

IN THE COURT OF APPEALS OF IOWA

No. 6-423 / 05-1044
Filed October 25, 2006

DAN E. MIULLI, D.O.,
Plaintiff-Appellant,

vs.

THE IOWA CLINIC, P.C., JOHN R. MAWK, M.D., STUART (RANDY) WINSTON, M.D., JOHN C. VAN GILDER, M.D., BRUCE L. HUGHES, M.D., THE STATE OF IOWA, CATHY MCCULLOUGH, THERESA O'CONNELL WEEG, JOHN C. VAN GILDER, M.D., in His Capacity as a File Reviewer, STUART (RANDY) WINSTON, M.D., in His Capacity as Member of the Iowa Board of Medical Examiners, QUENTIN DURWARD, M.D., in His Capacity as a Member of the Iowa Board of Medical Examiners, BRUCE L. HUGHES, M.D., in His Capacity as a Member of the Iowa Board of Medical Examiners, and STUART (RANDY) WINSTON, M.D., in His Capacity as a Consultant to the Iowa Board of Medical Examiners,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Carla T. Schemmel and D.J. Stovall, Judges.

Plaintiff appeals from a ruling granting defendants' motions for summary judgment and dismissal. **AFFIRMED.**

Michael Sellers, West Des Moines, for appellant.

Patrick J. Hopkins of Gaudineer, Comito & George, L.L.P., West Des Moines, for appellee Bruce L. Hughes, M.D.

J. Richard Johnson of White & Johnson, P.C., Cedar Rapids, and Jason Miller and Harry Perkins III of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for appellee Stuart (Randy) Winston, M.D.

John F. Lorentzen and Patrick B. White of Nyemaster, Goode, West, Hansell & O'Brien, P.C., Des Moines, for appellee The Iowa Clinic, P.C.

Lisa R. Perdue and Patrick J. McNulty of Grefe & Sidney, P.L.C., Des Moines, for appellee John R. Mawk, M.D.

Thomas J. Miller, Attorney General, and Shirley A. Steffe, Assistant Attorney General, for appellees State of Iowa, Theresa O'Connell Weeg, and Cathy McCullough.

Richard M. Tucker and Pope S. Yamada, Iowa City, for appellee John C. VanGuilder, M.D.

N. Richard Willia of Willia, Stahle & Andreasen, L.L.P., Sioux City, for appellee Quentin Durward, M.D.

Heard by Sackett, C.J., and Mahan and Zimmer, JJ.

MAHAN, J.

Dr. Dan Miulli, a neurosurgeon, appeals from the district court's ruling granting the defendants'¹ motions for summary judgment and dismissal. In 2001, following an extensive investigation and four-day hearing, the Iowa Board of Medical Examiners issued a forty-nine-page written decision restricting Dr. Miulli's license to practice medicine and ordering him to undergo retraining before he could practice neurosurgery without restrictions. The Board's decision was affirmed by the district court on judicial review and by this court on appeal. See *Miulli v. Iowa Bd. of Med. Exam'rs*, No. 03-0319 (Iowa Ct. App. April 28, 2004).

Dr. Miulli filed this action in July 2001, while the administrative charges brought by the Board were pending. Dr. Miulli's petition included various counts related to the defendants' alleged tortious conduct in relation to their respective roles in the Board's proceedings to restrict his medical license. The defendants filed motions for summary judgment and motions to dismiss. The district court granted motions for summary judgment filed by The Iowa Clinic and Drs. Mawk,

¹ Dr. John R. Mawk was the chief of neurosurgery at Mercy Hospital in Des Moines and is an employee of The Iowa Clinic, P.C. He reported complaints regarding Dr. Miulli's practice with the Iowa Board of Medical Examiners. Dr. Stuart (Randy) Winston was chief of neurosurgery at Mercy when Dr. Miulli first applied for privileges, an employee of The Iowa Clinic, and a member of the Board for a short period of time during the investigation of Dr. Miulli's case. Dr. John C. Van Gilder is a neurosurgeon in Iowa City, and served on the peer review committee at the request of the Board. Dr. Quentin Durward was a member of the Board and served on the hearing panel for Dr. Miulli's case. Dr. Bruce L. Hughes was a member of the Board and participated at a Board disciplinary committee meeting in January 2001, at Dr. Miulli's request. Dr. Huges did not serve on hearing panel for Dr. Miulli's case. Cathy McCullough was the Board's investigator. Theresa O'Connell Weeg is an assistant attorney general who acted as general counsel and/or prosecuting attorney for the Board.

Winston, Van Gilder, and Hughes; and motions to dismiss filed by the State, McCullough, Weeg, and Dr. Durward.

Dr. Miulli appeals, arguing the district court erred in sustaining the defendants' motions. Upon our review for correction of errors at law, Iowa R. App. P. 6.4; *Iowa Tel. Ass'n v. City of Hawarden*, 589 N.W.2d 245, 250 (Iowa 1999), we affirm the district court.

Dr. Miulli asserted at the administrative hearing before the Board that the charges against him were the result of a conspiracy to destroy his practice and of unfair bias and prejudice. The Board rejected his assertions, concluding:

In order to fulfill its obligation to protect the public, the Board is required to investigate all complaints that are made, regardless of the source of the complaint or possible bias of the complainant. The investigation of the complaint in this case revealed legitimate, serious concerns about [Dr. Miulli's] competency. The abundant evidentiary record documents several substantial violations of the standard of care and serious concerns about [Dr. Miulli's] clinical and operative judgment.

Dr. Miulli again raised the issue of bias in his petition for judicial review. The district court affirmed the Board's ruling, addressing Dr. Miulli's claims of bias in detail. On appeal to this court, Dr. Miulli again raised the issue of bias. This court, in an unpublished opinion, affirmed the district court's ruling, concluding in relevant part:

[T]hroughout his brief, Dr. Miulli alleges that several individuals involved in the disciplinary process were biased against him. The Board and the district court carefully considered Dr. Miulli's allegations of bias, and found the Board's action was based on serious medical concerns, not merely bias against Dr. Miulli. We find the Board's decision is supported by substantial evidence.

Miulli, No. 03-0319 (Iowa Ct. App. April 28, 2004).

After a careful review of the record in this case, we conclude the allegations raised by Dr. Miulli are nothing more than an improper collateral attack on the Board's decision and the subsequent decisions on appeal.² A collateral attack is

an attack made by or in an action or proceeding that has an independent purpose other than by impeaching or overturning of the judgment, although impeaching or overturning the judgment may be necessary to the success of the action.

City of Chariton v. J.C. Blunk Constr. Co., 253 Iowa 805, 816, 112 N.W.2d 829, 835 (1962) (citation omitted). Dr. Miulli “does not ask that the previous judgment be set aside; [he] ignores it and asks damages on a contention which was clearly answered adversely to [him].” *Id.* at 817, 112 N.W.2d at 835-36. The Board and the courts on judicial review found no evidence that a conspiracy or bias tainted the administrative proceedings. The administrative order and related decisions on judicial review would necessarily be impeached or overturned if Dr. Miulli was successful in this case--clearly an impermissible result. Accordingly, we affirm the district court's rulings dismissing Dr. Miulli's claims.

AFFIRMED.

² While this was not the ground upon which the district court relied in ruling on the defendants' motions, it was a ground urged by the defendants in district court; therefore, we may uphold the district court's rulings on this basis. *DeVoss v. State*, 648 N.W.2d 56, 61 (Iowa 2002).