

The Court of Appeals
of the
State of Washington
Division III

FILED
May 23, 2023
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

RICHARD J. EGGLESTON, M.D.,

Appellant,

v.

WASHINGTON MEDICAL COMMISSION,

Respondent.

No. 39731-9-III

COMMISSIONER'S RULING

Richard J. Eggleston, M.D., has appealed a May 17, 2023, superior court order denying his motion for a preliminary injunction. Dr. Eggleston sought to enjoin a three-day fact-finding, disciplinary hearing scheduled before the Respondent, Washington Medical Commission, which is scheduled to begin May 24, 2023. He now comes before this court requesting a stay of the proceedings before the Washington Medical Commission to preserve his First Amendment right to free speech.

FACTS

The Washington Medical Commission filed a Statement of Charges against Dr. Eggleston on August 9, 2022. The Commission seeks to sanction Dr. Eggleston based on allegations that he, a currently retired physician and surgeon whose license is currently retired active-in-state volunteering, committed unprofessional conduct in violation of RCW 18.130.180(1), (13), and

(22) (acts involving moral turpitude, misrepresentation in the conduct of the business or profession, and interference with an investigation by willful misrepresentation of facts before the disciplining authority) by making “false statements regarding medical issues and promulgated misinformation regarding the SARS-CoV-2 virus and treatments for the virus” in a handful of periodic newspaper columns he wrote for the Lewiston Tribune. Decl. of Kristin G. Brewer in Support of Mem. in Opposition to Pet’r’s Emergency Motion for Injunction Pursuant to RAP 8.3, Ex. 1 at 2 (May 22, 2023). An administrative fact-finding hearing on the Commission’s Statement of Charges is scheduled for May 24-May 26, 2023.

Dr. Eggleston denies that he committed unprofessional misconduct and unsuccessfully moved to dismiss the disciplinary proceedings on the ground that the opinions contained in his newspaper columns are entitled to First Amendment protection and, as applied, the statutes upon which the Commission relies to bring its charges violate his federal and state constitutional rights to free speech. He then filed a declaratory judgment action in superior court and unsuccessfully moved for a preliminary injunction. He appealed the order denying his injunction request and filed an emergency motion to stay the administrative proceeding pending review in this court.

ANALYSIS

This court has authority to issue orders, before or after acceptance of review . . . to insure effective and equitable review, including authority to grant injunctive or other relief to a party.” RAP 8.3. “[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254, 57 S. Ct. 163, 81 L. Ed. 153 (1936); *see also Clinton v. Jones*, 520 U.S. 681, 117 S. Ct. 1636, 137 L. Ed. 2d 945 (1997). When

deciding a motion to stay proceedings in one matter pending disposition of another case, the court must “weigh competing interests and maintain an even balance.” *Landis*, 299 U.S. at 254-55. It considers factors including but not limited to judicial economy, unnecessary expense or delay, and potential hardship to the parties. A court may consider granting a stay of one proceeding where a case in another court has the propensity to be dispositive of the issue at hand and a decision has not yet been rendered.

Here, the Washington Medical Commission asserts an interest in exercising its police power to protect public health and acting as a disciplinary body for members of the medical profession by carrying out the fact-finding hearing to create a record for appellate review and to resolve issues of fact and credibility that require the expertise of the Commission to resolve. Granting a stay would inconvenience the State’s witnesses and members of the Commission, who have planned to take time away from their regular schedules to attend this three-day hearing. The Commission has not demonstrated that a stay would cause actual harm to the public.

Dr. Eggleston has a competing interest in enjoining the disciplinary proceedings in order to seek First Amendment protection for his speech, which is the reason for the administrative proceedings in the first place. Denying a stay would, according to Dr. Eggleston, violate his constitutional right to free speech.

“‘[P]ublic dialogue’ by a professional . . . receives the greatest First Amendment protection.” *Tingley v. Ferguson*, 47 F.4th 1055, 1072-73 (9th Cir. 2022). And, regardless of whether the Commission’s charges against Dr. Eggleston succeed, “[t]he chilling effect upon the exercise of First Amendment rights” by not only Dr. Eggleston but also other members of the medical profession “may derive from the fact of the prosecution.” *Dombrowski v. Pfister*, 380

No. 39731-9-III

U.S. 479, 486, 85 S. Ct. 1116, 14 L. Ed. 2d 22 (1965). Balancing the parties competing interests and hardships favors Dr. Eggleston.

Judicial economy and unnecessary delay and expense also weigh in Dr. Eggleston's favor. His claim for injunctive relief could be dispositive of the administrative proceedings. Consequently, pursuit of review of the trial court's decision denying injunctive relief weighs heavier than potentially unnecessary time and expense spent by the parties, lawyers, witnesses, and commission members on a three-day administrative hearing that may be constitutionally precluded. Furthermore, in the event Dr. Eggleston is not entitled to review as a matter of right or discretion (which is what this court will have to decide), any delay caused by a stay will be brief.

Accordingly, IT IS ORDERED, Dr. Richard J. Eggleston, M.D.'s Emergency Motion for Injunction Pursuant to RAP 8.3 is granted. The Washington Medical Commission's administrative hearing on the Statement of Charges against Dr. Eggleston is hereby stayed pending further proceedings in this court.



Hailey L. Landrus
COMMISSIONER