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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-117

Filed 15 October 2024

The North Carolina State Bar, No. 22 BCR 2

IN RE: PETITION FOR REINSTATEMENT OF LAW LICENSE OF DAVID SHAWN CLARK.

Appeal by petitioner from order entered 27 October 2023 by the Disciplinary Hearing Commission of the North Carolina State Bar. Heard in the Court of Appeals 11 September 2024.

James, McElroy & Diehl, P.A. by Edward T. Hinson, Jr. and Sigmon, Clark, Mackie, Hanvey & Ferrell, P.A. by Jason White for Petitioner-Appellant.

The North Carolina State Bar, by Deputy Counsel Robert Weston and Counsel Carmen H. Bannon, for Respondent-Appellee.

DILLON, Chief Judge.

Petitioner David Shawn Clark appeals from an order denying his reinstatement to the North Carolina State Bar. After careful review, we affirm the Disciplinary Hearing Commission's ("DHC") decision.

I. Background

Petitioner was licensed to practice law in North Carolina in 1997.

In January 2009, Petitioner was appointed to represent a client in a juvenile

abuse, neglect, and dependency case. The client separately hired Petitioner to serve as counsel in a domestic matter involving her estranged husband. During the representation, Petitioner and his client engaged in a sexual relationship for approximately three months.

In September 2009, Petitioner ran for a public office position. Around the same time, the client's estranged husband learned about the sexual relationship and informed Petitioner he planned to file a lawsuit for alienation of affection.

Petitioner prepared a false affidavit for his client sign, which denied any sexual relations. Petitioner threatened his client by telling her that if she did not sign the affidavit, "he would see to it that she would lose custody of her children." Petitioner also told his client that she should "watch her back" because if she did not cooperate, things would "get ugly."

The client's estranged husband filed suit against Petitioner in January 2010. Petitioner filed a suit against his client and her estranged husband, falsely asserting that the client defamed him by disclosing their sexual relations and also falsely asserting his client had fabricated emails between Petitioner and herself. Petitioner's legal assistant knew about the relationship with the client. After the legal assistant informed Petitioner she would not lie under oath for him, Petitioner stated, "then you know I'm going to have to kill you?"

Petitioner was charged criminally with felonies of obstruction of justice and suborning perjury. He pleaded guilty to two misdemeanor counts of communicating

threats and obstruction of justice. Petitioner subsequently responded to a Letter of Notice from the Grievance Committee of the State Bar concerning the misconduct. At his disciplinary hearing, the DHC found more than sufficient evidence to support disbarment of Petitioner.

In January 2019, Petitioner petitioned for reinstatement. DHC denied his petition for reinstatement. Petitioner then appealed the DHC order to the State Bar Council (“Council”), which affirmed and adopted the DHC order, denying Petitioner’s petition for reinstatement. Petitioner appealed to this Court following the first denial of reinstatement. We affirmed the Council’s denial of reinstatement. *See In re Reinstatement of Clark*, 272 N.C. App. 577 (2020) (unpublished opinion).

In April 2022, Petitioner filed a second petition for reinstatement. The DHC again denied Petitioner’s reinstatement. The DHC concluded that Petitioner had failed to demonstrate: (1) he was reformed and presently possessed the moral character required for admission to practice law and (2) his reinstatement would not be detrimental to the integrity and standing of the bar, administration of justice, and to the public interest. Petitioner timely appealed to our Court.

II. Analysis

In reviewing a DHC order, we look at the whole record to determine whether there is sufficient evidence to deny Petitioner’s petition. We also review the DHC order to ensure there has been no abuse of discretion.

The whole record test “requires the reviewing court to determine if the DHC’s

findings of fact are supported by substantial evidence in view of the whole record, and whether such findings of fact support its conclusions of law.” *North Carolina State Bar v. Talford*, 356 N.C. 626, 632 (2003). The decision of the Council must be upheld unless there is “a showing that [its] actions are manifestly unsupported by reason ... [and] so arbitrary that the ruling could not have been the result of a reasoned decision.” *In re Skinner*, 370 N.C. 126, 140 (2017) (citation omitted). It should be noted that “the mere presence of contradictory evidence does not eviscerate challenged findings, and the reviewing court may not substitute its judgment for that of the committee.” *North Carolina State Bar v. Key*, 189 N.C. App. 80, 84 (2008).

In Petitioner’s July 2022 sworn response to the State Bar’s interrogatories in this case, he maintained the position that the only purpose of the affidavit was to deceive his wife and that he had never used it for legal purposes. This was proven to be false, as Petitioner used the affidavit to support his denial of sexual relations with his client to the State Bar.

Additionally, in the most recent reinstatement hearing, Petitioner still denies that he made any threats to his former client or employee. The DHC also found that Petitioner failed to acknowledge, or take responsibility for, any personal characteristics which made it possible for him to engage in the misconduct. The DHC found this as fact based on Petitioner’s testimony that his misconduct was due to the pressure he was under during his campaign running for District Attorney. Additionally, testimony was entered from three lawyers, who previously represented

Petitioner's former client. All opined Petitioner's reinstatement would be detrimental to the integrity and standing of the bar

III. Conclusion

Based on the whole record before us, we hold that there was substantial evidence to show facts supporting the conclusion of law in the DHC's decision. We discern no abuse of discretion and, therefore, affirm the DHC's decision.

AFFIRMED.

Judge TYSON and Judge WOOD concur.

Report per Rule 30(e).