

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE,
AT NASHVILLE

RICHARD AUSTIN DEMONBREUN,]

Petitioner,]

vs.]

No. 09-1733-III]

BOARD OF PROFESSIONAL]
RESPONSIBILITY OF THE]
TENNESSEE SUPREME COURT,]

Respondent.]

JUDGMENT

This case is before the court on a Petition for Certiorari filed by the petitioner, Richard A. Demonbreun. The petition seeks a reversal of the judgment of the hearing panel filed September 3, 2009, in a lawyer disciplinary proceeding against Mr. Demonbreun. After careful review of the record in this case, for the reasons set for in a Memorandum filed simultaneously with this Judgment which is incorporated herein by reference, the court of the opinion the petition to reverse the findings and conclusions of the hearing panel should be denied and the judgment of the hearing panel, as amended by order filed September 22, 2010, should be affirmed in all respects.

It is, therefore, ORDERED, ADJUDGED AND DECREED that the petition seeking reversal of the findings and conclusions of the hearing panel filed September 3, 2009, is denied and that the judgment of the hearing panel, as amended by order filed September 22, 2010, be affirmed in all respects. The costs of this cause shall be assessed against the petitioner, Richard Austin Demonbreun, and his surety, for which execution may issue, if necessary.

This 1st day of September 2011.



Donald P. Harris, Senior Judge
sitting by designation of the
Tennessee Supreme Court

CERTIFICATE

The undersigned hereby certifies that a copy of the forgoing Final Decree has been forwarded to Randall J. Spivey, 1101 Kermit Drive, Nashville, TN 37217; and to Richard A. Demonbreun, 746 Benton Avenue, Nashville, TN 37204, this the _____ day of September, 2011.

Clerk and Master

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE,
AT NASHVILLE

RICHARD A. DEMONBREUN,

Petitioner,

vs.

BOARD OF PROFESSIONAL
RESPONSIBILITY OF THE
TENNESSEE SUPREME COURT,

Respondent.

No. 09-1733-III

MEMORANDUM

This case is before the court on a Petition for Certiorari filed by the petitioner, Richard A. Demonbreun.¹ The petition seeks a review of the Judgment of the Hearing Panel filed September 3, 2009, as amended by order filed September 22, 2010, in a lawyer disciplinary proceeding against Mr. Demonbreun.

The hearing panel found violations of certain Rules of Professional Conduct. The panel also found various aggravating and mitigating factors. As a result, the hearing panel entered its judgment recommending Mr. Demonbreun be suspended from the practice of law in Tennessee for a period of four months. The panel further recommended that he be referred to the Tennessee Lawyers' Assistance Program for evaluation and possible treatment.

Standard of Review

In reviewing the findings and conclusions of the hearing panel in a disciplinary proceeding, the court must be guided by Rule 9, section 1.3, of the Rules of the Supreme Court which provides in pertinent part as follows:

¹Because Mr. Demonbreun is the petitioner in the proceeding before the court and was the respondent in the proceeding before the hearing panel, he will be referred to in this memorandum as "Mr. Demonbreun." The Board of Professional Responsibility will be referred to as the "Board."

The Respondent-attorney (hereinafter "Respondent") or the Board may have a review of the judgment of a hearing panel in the manner provided by [Tennessee Code Annotated section] 27-9-101 et seq., except as otherwise provided herein. The review shall be on the transcript of the evidence before the hearing panel and its findings and judgment. If allegations of irregularities in the procedure before the panel are made, the trial court is authorized to take such additional proof as may be necessary to resolve such allegations. The court may affirm the decision of the panel or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the panel's findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the panel's jurisdiction; (3) made upon unlawful procedure; (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (5) unsupported by evidence which is both substantial and material in the light of the entire record.

In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.

Tenn. Sup. Ct. R. 9, §1.3 (2007).

With that standard in mind, the court has carefully reviewed the entire record. The court's findings with regard to the allegations made by Mr. Demonbreun in his petition for certiorari are set forth below.

Findings

On March 7, 2008, the Board filed a Petition for Discipline pursuant to Rule 9 of the Rules of the Supreme Court. This petition was based upon allegations that Mr. Demonbreun had violated an Order of Protection obtained by his estranged wife, Stacey A. Tompson, and had pleaded guilty to the misdemeanor offence of the stalking of Ms. Tompson in violation of the Rules of Professional Conduct 8.4(a), prohibiting the violation of the Rules of Professional Conduct; 8.4(b) prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness; and 8.4(g) prohibiting a lawyer from knowingly failing to comply with a final court order entered in a proceeding in which the lawyer is a party. On December 31, 2008, a Supplemental Petition for Discipline was filed by the Board alleging Mr.

Demonbreun submitted an Agreed Petition to Modify Ex Parte Protective Order requesting the aforementioned Order of Protection be modified to allow some limited contact between Mr. Demonbreun and his wife. The petition alleged the agreed petition purported to contain the signature of Ms. Tompson but she had denied signing it. Consequently, it was alleged Mr. Demonbreun had submitted a falsified pleading to the court. This conduct was alleged to be in violation of Rule 3.3 of the Rules of Professional Conduct which prohibits lawyers from knowingly making a false statement of fact to a court, from failing to inform the court of all material facts known to the lawyer that will enable the court to make an informed decision, from offering evidence the lawyer knows to be false and from affirming the validity of evidence the lawyer knows to be false. Mr. Demonbreun was also alleged to have violated Rule 3.4 of the Rules of Professional Conduct which prohibits a lawyer from falsifying evidence. The conduct was also alleged to be in violation of Rules 8.4(a) and 8.4(b).

~~An evidentiary hearing was conducted by the a hearing panel on June 30, 2009.~~
The evidence presented during that hearing was summarized in the findings of fact included in the judgment of the hearing panel as follows:

3. On or about June 17, 2006, (Mr. Demonbreun) married Tompson. (Mr. Demonbreun) took Tompson and her family on a (sic) expensive honeymoon trip to Europe. (Mr. Demonbreun) also became a caring stepfather to Tompson's daughter, paying for her tuition to a private school, Franklin Road Academy. . . . (Mr. Demonbreun) and Tompson also consulted a fertility expert in anticipation of having children of their own. (Mr. Demonbreun) was intently focused on building a happy life and family with Tompson.

4. (Mr. Demonbreun's) plans soon fell apart. A few months after their return from their honeymoon, Tompson told (Mr. Demonbreun) that she no longer wanted to be married to him. She then moved out of (Mr. Demonbreun's) home in Davidson County, Tennessee, and relocated to Rutherford County, Tennessee.

5. (Mr. Demonbreun) was extremely distraught and shocked by Tompson's decision. On several occasions, he attempted to contact her in person and via telephone. Thereafter, on September 18, 2006, (Mr. Demonbreun) initiated divorce proceedings against Tompson in the Circuit Court for Davidson County, Tennessee. . . . (Mr. Demonbreun) decided to serve Tompson with process in the Divorce Proceedings personally by leaving copies of the Divorce Proceedings and summons inside the screen door of her residence. . . The record indicates that Thompson alleged that

(Mr. Demonbreun) was stalking her, and (Mr. Demonbreun) was arrested by the Murfreesboro Police Department.

6. On the same day (Mr. Demonbreun) filed and served the Divorce Proceedings, Tompson filed a Petition for an Order of Protection in the Circuit Court for Rutherford County, Tennessee. . . . On September 20, 2006, (Mr. Demonbreun) was arrested by the Murfreesboro Police Department for "stalking."

7. On September 26, 2006, the (Rutherford County Circuit Court) entered an Order of Protection . . . which provided as follows:

IT IS THEREFORE, ORDERED, ADJUDGED AND
DECREED

That (Mr. Demonbreun) shall not telephone, contact, or otherwise communicate with the petitioner, directly or indirectly.

8. (Mr. Demonbreun) testified that, after the Order of Protection was entered, he and Tompson had several communications which led him to believe that a reconciliation was possible. On October 6, 2006, (Mr. Demonbreun) voluntarily dismissed the Divorce Proceedings. On October 16, 2006, (Mr. Demonbreun) filed an "Agreed Petition to Modify Ex Parte Protective Order" in the Protection Proceedings, which sought to amend the Order of Protection so as to allow (Mr. Demonbreun) and Tompson to "meet to discuss their marriage and attend scheduled counseling sessions." That Agreed Petition purported to bear the signatures of (Mr. Demonbreun) and Tompson, and was set for hearing on November 9, 2006.

9. On October 26, 2008, Tompson filed her own Divorce Complaint in the (Davidson County Circuit Court).

10. After the entry of the Order of Protection and the filing of the Tompson Divorce Proceedings, (Mr. Demonbreun) maintained contact with Tompson. The record indicates that between September of 2006 and November of 2006, (Mr. Demonbreun) communicated with Tompson via

cellular phone text messages on several occasions. . . . In addition to these text messages, on several occasions between October 30, 2006 and December 15, 2006, (Mr. Demonbreun) unilaterally deposited funds into Tompson's bank account. (Mr. Demonbreun) testified that on more than one occasion he had telephone conversations with friends and/or family of Tompson.

11. On or about November 9, 2006, (Mr. Demonbreun) appeared before the judge presiding over the Protection Proceedings, the Hon. J. Mark Rogers, and presented to Judge Rogers what purported to be an Agreed Order modifying the Order of Protection. . . . (Mr. Demonbreun) represented to Judge Rogers, and testified before this Panel, that he obtained Tompson's signature to the Agreed Order after meeting Tompson in a parking lot. Specifically, he testified to this Panel that Tompson ~~affixed her signature to the Agreed Order, using the top of her steering wheel to do so.~~ (Mr. Demonbreun) further testified that, consistent with the terms of the proposed Agreed Order, he and Tompson attended a counseling session to discuss reconciliation. Judge Rogers, however, appeared before this Panel and testified that, in such matters, he requires that both parties attend hearings to set aside or modify protective orders, so that both petitioner and respondent clearly understand the consequences. Accordingly, using the Agreed Order document, the Judge entered an order denying the Agreed Petition, and noted that Tompson failed to appear. Tompson eventually presented (Mr. Demonbreun's) text messages and other information to Detective West.

12. On March 8, 2007, while (Mr. Demonbreun) and Tompson were both on (Rutherford County Circuit Court) premises, (Mr. Demonbreun) said to Tompson, "I am sorry," or words to that effect. He was swiftly arrested by the Murfreesboro Police Department. For violations of the Order of Protection, the (Rutherford County Circuit Court) held (Mr. Demonbreun) in contempt of court. The Rutherford County General Sessions Court issued a five (5) day jail sentence to (Mr. Demonbreun). (Mr. Demonbreun) served four (4) days of that sentence and was allowed an early release on March 12, 2007. (Mr. Demonbreun) notified the Board of his arrest and jail term.

13. (Mr. Demonbreun) acknowledges that, on or about August 13, 2007, he entered a guilty plea in Rutherford County Circuit Court to charges of misdemeanor stalking and violation of an Order of Protection and was

placed on diversion and probation for eleven (11) months and twenty-nine (29) days. The (Rutherford County Circuit Court) also entered an "Order of Retirement" . . . Thereafter, on November 26, 2007, Tompson filed a Motion to Extend the Order of Protection for five (5) years.

* * *

15. The dissolution of his brief marriage, and the legal fallout, caused severe physical, mental and emotional distress to (Mr. Demonbreun). He was admitted by his father to Vanderbilt University Medical Center on September 11, 2006, where he was initially diagnosed as suffering from "[s]uicidal ideation and depression." He was later admitted to the Psychiatric Hospital at Vanderbilt and was placed under the care of Dr. Roy O. Asta. During his stay, (Mr. Demonbreun) occasionally exhibited "slightly-bizarre" behavior. Dr. Asta diagnosed (Mr. Demonbreun) with depression and prescribed antidepressants. (Mr. Demonbreun) testified that, among other medications, he was taking Ativan, Lunesta, Ambien, CR, Lexapro, Cymbalta and Remeron. On September 12, 2006, (Mr. Demonbreun) checked himself out of (the psychiatric hospital) against Dr. Asta's medical advice. The records introduced into the record by (Mr. Demonbreun) show that Dr. Asta recommended that (he) continue psychiatric and/or psychological treatment after his discharge.

16. (Mr. Demonbreun) testified he consulted Dr. Asta for approximately six (6) months after his discharge from the (psychiatric hospital). Dr. Asta, however, testified that (Mr. Demonbreun) unilaterally ended his treatment, against Dr. Asta's advice. Dr. Asta testified that he usually prepares a letter certifying a patient's fitness to resume work, and he had not done so for (Mr. Demonbreun) at the time (he) stopped treatment. Dr. Asta's testimony indicated to the Panel that (Mr. Demonbreun) remains in need of psychiatric and/or psychological treatment and evaluation.

17. (Mr. Demonbreun) testified that his mental and emotional distress was a central factor in the conduct and decisions leading to the Protection Proceedings and Criminal Proceedings. (Mr. Demonbreun) has claimed that his depression, and the effects of prescription medication he was taking for his condition (most notably, Ativan) diminished his capacity to discern the propriety of his conduct, or the consequences thereof. His testimony and demeanor made it apparent to this Panel that he still suffers

from mental and emotional distress. (Mr. Demonbreun) resumed his practice, and has acknowledged his mistakes, but is still in the process of putting his personal life back together.

18. Finally, (Mr. Demonbreun) testified that his conduct was to a great degree triggered by the mixed messages Tompson sent him in the weeks and months after their separation. (Mr. Demonbreun) presented evidence that Tompson initiated many of the contacts with him, at a time when he held out hope of reconciliation. He also claims that many of the criminal complaints Tompson initiated against him were designed to advance her interests in the Tompson Divorce Proceedings, which became final on February 28, 2008, by Final Decree wherein the court (Kurtz, J.) directed (Mr. Demonbreun) to remit \$20,000.00 to Tompson, and to assume sole responsibility for a debt owing to Franklin Road Academy for the school tuition for Tompson's daughter. The Final Decree also extended the Order of Protection for two and a half years from the hearing date, February 20, 2008.

Based upon these facts, the hearing panel found that, the purported signature of Tompson on the agreed petition presented to the Rutherford County Circuit Court did not resemble her signature on other documents in the record and more closely resembled Mr. Demonbreun's writing than Ms. Tompson's. The panel concluded Mr. Demonbreun filed the agreed petition with a signature he knew was inauthentic in violation of Rule 3.3 and 3.4 of the Rules of Professional Conduct. The hearing panel also found that Mr. Demonbreun knowingly violated the order of protection which is prohibited by Rule 8.4(g)² of the Rules of Professional Conduct. Finally, the hearing panel found the foregoing violations of the Rules of Professional Conduct amounted to professional misconduct in violation of Rule 8.4(a).

On September 3, 2009, the hearing panel filed its Findings and Judgment of the Panel, suspending Mr. Demonbreun's license to practice law for a period of four months effective September 15, 2009, and requiring, as a condition of reinstatement, that he submit a letter from a physician, psychiatrist or psychologist that he is mentally fit to practice law and that be monitored by the Tennessee Lawyer Assistance Program for a period of three years. On September 8, 2009, Mr. Demonbreun filed a Petition for Writs of Certiorari and Supersedeas in the Chancery Court for Davidson County, Tennessee. In

²The Hearing Panel referred to it as Rule 8.4(b) but quoted the text of 8.4(g). The Panel made no finding as to whether Mr. Demonbreun violated Rule 8.4(b) which prohibits a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness.

his petition, Mr. Demonbreun complained that the hearing panel failed to file its findings within fifteen days as provided in Rule 9, § 8.3, Rules of the Supreme Court, that the hearing panel had mis-characterized the testimony of Dr. Asta with regard to Mr. Demonbreun's need for further psychiatric treatment and that the effective date of his suspension set by the hearing panel denied him the right to an appeal from their judgment in violation of due process. He asked the court to "modify the ruling of the hearing panel so that it conforms to the material evidence presented at the hearing" and to declare that the action of the hearing panel suspending Mr. Demonbreun's license prior to completion of an appeal to be a violation of due process. Thereafter, on motion of the Board, the case was remanded to the hearing panel for the purpose of allowing the hearing panel to correct the transcript of the proceedings and the Board to file a motion to alter or amend. A corrected transcript was prepared and approved by the hearing panel³ and the judgment was amended to delete the effective date of the suspension and to provide as a condition of reinstatement of Mr. Demonbreun's license a simple referral to the Tennessee Lawyer Assistance Program and compliance with their recommendations rather than the previous three-year monitoring provision.

Rule 9 § 8.3, Rules of the Supreme Court, provides: The hearing panel shall, in every case, submit its findings and judgment, in the form of a final decree of a trial court, to the Board within 15 days after the conclusion of its hearing. The hearing in this case was conducted on June 30, 2009. The findings and conclusions of the hearing panel were filed September 3, 2009, about 65 days later. The court is of the opinion that the 15 day provision in the rule is directory only and does not defeat the jurisdiction of the hearing panel nor affect the efficacy of their determinations.

With regard to Dr. Asta's testimony, Mr. Demonbreun takes issue with the hearing panel's finding that "Dr. Asta's testimony indicated to the Panel that (Mr. Demonbreun) remains in need of psychiatric and/or psychological treatment and evaluation." He asserts that, to the contrary, Dr. Asta testified that he did not know whether or not Mr. Demonbreun was mentally fit to practice law. He argues that the panel's requirement that he obtain a letter from a practicing psychiatrist and the referral to the Tennessee Lawyer Assistance Program is therefore based upon the hearing panel's personal observations of him during the hearing of this matter.⁴

³While the corrected transcript is much improved over the original, it still contains errors. The court believes, however, it is sufficient to give a fair sense of what occurred at the hearing.

⁴The hearing panel explained in a footnote as follows:

At various times throughout the proceedings, (Mr. Demonbreun) appeared visibly troubled and shaken. While the Panel understands the stress caused to (Mr.

The court has carefully read the testimony of Dr. Asta. While he did testify that he could not determine whether Mr. Demonbreun was currently fit to practice law without re-establishing the doctor-patient relationship, he also described Mr. Demonbreun's decision to discontinue treatment as unfortunate. The relevant testimony, as contained in the corrected transcript, is as follows:

Q. (By Mr. Demonbreun) Did I stop seeing you?

A: Unfortunately you did that yourself in February. That was the last time you made a follow-up appointment.

Dr. Asta testified that he would like to have performed an evaluation prior to releasing Mr. Demonbreun to return to work in order to identify the symptoms which would indicate a need for additional treatment in order to prevent a re-occurrence of Mr. Demonbreun's severe depression. Dr. Asta also testified that when he was contacted by Mr. Demonbreun about the upcoming hearing a month or two prior to the disciplinary hearing, he explained to Mr. Demonbreun "that he really needed to continue treatment." In the opinion of the court there is substantial and material evidence that supports the hearing panel's finding that Dr. Asta's testimony indicated Mr. Demonbreun remains in need of psychiatric or psychological treatment and evaluation.

While not raised in his Petition for Writs of Certiorari and Supersedeas, Mr. Demonbreun argued additional grounds during the hearing of his petition. First, Mr. Demonbreun complains that the hearing panel's finding that he submitted a petition to the Rutherford County Circuit Court with an inauthentic signature was based upon the inadmissible hearsay testimony of Judge Rogers that Ms. Tompson had testified in his court that she did not sign the agreed petition. First, the court would note that Mr. Demonbreun admitted in his answer to the Supplemental Petition for Discipline that Ms. Tompson testified that she did not sign the agreed petition. Second, because of the condition of the transcript, it is not clear that Mr. Demonbreun objected to the admission of this testimony. Clearly, he did not object to its admission the first two times Judge Rogers testified as to what Ms. Tompson stated in his court. Finally, while the testimony may have caused the hearing panel to examine the evidence as to the authenticity of the signature, it does not appear that the hearing panel relied upon the truth of what Ms. Tompson testified to before Judge Rogers. Rather, the panel compared the signature of

Demonbreun) as a result of these proceedings, and specifically, in representing himself, these observations, coupled with the testimony of Dr. Asta -- (Mr. Demonbreun's) own witness -- cannot be ignored by the Panel.

Ms. Tompson on other documents to that contained on the agreed petition and found by a preponderance of the evidence that it was not her signature.

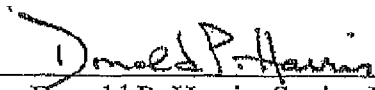
During the hearing of his petition, Mr. Demonbreun also complained that the signatures of Ms. Tompson used in the comparison had not been authenticated. These signatures were, however, contained in documents submitted into evidence by Mr. Demonbreun and identified by him as being her signature. In the opinion of the court, the signatures used in the comparison were sufficiently authenticated and the finding of the hearing panel that the signature on the agreed petition was not that of Ms. Tompson was supported by material and substantial evidence. While the court may have reached a different result, as stated above, this court should not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.

Mr. Demonbreun also argued that suspension was not the appropriate sanction. It ~~appears to the court that the panel noted that the ABA Standards for Imposing Lawyer Sanctions (ABA Standards), provide that suspension or disbarment are appropriate sanctions where a lawyer submits a false document or knows that a false document is being submitted to a court. The panel also noted that these sanctions are appropriate where 'the lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another party, and in the process causes serious or potentially serious injury to (or serious or potentially serious interference with) a legal proceeding.'~~ The panel recognized that, in accordance with ABA Standard 2.3, lawyer suspensions generally should be "equal to or greater than six months." The panel considered the aggravating and mitigating factors and determined that a suspension of less than six months was warranted in this case. Certainly, the panel's sanction was, under the circumstances, within a reasonable range of possible sanctions that it could have imposed. The court is of the opinion that the recommended suspension of Mr. Demonbreun's license to practice law and the conditions of reinstatement are not arbitrary, capricious, or an unwarranted exercise of discretion.

Conclusion

For the foregoing reasons, the court is of the opinion the petition filed by Mr. Demonbreun seeking to overturn the action of the hearing panel should be denied and that the judgment of the hearing panel should be affirmed in all respects. A decree will be filed simultaneously with this Memorandum denying the relief requested by Mr. Demonbreun, affirming the judgment of the hearing panel, and assessing costs to Mr. Demonbreun.

This the 1st day of September, 2011.


Donald P. Harris, Senior Judge

c: Randall J. Spivey
1101 Dermit Drive, Suite 730
Nashville, TN37217

~~Richard A. Demonbreun~~
746 Benton Avenue
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