

IN THE CIRCUIT COURT FOR KNOX COUNTY, TENNESSEE

Herbert S. Moncier,)
)
 Petitioner,)
)
 v.)
)
 Board of Professional Responsibility)
 of the Supreme Court of Tennessee,)
)
 Respondent.)

No. 3-133-10

CATHERINE F. QUIST
FILED
FEB 18 2011
Kelly

ORDER

The Court has before it the Board of Professional Responsibility's motion to set aside the Memorandum and Order of this Court rendered on September 8, 2010.¹ Mr. Moncier has filed a response to the motion. In addition, the Court also has before it Mr. Moncier's motion for relief from Orders and petition for declaratory judgment.

This case is an appeal of a decision by a Hearing Panel of the Board of Professional Responsibility adverse to Mr. Moncier. Mr. Moncier appealed that decision by petition for writ of certiorari pursuant to SCR 9, § 1.3 in accordance with Tenn. Code Ann. § 27-9-101 - 114. Mr. Moncier's petition to review the Hearing Panel's decision of January 12, 2010 was filed on March 31, 2010. This Court by Memorandum and Order entered September 8, 2010, affirmed in part and reversed in part the Hearing Panel's decision, and remanded back to the Hearing Panel for reconsideration of the imposed discipline.

¹ The Court assumes that the Board of Professional Responsibility's motion is filed pursuant to Tenn. R. Civ. P. 60.02(3) or (5). A judgment is void if the Court "lacked jurisdiction over either the subject matter or the person, or did not have the authority to make the challenged judgment." *Team Design v. Gottlieb*, 104 S.W.3d 512, 525 (Tenn. Ct. App. 2002).

The issue is whether this Court should dismiss Mr. Moncier's petition, as this Court was "deprived of jurisdiction," because Mr. Moncier's petition to review the decision of the Board of Professional Responsibility Hearing Panel's decision was not under oath and did not contain the language that "this was the first application for the writ." See *Board of Professional Responsibility v. Caywood*, ___ S.W.3d ___, 2010 WL 5141785 (Tenn. Dec. 20, 2010). In turn, this would require the Court to set aside its September 8, 2010 decision.

Mr. Moncier argues that *Caywood* should be applied only prospectively. Any consideration of prospective application of *Caywood* would be inconsistent with the Supreme Court's application of *Caywood* in *Nebel v. Board of Professional Responsibility*, ___ S.W.3d ___, 2011 WL 197868 (Tenn. Jan. 21, 2011).

Based upon *Caywood* and *Nebel*, the motion of the Board of Professional Responsibility to set aside this Court's prior disposition of Mr. Moncier's petition for writ of certiorari is GRANTED. The petition for writ of certiorari is DISMISSED. This Court never had jurisdiction over the case.

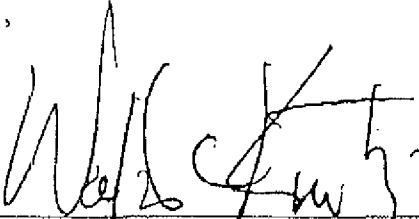
Mr. Moncier's motion for relief from orders and petition for declaratory judgment is DENIED and DISMISSED. This motion and petition are simply an imaginative attempt to sidestep the holdings in *Caywood, supra*, and *Nebel, supra*.

The issue before the Court is simple: Mr. Moncier's petition did not comply with Tenn. Code Ann. § 27-8-106.² This Court therefore never had jurisdiction, the appeal was a nullity, and this Court's ruling of September 8, 2010 was equally a nullity. Mr. Moncier has lost his opportunity to appeal the Hearing Panel's decision. *Caywood*, 2010 WL 5141785, at *2.

² *Caywood* explains why the Tenn. Code Ann. § 27-8-106 applies. See *Caywood*, 2010 WL5141785, at *2.

It is so ORDERED.

This the 18 day of February, 2011,



Senior Judge Walter C. Kartz

cc:

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