

Court of Appeals, State of Michigan

ORDER

In re Alice Hinnawi R Ph

Docket No. 323931

LC No. 11-120635

Amy Ronayne Krause
Presiding Judge

Donald S. Owens

Stephen L. Borrello
Judges

The Court orders that the application to take a delayed appeal is DENIED for lack of merit in the grounds presented.

Ronayne Krause, J., would remand this case to the lower court. While it is true that a failure of actual delivery does not invalidate service, if the non-delivery was attributable to the licensee's refusal to accept service. As § 16192(2) provides: "The department may serve a notice of hearing or a complaint on an applicant, licensee, or registrant in an action or proceeding for a violation of this article, article 7, or article 8 or a rule promulgated under this article, article 7, or article 8 by regular mail and by certified mail, return receipt requested, to the applicant's licensee's, or registrant's last known address, by serving the notice on the applicant, licensee, or registrant, or by making a reasonable attempt to serve the notice on the applicant, licensee, or registrant. For purposes of this subsection, if service is by mail, service is effective 3 days after the date of mailing, and nondelivery does not affect the validity of the service if the nondelivery was caused by the refusal of the applicant, licensee, or registrant to accept service."

This case contains very specific and unique facts that indeed verify that respondent did not receive service. Respondent's husband hid the information from respondent as he is friends with respondent's business partner.

While it is true that mailing creates a presumption that the documents were received, respondent argues that the presumption of service can be rebutted and the question of whether it was rebutted is for the trier of fact. *Stacey*, 19 Mich App at 694. No findings of fact were made by the disciplinary subcommittee because respondent filed her request for reconsideration too late. She filed her request for reconsideration or rehearing after the 21 days for doing so under the APA had elapsed. MCL 24.287(3); MCR 2.704(1). Therefore, respondent's argument that she never received actual notice of the disciplinary case was not considered by the disciplinary subcommittee and therefore she was unable to rebut the presumption.

The loss of a health professional license is a matter of due process. This case should be remanded to the disciplinary subcommittee so that findings of fact may be made at that level regarding the motion for reconsideration.

Notably, respondent was unaware of the suspension of her license until August 11, 2014. The previous Saturday she was accessing a pharmacy computer database and was denied access. On August 11th she was informed that her license had been suspended and this is the first she knew of this. It seems axiomatic that she did not know that her license was suspended if she was attempting to access such a database. While this knowledge of the suspension may have technically been in time to file a motion for reconsideration or rehearing with the 21-day period, as her license was suspended on July 31, 2013, addressing the merits would be difficult if not impossible without copies of the administrative complaint and final order, which respondent did not obtain until August 25, 2014.

This case should be remanded on the basis of justice and due process.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

DEC - 4 2014

Date


Chief Clerk