

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

DANNY KAYE DOCKERY,

Appellant,

v.

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

Appellee.

)
)
)
)
)
)
)
)
)
)
)

FOR PUBLICATION

Filed: October 14, 1996

SHELBY COUNTY

HON. J. STEVEN STAFFORD,
JUDGE

No. 02-S-01-9507-CH-00056

FILED

October 14, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

For Appellant: _____ For Appellee: _____

Danny K. Dockery
Pro Se
Memphis, TN

Laura L. Chastain
Deputy Chief
Disciplinary Counsel
Nashville, TN

O P I N I O N

AFFIRMED AS MODIFIED.

BIRCH, C.J.

Danny Kaye Dockery, Esquire, appeals the judgment of the Chancery Court of Shelby County suspending him from the practice of law for specified violations of the Code of Professional Responsibility committed in connection with his representation of Deborah Dalton. After a painstaking examination of the record and a thorough consideration of the issues presented, we find that the record fully supports the trial court's judgment except as to the amount of money Dockery must pay Dalton as a prerequisite for reinstatement.

I

The record indicates that Dalton was injured in an automobile accident in September 1985. She received medical treatment at a Memphis hospital and consulted a local attorney to handle her claim. Soon thereafter, she moved to the state of Florida, where she obtained further medical treatment from Jerome M. Dolinsky, P.A., D.C. Also, she engaged E. Randall Beider, a Florida lawyer, to handle her claim for personal injury arising out of the automobile accident.

In December 1986, Dalton returned to Memphis, terminated her agreement with Beider, and retained Dockery to represent her in her claim. She agreed to pay Dockery a contingent fee of one-third of the proceeds remaining after payment of medical expenses. On

March 17, 1987, Dockery, at Dolinsky's request, agreed to withhold and remit Dolinsky's fees from any recovery.

Evidently, Dockery negotiated Dalton's claim to settlement. On November 17, 1987, the insurer issued its check in the amount of \$7,500 in full settlement of Dalton's claim.¹ Dockery deposited this check into his escrow account on December 8, 1987.

On December 9, 1987, Dockery issued a check to Dalton in the amount of \$2,500. The check is inscribed "Full settlement to close Dalton v. Coffey." Dockery did not inform Dolinsky of the settlement or that some of the proceeds remained in his escrow account. He did not remit any funds to Dolinsky at this point. Moreover, Dockery did not provide Dalton with an accounting or other statement showing how the funds received to her credit had been disbursed.

Dolinsky subsequently discovered that the case had been settled and funds disbursed. He waged an aggressive and persistent effort to collect his fee of \$1,068 for medical services rendered. These efforts proved futile. On July 1, 1991, Dolinsky complained

¹The settlement check was made payable to Deborah Dalton, Danny Dockery, and the two other attorneys that Dalton initially consulted in this cause of action.

to the Board of Professional Responsibility that Dockery had not paid him.²

Dolinsky's complaint led to the initiation of formal disciplinary charges against Dockery. In a petition filed December 19, 1991, the Board of Professional Responsibility charged Dockery with violation of the following disciplinary rules:

DR 1-102(A)(1)(violating a disciplinary rule);

DR 1-102(A)(3)(engaging in illegal conduct involving moral turpitude);

DR 1-102(A)(4)(engaging in conduct involving dishonesty);

DR 1-102(A)(5)(engaging in conduct prejudicial to the administration of justice);

DR 1-102(A)(6)(engaging in conduct adversely reflecting on fitness to practice law);

DR 1-106(A)(collecting or charging excessive fee);

DR 6-101(A)(1)(handling legal matter not competent to handle);

DR 6-101(A)(2)(handling legal matter without adequate preparation);

DR 6-101(A)(3)(neglecting legal matter entrusted to lawyer);

DR 7-101(A)(1)(failing to act diligently and promptly);

²The record reveals that Dockery paid Dolinsky on May 21, 1992.

DR 7-101(A)(2)(failing to keep client informed of status of case);

DR 7-101(A)(3)(failing to provide client with sufficient information to make informed decision);

DR 7-101(A)(4)(failing to comply with employment contract);

DR 7-101(A)(8)(knowingly engaging in illegal or unethical conduct);

DR 9-102(A)(failing to properly deposit client funds);

DR 9-102(B)(1)(failing to promptly notify client of the receipt of funds);

DR 9-102(B)(2)(failing to properly identify client funds);

DR 9-102(B)(3)(failing to properly maintain records of client funds);
and

DR 9-102(B)(4)(failing to promptly pay client).

II

The disciplinary proceeding progressed; it soon became apparent that a settlement could not be effected. Accordingly, a hearing panel was appointed pursuant to Rule 9, § 6.4, Rules of the Supreme Court of Tennessee. The record reflects that during the discovery process prior to the formal hearing before the disciplinary hearing panel, Dockery's willful and persistent efforts to derail the process became a source of consummate frustration for the panel. Dockery seized every opportunity to

thwart, stymie, and delay the orderly progress of the cause, and its procedural path is paved with Dockery's unkept promises and dilatory ploys. So egregious and blatant was Dockery's resistance that counsel for the Board sought and received orders of sanction pursuant to Rule 37.02 (A) and (B), Tennessee Rules of Civil Procedure.³

Sanctions notwithstanding, the hearing panel convened and took proof from several witnesses and from Dockery. His testimony, in the main, addressed matters more mitigating in nature, and he made no serious contest of the salient facts. In these circumstances, the facts upon which the violations were grounded stand virtually intact as alleged. The record reveals, nonetheless, that the panel extended to Dockery every modicum of "due process." Perhaps the best example of this deference is found in the panel's decision to permit Dockery to testify, thereby disregarding the sanctions previously requested and imposed.

³Under 37.02(A), where a party fails to obey a discovery order, the court may "order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order." Tenn. R. Civ. P. 37.02(A).

Rule 37.02(B) allows the trial court to enter "[a]n order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence." Tenn. R. Civ. P. 37.02(B).

After a full evidentiary hearing, the panel found that Dockery, indeed, had violated several sections of the Code of Professional Responsibility in connection with the Dalton matter. The panel's findings and conclusions are quoted as follows:

It is the finding of the Panel that in numerous instances over an extended period Respondent co-mingled entrusted funds with his personal funds, that he misapplied and misappropriated to his own use and benefit the funds entrusted to him. He failed to pay his client the amount she was owed and failed to maintain his records in a professional manner that would permit him to demonstrate what he had done with the settlement proceeds. The proof demonstrated a pattern by Respondent of mismanaging his escrow account, his escrow account records and using his escrow account for payment of personal and office expenses and showing no appreciation for the importance of maintaining his records accurately and doing this over an extended period of time. The acts and omissions of the Respondent constitute violations of the following provisions of the Code of Professional Responsibility:

DR 1-102 Misconduct . . .

DR 9-102 Preserving Identity of Funds of Property of a Client . . .

The Panel also finds a violation of T.C.A. § 23-3-201(3)⁴

Respondent's refusal and failure to appropriately respond to Disciplinary

⁴Tenn. Code Ann. § 23-3-201(3) provides that any attorney, solicitor, or counselor-at-law admitted to practice in the courts of Tennessee may be disbarred or suspended from the practice of law for wrongfully retaining money or property of a client for an unreasonable period of time after a demand has been made.

Counsel and the Board regarding allegations of ethical misconduct constitutes an additional violation of DR 1-102(A)(5)(6).

The panel imposed the following sanctions:

1. Suspension of license for two years;
2. Reinstatement to be conditioned upon:
 - A. Payment of \$1,500 to Dalton, and
 - B. Successful completion of a three-hour legal ethics course at an accredited Tennessee law school.

Dockery prosecuted an appeal in the nature of a petition for writ of certiorari to the Chancery Court of Shelby County, a right provided by Supreme Court Rule 9, § 8.3. The trial court heard the matter, and again Dockery testified in his own behalf. At the conclusion of the hearing, the trial court entered an order adopting the findings of fact and conclusions of law reached by the panel and approved the discipline imposed.

III

Dockery is before this Court as a matter of right pursuant to Rule 9, § 1.3, Rules of the Supreme Court of Tennessee. The issues are: (1) whether the trial court erred in refusing to admit certain evidence; and (2) whether the reinstatement conditions were reasonable.

Supreme Court Rule 9, § 1.3 limits our review to "the transcript of the record from the circuit or chancery court, which shall include the transcript of evidence before the hearing [panel]." Our standard of review is de novo upon the record of the trial court with a presumption of correctness unless the evidence preponderates against the trial court's findings.⁵ Tenn. R. App. P. 13(d); Gillock v. Board of Professional Responsibility, 656 S.W.2d 365, 367 (Tenn. 1983); Scruggs v. Bracy, 619 S.W.2d 101 (Tenn. 1981).

Regarding the first issue, Dockery sought to introduce certain documents into evidence at the hearing in the trial court. The trial court sustained the objection to their admission on hearsay grounds. Rulings on the introduction of evidence are usually within the discretion of the trial judge and will not be reversed except for an abuse of that discretion. State v. Campbell, 904 S.W.2d 608, 116 (Tenn. 1995); State v. Baker, 785 S.W.2d 132, 134 (Tenn. Crim. App. 1989); see also Tenn. R. Evid. 104. We are unable to conclude that the trial court abused its discretion in refusing to admit the proffered evidence.

Even so, we have examined the questioned documents in light of Dockery's implication that he disbursed funds in payment

⁵The trial court's "review shall be on the transcript of the evidence before the hearing committee, its findings and judgment and upon such other proof as either party may desire to introduce. The trial judge shall weigh the evidence and determine the facts by the preponderance of the proof." Sup. Ct. R. 9, § 1.3.

of Dalton's medical bills for which he has received no credit. The documents proffered are not in the least probative of this implication, and the trial court's ruling on their admissibility was eminently correct.

In deciding what discipline to impose, the trial court considered, in addition to the other evidence, the following factors submitted by the Board as aggravating factors:

- (1) Dockery's prior disciplinary offenses;
- (2) Dockery's pattern of misconduct;
- (3) Dockery's bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with disciplinary rules or orders;
- (4) Dockery's submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (5) Dockery's refusal to acknowledge the wrongful nature of his conduct;
- (6) the vulnerability of Dockery's victim;
- (7) Dockery's substantial legal experience;
- (8) Dockery's indifference to making restitution.⁶

As previously stated, the trial court suspended Dockery's license to practice law for two years. Although Dockery has not

⁶These circumstances appear in Standards for Imposing Lawyer Sanctions § 9.22 (ABA 1986). The Board has adopted these standards for disciplinary matters.

directly challenged the suspension, he has referred to it in a rather oblique manner. He has failed, however, to brief the issue or discuss it.

The trial court imposed two conditions for reinstatement; Dockery challenges both. The first condition requires that Dockery pay Dalton the sum of \$1,500; Dockery maintains that he does not owe Dalton that amount. We are unable to determine from the record before us how the amount of \$1,500 was derived. However, the record does amply demonstrate that Dockery has failed to pay or account for all sums owing to Dalton. We calculate the amount Dockery owes Dalton to be \$1788.⁷

Regarding the second condition of reinstatement, Dockery argues that "requiring [him] to attend a Tennessee law school is not within the power of neither the petitioner or the Board of Professional Responsibility. This would require the participation of a party not in a relationship to either [himself] or the Board and is unreasonable." Ample precedent exists for conditioning reinstatement upon further legal education.⁸ See, e.g., Board of

⁷The settlement for Dalton is \$7,500. The attorney's fee is one-third after medicals are paid. The medicals for Dolinsky totaled \$1,068. Subtracting the medicals from the settlement leaves \$6,432. One-third of this as the attorney's fee leaves Dockery with \$2,144, \$976 of that going to Beider, the Florida attorney. Dalton is entitled to two-thirds of \$6,432 or \$4,288. Dalton has already received \$2,500; therefore, she is due \$1,788.

⁸We interpret "further legal education" to mean a regular curriculum course, not a continuing legal education course.

Professional Responsibility v. Bonnington, 762 S.W.2d 568, 570 (Tenn. 1988)(a lawyer suspended for one year or more must prove by clear and convincing evidence that the lawyer has the moral qualifications, competency, and learning in law required for admission to practice and that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar or the administration of justice); Disciplinary Counsel ex rel. Board of Professional Responsibility v. Davis, 696 S.W.2d 528 (Tenn. 1985)(taking of bar examination condition to reinstatement).

In light of the record before us and applicable law, we are unable to conclude that the evidence preponderates against the trial court's findings, except as to the sanction requiring payment of \$1,500 to Dalton. Accordingly, we enter judgment against Dockery in favor of Dalton in the amount of \$1,788, which judgment must be satisfied as a condition of reinstatement. In all other respects, the judgment is affirmed.

ADOLPHO A. BIRCH, JR., Chief Justice

CONCUR:

Drowota, Anderson, Reid, White, JJ.