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NO. COA09-1607

NORTH CAROLINA COURT OF APPEALS

Filed: 21 December 2010

JERRY MILTON HAYNIE, IT'S ELECTRIC  
ELECTRICAL CONTRACTORS,  
Petitioner,

v.

Wake County  
No. 09 CVS 1654

NORTH CAROLINA STATE BOARD OF  
EXAMINERS OF ELECTRICAL  
CONTRACTORS,  
Respondent.

Appeal by petitioner from order dated 20 May 2009 by Judge A. Leon Stanback, Jr., in Wake County Superior Court. Heard in the Court of Appeals 13 May 2010.

*Wood, Rabil & Peake, L.L.P., by Thomas R. Peake, II, for petitioner-appellant.*

*Young, Moore & Henderson, P.A., by John N. Fountain and Reed N. Fountain, for respondent-appellee.*

BRYANT, Judge.

On 10 December 2008, respondent, the State Board of Examiners of Electrical Contractors, conducted an administrative hearing regarding petitioner Jerry Milton Haynie and It's Electric Electrical Services. The Board rendered a final agency decision by order dated 29 December 2008 permanently revoking petitioner's license to engage in business as an electrical contractor. On 29 January 2009, petitioner filed a document entitled "Judicial Review

of Proceedings Appeal of Order" which contained no text beyond the caption. A copy of the Board's order was attached to the document. On the same date, petitioner also filed a document entitled "Motion for Stay of Proceedings Appeal Order." On 5 February 2009, petitioner filed an "Amended Judicial Review of Proceedings Appeal Order" which again contained no text beyond the caption, as well as an "Amended Motion for Stay of Proceedings Appeal Order." On 24 February 2009, the Board moved to dismiss. On 15 April 2009, petitioner filed a "Motion to Amend the Pleadings", a "Petition for Judicial Review" and a "Motion for a More Definite Statement." Following a hearing on 20 May 2009, by order dated 20 May 2009, the trial court denied petitioner's request for a stay and motion for a more definite statement, allowed respondent's motion to dismiss, and affirmed the Board's order. On 19 June 2009, petitioner filed a notice of appeal. Subsequently, on 2 July 2009, petitioner filed a Motion for Relief under Rule 60 in the trial court. Thereafter, petitioner submitted both an appellate brief and moved this Court to remand to the trial court for a Rule 60 determination. On 22 February 2010, we denied petitioner's motion to remand. On 6 May 2010, upon reconsideration of petitioner's "Motion to Remand for Rule 60 Determination," we remanded to the trial court to conduct an evidentiary hearing on the Rule 60(b) motion pending before it.<sup>1</sup>

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<sup>1</sup> This appeal was held in abeyance pending the trial court's consideration of petitioner's Rule 60(b) motion. See *Bell v. Martin*, 43 N.C. App. 134, 142, 258 S.E.2d 403, 407 (1979) (holding that "the better practice is to allow the trial court to consider a Rule 60(b) motion filed while the appeal is pending for the limited purpose of indicating, by a proper entry in the record, how it would be inclined to rule on the motion were the appeal not

By order filed 8 November 2010 and filed with this Court 17 November 2010, the trial court made numerous findings of fact and indicated that it would be inclined to deny petitioner's Rule 60 motion were this appeal not pending before this Court. For the reasons discussed herein, we affirm the trial court's 20 May 2009 order.

### *Facts*

Prior to entry of the Board's 29 December 2008 order, petitioner held a license to engage in business as an electrical contractor; the license was issued in the name of petitioner's business, It's Electric. In January 2007, petitioner contracted to perform electrical work at a church in Winston-Salem. In connection with this project, the Board found that petitioner: engaged in a project valued in excess of the \$25,000 limitation applicable to his license; failed to complete the project in a timely manner and then abandoned it; had multiple failed inspections due to code violations and incomplete work; and operated under names other than that licensed by the Board. On this basis, the Board permanently revoked petitioner's license to engage in business as an electrical contractor. Petitioner then sought judicial review.

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Petitioner's brief to this Court contains two arguments: the trial court erred and abused its discretion in (I) denying his

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pending"), *rev'd on other grounds*, 299 N.C. 715, 264 S.E.2d 101 (1980); see also *Hall v. Cohen*, 177 N.C. App. 456, 628 S.E.2d 469 (2006); *Davis v. Sellers*, 115 N.C. App. 1, 443 S.E.2d 879 (1994).

motion to amend his petition and allowing the Board's motion to dismiss and (II) affirming the Board's order without properly considering petitioner's exceptions.

*I*

Petitioner first argues that the trial court erred and abused its discretion in denying his motion to amend his petition and allowing the Board's motion to dismiss. We disagree.

We first note that the trial court did not deny petitioner's motion to amend in its 21 May 2009 order or in any other order contained in the record on appeal. Rather, the trial court denied petitioner's request for a stay, denied petitioner's motion for a more definite statement, allowed respondent's motion to dismiss, and affirmed the Board's order. Further, our careful review of this order reveals that, despite the decretal portion of the order indicating that the Board's motion to dismiss was allowed, the trial court actually conducted the full judicial review which petitioner sought, using the whole record test to review the Board's decision. Finding 6 states that the Board's motion to dismiss was "well-taken in that the pleadings filed by [p]etitioner in [the trial court] are totally inadequate to specify error purportedly committed by the Board[.]" However, findings 7 and 8 state that the trial court, in its discretion, applied the whole record test to review the Board's decision despite the inadequacy of petitioner's pleading. Finding 9 states that petitioner's motion to amend was not filed until 15 April 2009, and that petitioner did not raise or argue the amended pleading at the 20

April 2009 hearing. Finding 9 also states that the trial court reviewed the amended pleadings, but "conclude[d] that the contents do not alter the conclusion that the decision of the Board was not in violation of any of the grounds for relief [under the APA]."

Thus, the trial court did *not* deny petitioner's motion to amend in the order from which he appeals, and therefore, the issue is not properly before us. However, the trial court *did* consider his amended pleading and *did* apply the whole record test in reviewing the Board's decision as petitioner requested. Thus, we do not comprehend how petitioner has been prejudiced by the trial court's actions or what benefit he would hope to gain if we were to remand this case to the trial court for entry of an order allowing or denying his motion to amend. Petitioner has received the full judicial review which he sought and to which he was entitled under the APA. Petitioner's arguments on this point are overruled.

## II

Petitioner also argues that the trial court erred and abused its discretion in affirming the Board's order without properly considering petitioner's exceptions. We disagree.

As discussed *supra*, the trial court's order makes clear that it had the amended petition before it and applied the whole record test to review the Board's decision. In his brief to this Court, petitioner states that the trial court erred by "conducting its review of the Board's Order without properly considering [his] exceptions." Petitioner asserts that the trial court may have applied the wrong standard of review, suggesting that he made

exceptions as to purported errors of law in the Board's order, which would require a de novo review by the trial court. See *Blalock v. N.C. Dept. of Health and Human Serv.*, 143 N.C. App. 470, 475-76, 546 S.E.2d 177, 182 (2001).

However, we have carefully reviewed petitioner's amended petition and reject this contention. Petitioner's purported amended petition is difficult to comprehend, but, being mindful that petitioner was acting *pro se*, we have endeavored to find something that could be construed as an exception in it. It appears to this Court that petitioner's complaint is that one exhibit before the Board was an order from a different agency, the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors ("the Heating Board") regarding petitioner's license as a heating contractor.<sup>2</sup> Petitioner asserts that the Board received this order in violation of N.C. Gen. Stat. § 132-1.1 (2009), entitled "Confidential communications by legal counsel to public board or agency; State tax information; public enterprise billing information; Address Confidentiality Program information" and thereby violated his privacy. However, section 132-1.1 is wholly inapplicable to petitioner's case as it deals with attorney-client privilege and confidential communications. The order from the Heating Board is neither; rather, it is a matter of public record.

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<sup>2</sup> The superior court's review of the Heating Board's revocation order is the subject of a related appeal and opinion filed contemporaneously with this opinion. See *Haynie v. North Carolina Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (2010) (unpublished).

Hearings before the Board are governed by the Administrative Procedures Act ("APA"). N.C. Gen. Stat. § 150B-1 *et seq.* (2009). Section 150B-45 provides for judicial review in the superior court of final agency decisions by filing of a petition. N.C. Gen. Stat. § 150B-45 (2009). Section 150B-46 provides, in pertinent part, that "[t]he petition shall explicitly state what exceptions are taken to the decision or procedure and what relief the petitioner seeks." N.C. Gen. Stat. § 150B-46 (2009). We have previously held that a "petition was not sufficiently explicit to allow effective judicial review" where the party seeking review "did not except to any finding of fact or conclusions of law, but made only generalized complaints as to certain procedural aspects of the hearing before respondent." *Vann v. North Carolina State Bar*, 79 N.C. App. 173, 174, 339 S.E.2d 97, 98 (1986) (applying the predecessor statute to N.C.G.S. § 150B-46).

Like the petition in *Vann*, petitioner's purported amended petition for judicial review did not except to any finding of fact or conclusions of law and consisted of only a generalized complaint. Thus, it would be insufficient to sustain judicial review under the APA. On these facts, we believe the trial court was very generous in exercising its discretion and conducting a whole record test review of the Board's decision on petitioner's behalf. This argument is overruled.

Affirmed.

Judges ELMORE and ERVIN concur.

Report per Rule 30(e).