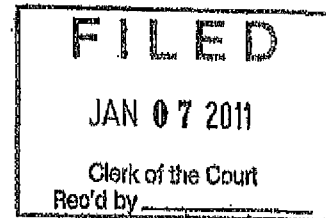


IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE
September 2, 2010 Session

**BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME
COURT OF TENNESSEE v. THOMAS EWING COWAN, JR.**

Direct Appeal from the Chancery Court for Carter County
No. 27363 Jon Kerry Blackwood, Senior Judge

No. E2010-00957-SC-R3-PB



ORDER

This is an appeal by both Thomas E. Cowan, Jr. and the Board of Professional Responsibility from an order entered by the Chancery Court for Carter County on April 19, 2010, affirming the decision of the hearing panel to suspend Mr. Cowan's license to practice law for three years. Mr. Cowan asserts that the punishment was too severe, while the Board asserts that Mr. Cowan should have been disbarred.

Tenn. Sup. Ct. R. 9, § 1.3 provides that parties dissatisfied with the decision of a hearing panel may obtain judicial review by filing a petition for a writ of certiorari in accordance with Tenn. Code Ann. §§ 27-9-101 through -114 (2000 & Supp. 2010). Article VI, Section 10 of the Constitution of Tennessee requires that all writs of certiorari be supported by oath or affirmation, and Tenn. Code Ann. § 27-8-106 (2000) requires that a petition for a writ of certiorari be "sworn to" and state that "it is the first application for the writ." We recently held that the failure to satisfy these requirements deprives trial courts of jurisdiction to review a hearing panel's decision. *Bd. of Prof'l Responsibility v. Cawood*, ___ S.W.3d ___, 2010 WL 5141785, at *2 (Tenn. 2010).

Even though neither party has questioned the trial court's jurisdiction in this case, Tenn. R. App. P. 13(b) requires all appellate courts to consider whether trial and appellate courts have jurisdiction over the subject matter whether or not the issue has been presented for review.

In this proceeding, neither the petition for writ of certiorari filed by the Board on August 24, 2009, nor the petition filed by Mr. Cowan on August 31, 2009, satisfies the requirements of Article VI, Section 10 of the Constitution of Tennessee or Tenn. Code Ann.

§ 27-8-106. Accordingly, their appeals were not properly perfected, and the trial court lacked jurisdiction to hear and decide their petitions. Because the trial court lacked jurisdiction in this matter, its April 19, 2010 order must be vacated, and the parties' appeals must be dismissed for failure to file a proper petition within sixty days from the entry of the hearing panel's order as required by Tenn. Sup. Ct. R. 9, § 8.3.

It is, therefore, ordered that the trial court's April 19, 2010 order is vacated and that the appeals of both parties to this Court are dismissed. Because the sanction imposed by the hearing panel exceeds a three-month suspension and because no appeal was properly perfected, the Board is directed to file a copy of the hearing panel's order for review by this Court in accordance with Tenn. Sup. Ct. R. 9, § 8.4.

The costs of this appeal are taxed in equal proportions to the Board of Professional Responsibility and to Thomas E. Cowan, Jr. and his surety for which execution, if necessary, may issue.

PER CURIAM