

SUPREME COURT OF ARIZONA

In the Matter of the Application) Arizona Supreme Court
for Reinstatement of a Disbarred) No. SB-14-0041-R
Member of the State Bar of)
Arizona) Office of the Presiding
) Disciplinary Judge
LISE R. WITT,) No. PDJ20149003
Attorney No. 13118)
)
Applicant.) **FILED 12/12/2016**
_____)

O R D E R

On December 2, 2014, the Court dismissed Applicant Witt's application for reinstatement without prejudice. The Court's order permitted Witt to reopen the application in twelve months provided she continued her mental health therapy. On December 31, 2014, the Court issued an order clarifying the procedures and burden of proof if she reopened her application. The order provided:

Witt may offer any additional evidence to meet her burden to show by clear and convincing evidence that she is rehabilitated, that she is competent, and that she poses no further threat to members of the public. *In re Arrotta*, 208 Ariz. 509, 512 ¶ 12, 96 P.3d 213, 216 (2004). The hearing panel should consider this additional evidence, along with the other evidence in the record, in making its recommendation.

On January 11, 2016, Witt filed a Supplemental Application for Reinstatement. On April 1, 2016, a hearing was held before a hearing panel on the supplemental application. Witt presented evidence of her continued mental health therapy, community activities, and good character. On May 9, 2016, the hearing panel

issued a "Supplemental Report and Recommendation to Re-Opened Application." The panel recommended that Witt's application for reinstatement be denied.

Under Rule 65(b)(4), Ariz. R. Sup. Ct., the Court has reviewed the panel's supplemental report, Witt's supplemental response, and the record in this matter. We review a hearing panel's factual findings applying a clearly erroneous standard. *In re Johnson*, 231 Ariz. 556, 557 ¶ 1, 298 P.3d 904 (2013). As detailed below, the Court finds a number of the hearing panel's factual findings were clearly erroneous because they were not supported by the evidence. In addition, it is not clear from the panel's reports that it considered Witt's evidence of good character and rehabilitation. Accordingly, the matter will be remanded to the hearing panel for reconsideration.

First, Witt presented evidence regarding her mental health, including evidence that she suffered from Bipolar Type II. The hearing panel questioned Witt's diagnosis of Bipolar Type II. The panel found that Witt's current doctor, Dr. Neff, based his diagnosis on facts she provided and the records of her previous treating doctor, Dr. Kwoh. The panel, however, "found no such diagnosis" by Dr. Kwoh. Supplemental Report and Recommendation to Re-Opened Application, p. 23. This finding is clearly erroneous as Dr. Kwoh testified that he conducted his own evaluation of Witt in

2012 and also diagnosed her with Bipolar Type II disorder. RT of May 22, 2014, p. 107. The record shows that at least four medical doctors have diagnosed Witt with Bipolar Type II disorder. She has been in therapy and receiving medication to treat her symptoms for this disorder since 2012. Further, the State Bar did not present any evidence contradicting this diagnosis.

Second, the panel found that the medical evidence in the record was clear that Witt had a personality disorder. Supplemental Report, p. 23. The panel also found that Dr. Neff had diagnosed Witt with a personality disorder and that "[m]ultiple doctors in the record before us have concluded Ms. Witt has a personality disorder." *Id.* These findings are clearly erroneous. There is no medical evidence in the record that Witt was diagnosed with a personality disorder.

Third, the panel questioned whether the psychiatric treatment Witt received from Dr. Neff was the type of continued "mental health therapy" contemplated by this Court. The panel found that cognitive behavioral therapy was the type of treatment Witt needed to demonstrate her rehabilitation. Further, the panel believed that Dr. Neff did not provide treatment for Witt's narcissistic traits because "Witt minimized her condition and did not adequately inform Dr. Neff of what was required, but instead directed him to do what she wanted." *Id.* p. 22. These findings are not supported

by the record. This Court's order did not specify the type of mental health therapy Witt should receive. Further, there is nothing in the record indicating that Witt directed the type of therapy she would receive. On the contrary, Dr. Neff testified that the case was transferred from Dr. Kwoh in July of 2014 as a "supportive therapy medication management case." RT of April 1, 2016, p. 36. Dr. Neff testified that he did not engage in cognitive behavioral therapy with Witt because when the case was transferred to him there was nothing in the record indicating that this therapy was necessary or needed to be continued. The record demonstrates that Dr. Neff, in consultation with his supervising physician, made a professional assessment and directed the therapy plan for Witt. The evidence showed that Witt followed the plan as directed. Witt's continued mental health therapy complied with this Court's order.

Fourth, the panel remains concerned that Witt continues to refuse to take the "medically accepted" therapeutic dose of her medication. The panel found "We have no evidence before us except the testimony of Ms. Witt that the partial dosage she said she takes has any impact on her at all." Supplemental Report, p. 24. This finding is incorrect. Dr. Schulte's evaluation report indicated that Witt was responding well in 2011 to the lower dose of the medication. Stipulated Exhibit 11. Dr. Cheryl Roth

testified at the 2014 reinstatement hearing that the lower dose of the medication was the therapeutic dose for Witt. RT of May 22, 2014, p. 160. Further, Dr. Kwoh admitted that the lower dose seemed effective for Witt in view of her mood stability. *Id.* p. 143. Thus, there was evidence in the record to support a finding that the reduced dosage was therapeutic for Witt. While there is some evidence that the reduced dosage is therapeutic for Witt, the panel may require a blood test to assist in its determination.

Finally, it is not clear that the panel considered all the evidence Witt offered to demonstrate rehabilitation and good character. At the May 22, 2014 hearing, Witt presented evidence to establish her rehabilitation and good character through witness testimony and character letters. This evidence should have been weighed against any evidence in the record tending to show a lack of rehabilitation or good character. See *In re Hamm*, 211 Ariz. 458, 465 ¶ 25, 123 P.3d 652, 659 (2005). The panel's decision, however, fails to make any reference to this evidence. Thus, it is not clear that the panel considered Witt's evidence in reaching its recommendation.

IT IS ORDERED remanding this matter to the panel for reconsideration in light of this order. The panel may reopen the

proceeding and accept additional evidence if it sees fit.

DATED this 12th day of December, 2016.

_____/s/_____
SCOTT BALES
Chief Justice

TO:

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