



D115981989

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JUDGE ROBERT P. RUEHLMAN
COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STEPHANIE GAYE MILLARD,
Plaintiff-Appellant,

Case No.: A1506230

v.

ACCOUNTANCY BOARD OF OHIO,
Defendant-Appellee.

ADMINISTRATIVE APPEAL
DECISION

ENTERED
OCT 13 2016

RUEHLMAN, R., Presiding Judge

Appellant, Stephanie G. Millard, brought this administrative appeal from appellee, Accountancy Board of Ohio ("Board"), revoking her certificate to practice accountancy. In this appeal, Millard argues that the Board's decision lacked reliable, probative, and substantial evidence to support its findings. To understand and decide her assignment of error, the Court must review the background leading to the charges and the evidence adduced at the administrative hearing.

BACKGROUND LEADING TO CHARGES

On April 15, 1989, Millard was issued certified public accountant certificate number 23,594. In 2002, Millard began her relationship with the Cincinnati College Preparatory Academy ("CCPA"), a charter school located in Hamilton County, Ohio. CCPA received funding from private resources, private grants, and the Ohio Department of Education. From July 1, 2006 through February 26, 2013, Millard served as an outside, contract treasurer where she oversaw payroll, grant writing, check writing and signing, and general financial help for the organization. In addition, Millard worked closely with Lisa Hamm, Superintendent of CCPA.

Beginning July 3, 2006 through July 12, 2006, the CCPA Board approved a four person group, including Hamm and Millard, to attend a conference in San Diego, California. The conference took place from July 9 through 12. The group left six days prior to the conference and went vacationing and sightseeing. The group claimed to have visited some charter schools while on the trip, however, no school visits occurred. In addition, unauthorized individuals were present during portions of the trip. The CCPA Board approved \$5,000 for the conference; however, Millard and the group spent \$20,039.37. No

group member went back to the CCPA Board to have it ratify the expenditure of the additional funds. All expenditures were paid by Millard using Ohio Department of Education and/or CCPA funds.

Several years later, from June 4, 2008 through June 19, 2008, the CCPA Board approved a seven day residency program for Hamm and Clayton Mathews in Liverpool, England. Hamm and Mathews flew into Paris, France where they met Millard. The group of three then spent several days in Paris before going to London, England; Manchester, England; and Edinburgh, Scotland. No CCPA business or school visits were conducted outside the residency program. The cost of this trip was \$32,438.43. All expenditures were paid by Millard using Ohio Department of Education and/or CCPA funds.

In light of these events and others, on March 6, 2013, a Hamilton County grand jury indicted Millard, charging her with twenty-six (26) counts of felony criminal conduct. The indictment charged nine (9) counts of theft in office, in violation of R.C. § 2921.41(A)(1); nine (9) counts of unauthorized use of property of another, in violation of R.C. § 2913.04; and eight (8) counts of tampering with evidence, in violation of R.C. § 2921.12(A)(2). In the indictment, the grand jury charged Millard with committing the aforementioned crimes for the purpose of devising a scheme to defraud. Specifically, the grand jury charged Millard with deception and fraud by making, presenting, or using documents, records, or other things to mislead investigators concerning the nature or purpose of certain transactions serving as the basis for the theft and unauthorized use charges or to mislead investigators concerning the use of funds.

On February 25, 2015, Millard entered a plea bargain whereby she pled guilty to two (2) first-degree misdemeanor counts of unauthorized use of property of another, in violation of R.C. § 2913.04(A), and the prosecution dismissed all other charges. Of note, Millard maintained her innocence throughout the duration of the proceedings, and only entered this plea agreement by use of an Alford plea. At the conclusion of sentencing, Millard was placed on two (2) years community control, ordered to pay restitution of \$2,000, and ordered to pay court costs and probation fees. On March 15, 2016, the court granted Millard's Motion for Early Termination of Probation, in part because all probation protocol, restitution, costs and fees were paid in full.

NOTICE OF DISCIPLINARY ACTION

On April 22, 2015, the Board notified Millard of her disciplinary hearing. The Notice informed Millard that the Board may take disciplinary action against her certificate due to her two first-degree misdemeanor convictions for unauthorized use of property under R.C. § 2913.04. The Notice charged Millard with a violation of R.C. § 4701.16(A)(6) for having been convicted of a crime, an element of which is dishonesty or fraud.

DISCIPLINARY HEARING

On November 6, 2015, a disciplinary hearing was held before the Board pursuant to R.C. Chapter 119. The hearing was held to determine whether Millard should be disciplined for her convictions on two first-degree misdemeanor counts of unauthorized use of property, in violation of R.C. § 2913.04. At the conclusion of the hearing, the Board voted 9-0 to revoke Millard's certificate to practice accountancy in the State of Ohio, pursuant to its authority under R.C. § 4701.16(A)(6), which provides that the Board "may discipline an Ohio registration, a firm registration, [or] a CPA certificate...for...[a] conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States." Subsequently, Millard timely filed the current appeal challenging the findings and conclusions of the Board's Adjudication Order.

STANDARD OF REVIEW IN ADMINISTRATIVE APPEALS

In an administrative appeal under R.C. § 119.12, a court of common pleas must determine whether the agency's order was supported by reliable, probative, and substantial evidence, and was in accordance with law. *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571, 589 N.E.2d 1303; *Weaver v. Ohio Dept. of Job & Family Servs.*, 153 Ohio App.3d 331, 2003-Ohio-3827, 794 N.E.2d 92, ¶ 2. The court must give due deference to the agency's resolution of evidentiary conflicts and may not substitute its judgment for that of the agency on factual issues. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111, 17 O.O.3d 65, 407 N.E.2d 1265; *Weaver, supra*, at ¶ 2. Reliable evidence is dependable, confidently trusted, and provides reasonable probability that the evidence is true. *Our Place*, 63 Ohio St.3d, at 571.

Furthermore, an administrative agency's construction of a statute that the agency is empowered to enforce must be accorded due deference. See, e.g., *Leon v. Ohio Bd. of*

Psychology (1992), 63 Ohio St.3d 683, 687, 590 N.E.2d 1223, 1226; *Chaney v. Clark Cty. Agricultural Soc., Inc.* (1993), 90 Ohio App.3d 421, 426, 629 N.E.2d 513, 516–517. Unless the construction of a statute is unreasonable or impermissible, the construction given to it by the agency should be followed by reviewing courts. *Leon*, 63 Ohio St.3d at 687, 590 N.E.2d at 1226; *Chaney*, 90 Ohio App.3d at 426, 629 N.E.2d at 516–517. But the court need not accept improperly drawn inferences from the evidence or evidence that is not reliable and probative. *Prinz v. Ohio Counselor & Social Worker Bd.* (Jan. 21, 2000), 1st Dist. No. C-990200, 2000 WL 43707; *Hi Rise, Inc. v. Ohio Liquor Control Comm.* (1995), 106 Ohio App.3d 151, 153, 665 N.E.2d 707.

The common pleas court's "review of the administrative record is neither a trial *de novo* nor an appeal on questions of law only, but a hybrid review in which the court 'must appraise all the evidence as to the credibility of the witnesses, the probative character of the evidence, and the weight thereof.'" *Lies v. Veterinary Med. Bd.* (1981), 2 Ohio App.3d 204, 207, 2 OBR 223, 441 N.E.2d 584 (quoting *Andrews v. Bd. of Liquor Control* (1955), 164 Ohio St. 275, 280, 58 O.O. 51, 131, N.E.2d 390). Therefore, a trial court's review of an administrative agency decision involves two inquiries: (1) a hybrid factual/legal inquiry, and (2) a purely legal inquiry. *Bartchy v. Ohio Bd. Of Edn.*, 120 Ohio St.3d 205, 212, 2008 Ohio 4826, 897 N.E.2d 1096, 1106, ¶37 (2008). Lastly, the judgment of the court shall be final and conclusive unless reversed, vacated, or modified on appeal. R.C. § 119.12(N).

PRESENT APPEAL

Millard alleges one assignment of error in this appeal: that the Board's decision lacked reliable, probative, and substantial evidence to support its findings. In support of this position, Millard argues (1) that the Board lacked a basis in law to reach its conclusion; and (2) the discipline the Board imposed is arbitrary, capricious, excessive, unfair, and so disproportionate to the seriousness of any conduct involved.

DISCUSSION

In support of this appeal, Millard relies heavily upon her own version of events, and her own interpretation of the law. Specifically, Millard argues, *inter alia*, that her Alford plea in the criminal matter was not an admission of guilt, and her two convictions of unauthorized use of property of another, in violation of R.C. § 2913.04, did not include an

element of dishonesty or fraud, under R.C. § 4701.16(A)(6), which the Board used as a basis in determining to revoke her CPA license. Millard further argues that a purpose to defraud is not equivalent to an element of defraud. Lastly, Millard argues that her conduct falls outside the scope of the statute for dishonesty or fraud.

Here, the Board found that Millard was convicted of the aforementioned misdemeanors, which were originally indicted as felonies, because Millard participated in a scheme to defraud a non-profit corporation. Specifically, that in her role, she had check writing authority, and wrote checks for two conferences where there was no evidence that corporate business was conducted. In support of this position, the Board relied upon the facts as agreed to within the criminal proceeding, and in support of Appellee's position.

In the matter at bar, the Court finds it necessary to address Appellant's argument regarding the effect of her Alford plea, in light of the Board's decision. It is well settled law, that the elements of a crime must be gathered wholly from the statute. *State v. Warner* (1990), 55 Ohio St.3d 31, 564 N.E.2d 18. Similar to R.C. § 2943.03, Crim.R. 11 states, with reference to the offense pled to, a guilty plea is a complete admission of guilt. Crim.R. 11 further indicates that, once a guilty plea is accepted, the court shall proceed to sentencing. *The trial court cannot sentence a defendant upon the acceptance of a guilty plea to fewer than all of the elements of the offense.* Thus, Crim.R. 11 does not permit a guilty plea to fewer than all of the elements of an offense and is not in conflict with R.C. 2943.03.

Although not controlling in this case, R.C. Chapters 2901 and 2937 provide further insight that a guilty plea, including an Alford plea, cannot be made to fewer than all of the elements of a crime charged in an indictment. R.C. § 2937.09, which describes the plea procedure for felony cases at an arraignment in further detail, states, in relevant part, "If the defendant enters a written plea of guilty or, pleading not guilty, affirmatively waives the right to have the court or magistrate take evidence concerning the offense, *the court or magistrate forthwith and without taking evidence may find that the crime has been committed.*" (Emphasis added.)

In sum, the Revised Code and the Rules of Criminal Procedure do not contemplate guilty pleas to fewer than all elements of a crime. The language employed by the sections of the Revised Code and the Rules of Criminal Procedure pertinent to guilty pleas employ the words "charge," "offense," "crime," and "indictment" in describing guilty plea procedure. The plain meaning of the words "charge," "offense," "crime," and "indictment" indicate that it was the General Assembly and the Supreme Court's intent to allow for a guilty plea to an

entire offense, not individual elements of an offense. Consequently, a guilty plea cannot be made to fewer than all elements of an offense. *State v. Bibler*, 2014-Ohio-3375, ¶¶ 15-19, 17 N.E.3d 1154, 1158-59.

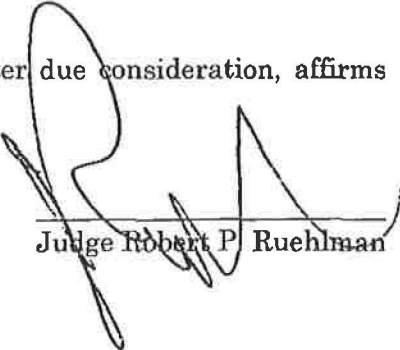
Millard was charged and plead guilty to unauthorized use of property, which R.C. § 2913.04(A) states is “knowingly operated the use of the property without the consent of the owner and the offense was committed for the purpose of devising a scheme to defraud or obtain property or services.” Here, the indictment cited R.C. § 2913.04(F)(3)(c), charging the Appellant with a felony of the fourth-degree based upon her participation in a scheme to defraud and on the amount of property or services involved in the scheme. Therefore, if the case had gone to trial, a prosecutor would have had to prove the element of a fraud or a scheme to defraud for the conviction of the first-degree misdemeanor. R.C. § 2945.75(A) states that when the presence of one or more additional elements makes an offense one of more serious degree, the indictment must allege the additional elements.

Thus, in order to enhance the degree of the charge of unauthorized use of property from a misdemeanor to a felony of the fourth degree, R.C. § 2913.04(F)(3)(c) requires the prosecutor prove the additional element of a fraudulent scheme and the amount of the property involved. Therefore, the prosecutor must prove the element that it was a scheme to defraud. At the criminal trial, no evidence was presented because Millard pled guilty to the two counts of unauthorized use of property. In addition, what makes it a misdemeanor of the first degree is to devise a scheme or defraud. The prosecutor would have to prove that element in order to get the enhancement of the misdemeanor of the first degree.

Therefore, this Court finds that the Board’s decision was based upon substantial and reliable evidence as presented within the administrative proceeding. In addition, the Court finds that the law supports the Board’s decision, and that the Board’s imposed discipline is not arbitrary, capricious, or disproportionate to the seriousness of the proceeding.

CONCLUSION

THEREFORE, the Court, being fully advised and after due consideration, affirms the decision of the Board.



Judge Robert P. Ruehlman

JUDGE ROBERT P. RUEHLMAN
Court of Common Pleas 6
Hamilton County, Ohio