

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS)
)
FOR THE TENTH JUDICIAL CIRCUIT)

CEB

DOCKET NO. 2014-CP-04-01780

RECEIVED
MAR 14 2016
SC Court of Appeals

Nancy C. Perez,

Petitioner,

South Carolina Department of Labor
Licensing and Regulation, Board of
Nursing

Respondent.

TRUE COPY
AUG 14 2015
Clerk of Court

ORDER OF DISMISSAL

FILED - CLERK'S OFFICE
ANDERSON SC
2015 AUG 10 A 11: 25
COMMON PLEAS AND
GENERAL SESSIONS

This matter came before this Court pursuant to Respondent's Motion to Dismiss Nancy Perez's *pro se* Amended Petition for a Writ of Mandamus and Declaratory Judgment, or in the Alternative, Inverse Condemnation Proceedings ("Complaint"). This Court grants Respondent's Motion to Dismiss because this Court does not have subject matter jurisdiction to judicially review Respondent's occupational licensing decisions regarding Ms. Perez. Furthermore, even if this Court had subject matter jurisdiction to hear the case, it could not grant the relief Ms. Perez seeks in the Complaint.

1. Rule 12(h) (3), SCRPC, states "[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the case." (Emphasis added). Subject matter jurisdiction may not be waived by the parties, and may be raised by the court itself. *Ex Parte Cannon*, 385 S. C. 643, 685 S. E. 2d 814 (Ct. App. 2009). Denial of occupational licensure is a contested case under the South Carolina Administrative Procedures Act (APA). S. C. Code §1-23-310 (3)-(4) (Supp. 2014). A party who has exhausted all administrative remedies with a licensing board administered by the South Carolina Department of Labor, Licensing and Regulation must appeal the board's decision to the Administrative Law Court, not to this Court. S. C. Code §§1-23-600(D)-(E) (Supp. 2014), 40-1-160, and 40-33-160 (2011).

2. Even if this Court had jurisdiction, it would not issue the requested writ of mandamus because the licensure denial alleged in the Complaint is not ministerial in nature.

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To obtain a writ of mandamus requiring the performance of an act, the applicant must show 1) a duty of respondent to perform the act, 2) the ministerial nature of the act, 3) the applicant's specific legal right for which discharge of the duty is necessary, and 4) a lack of any other legal remedy. *Willimon v. City of Greenville*, 243 S. C. 82, 132 S. E. 2d 169 (1963). Reinstatement of Ms. Perez's license in this instance is discretionary rather than ministerial. A duty is ministerial "when it is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts. *Wilson v. Preston*, 378 S. C. 348, 354, 662 S. E. 2d 580, 583 (2008). It is ministerial if it is defined by law with such precision as to leave nothing to the exercise of discretion. *Id.*

Under S.C. Code §40-1-130 (2011), the Board of Nursing (Board) may deny an authorization to practice to an applicant who has committed an act that would be grounds for disciplinary action. The Board required Ms. Perez to appear before it for a reinstatement hearing because of Ms. Perez's failure to disclose a criminal matter to the Board both on her initial South Carolina application in 1996, as well as on her reinstatement application in May, 2014. Under S.C. Code §40-33-110(A)(19)(2011), obtaining or attempting to obtain a license to practice nursing through fraud, deceit or misrepresentation or any other dishonesty in any phase of the licensing process is grounds for discipline. Additionally, pursuant to S.C. Code §40-33-41(2011), the Board has the discretion to deny reinstatement based on evidence of unlawful acts, incompetence, unprofessional conduct, or other misconduct. See also *Trimmier v. South Carolina Dept. of Labor, Licensing and Regulation*, 405 S.C. 239, 245 746 S.E.2d 491, 494 (Ct. App. 2013), cert. denied, July 25, 2014 (finding the Board of Dentistry is permitted discretion in determining whether to reinstate a lapsed license).

3. Ms. Perez stated on the record that she is also seeking damages from Respondent because her LPN license has not been reinstated. Even if this Court has jurisdiction in this matter, the Complaint does not state viable grounds for monetary compensation from the Respondent. Inverse condemnation is the only cause of action pled in the Complaint that requests monetary relief. The elements of an action for inverse condemnation are: (1) affirmative conduct of a government entity; (2) the conduct effects a taking; and (3) the taking is for a public use. *S. C. State Highway Dep't v. Wilson*, 254 S. C. 360, 365, 175 S. E. 2d 391, 394 (1970). The inverse condemnation action is not viable because even if a compensable property interest in a lapsed occupational license exists which

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could be taken by denial of a reinstatement request, the requirement of taking that interest for public use is not alleged or met.

THEREFORE, IT IS ORDERED that Respondent's motion to dismiss the Complaint is GRANTED.

Date: 8-4-15

Anderson, South Carolina
Walt



R. Scott Sprouse
Presiding Circuit Judge

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