code states:

{¶20} “The Board may reprimand, place on probation, deny, *suspend*, revoke or refuse to issue or renew the license or refuse to issue the conditional license of an applicant or licensee for violation of any provision of Chapter 4753. of the Ohio Revised Code, or any lawful order or rule of the board, and for unprofessional conduct, including but not limited to the following:

{¶21} “M. Violating any provision of this law, and lawful order given, or rule or regulation adopted by the board.

{¶22} “ ***

{¶23} “In the event that no request for hearing is made within thirty days of the time of the mailing of this notice, the Ohio Board of Speech-Language Pathology and Audiology may, upon consideration of this matter, reprimand, place on probation, deny, *suspend*, or revoke, or refuse to issue you a license.” (Emphasis added.)

{¶24} In its adjudication order, the Board found that Carothers was properly notified of the hearing. Pursuant to R.C. 119, the trial court had the duty to determine whether this decision was supported by reliable, probative, and substantial evidence.¹²

12. *Sohi v. Ohio St. Dental Bd.*, 130 Ohio App.3d at 421, citing R.C. 119.12; *Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St.3d at 571.

The November letter references suspension on three separate occasions. Accordingly, the trial court did not abuse its discretion in determining that Carothers was properly notified of the nature of the charges against her and the possibility of a suspension of her license, provided her license was reinstated.

{¶25} In the alternative, even if we were to accept Carothers argument that she was not properly informed of the possibility of a suspension, she admits that she was informed that the Board could refuse to issue her a license. Thus, she was informed of the “worst case” scenario. The Board notified Carothers of the severity of the hearing, including the possible result of not being issued a license. The final adjudication issued a less severe sanction, suspension of her license. Accordingly, Carothers was not prejudiced by her perceived lack of due process, because she had adequate notice that Board was conducting a hearing regarding the status of her licensing and that the hearing could result in no license at all. In addition, she was given an opportunity to participate in this hearing.

{¶26} Carothers also asserts the May letter did not provide her with proper notice regarding the possibility of suspension. The Board notes that the May letter was not required by statute and was merely sent as a courtesy. In addition, a review of the May letter indicates that Carothers was informed that the Board would review the evidence relating to her case at a public meeting on June 26, 2003. The letter clearly stated that Carothers could not present evidence or otherwise participate in the hearing, since she did not request a hearing in response to the November notice. Therefore, even if the May letter was more specific, at that time it would have been too late for Carothers to advance her position. Finally, as we held supra, Carothers had already

been properly and adequately notified, via the November letter, of the scope of the proceedings.

{¶27} Carothers was properly notified of the nature of the hearing. Further, the trial court did not abuse its discretion in determining that the Board's adjudication was supported by reliable, probative, and substantial evidence.

{¶28} Carothers' assignment of error is without merit.

{¶29} The judgment of the trial court is affirmed.

DONALD R. FORD, P.J.,

JUDITH A. CHRISTLEY, J.,

concur.