Roger Williams University Law Review

Volume 26
Issue 3 *Vol. 26: No. 3 (Summer 2021)*

Article 7

Summer 2021

Banki v. Fine, 224 A.3d 88 (R.I. 2020)

Richard Tavares
Candidate for Juris Doctor, Roger Williams University School of Law

Administrative Law. *Banki v. Fine*, 224 A.3d 88 (R.I. 2020). Pursuant to the Administrative Procedures Act, the Rhode Island Superior Court has general subject-matter jurisdiction and equitable jurisdiction to hear appeals against state administrative agencies. However, its judicial intervention is only appropriate to review a final order, with the sole exception for interlocutory orders being when review of the agency's final order would be an inadequate remedy. An order denying a motion to dismiss is not a final order and the exception for interlocutory orders requires showing that continuing the administrative process would be futile or would make the requested relief ineffective. The appropriate remedy for an incomplete or deficient record is to either remand to the agency or order limited discovery.

FACTS AND TRAVEL

On July 2, 2013, the Defendant, the Rhode Island Department of Health (the Department), through the Investigating Committee of its Board of Medical Licensure and Discipline, "made a finding of unprofessional conduct" against Mohammed Banki, M.D., D.M.D., and Frank Paletta M.D., D.M.D. (the Physicians).[1] On December 19, 2013, the Department made formal charges and scheduled an administrative hearing.[2] However, the Physicians' discovery was hindered by the Department's failure to adequately comply with several of the Physicians' discovery requests, and so, on May 9, 2014, a hearing officer entered a conditional order of dismissal against the Department unless it complied with the discovery requests by May 14, 2014.[3] Although the Department gave responses for the discovery requests by the date ordered, on May 21, 2014, the Physicians moved to dismiss, alleging that the

1. Banki v. Fine, 224 A.3d 88, 91 (R.I. 2020). The Physicians are "both medical doctors and dentists, but . . . their practice was primarily in the area of dentistry." *Id.* at 92 n.5.

2. *Id.* at 92.

3. *Id.*

responses were inadequate.[4] After a hearing, and another attempt by the Department to satisfy the discovery requests, the hearing officer denied the Physicians' motion to dismiss in a written order (the Order), concluding that the Department had obeyed the conditional order.[5]

Following the denial of their motion to dismiss by the hearing officer, the Physicians entered a complaint in Rhode Island Superior Court pursuant to the Administrative Procedures Act,[6] arguing that the Order was final and as such, appealable.[7] The Department argued that the complaint should be dismissed because the denial of the motion to dismiss was an interlocutory order and not a final order that is appealable under the statute.[8] The first hearing justice[9] found that the Order was interlocutory in nature and thus not appealable without satisfying the elements of the exception provided in section 42-35-15(a) of the Rhode Island General Laws.[10] Next, the hearing justice found that the Physicians failed to allege facts supporting why a future review of a final agency order would fail to provide an adequate remedy in the Physicians' case.[11] Finally, the hearing justice granted the Department's motion to dismiss the Physicians' complaint without prejudice to the Physicians' seeking review after the Physicians had "*exhausted* their administrative remedies."[12]

After the Department's motion to dismiss was granted, the Physicians petitioned for writ of certiorari with the Rhode Island

4. *Id.*
5. *Id.*
6. 42 R.I. GEN. LAWS § 42-35-15.
7. *Banki*, 224 A.3d at 92.
8. *Id.*
9. In this case, the Rhode Island Supreme Court consolidated two matters that were each heard by separate justices in the Rhode Island Superior Court who are referred to as the first hearing justice and the second hearing justice. *Id.* at 92 n.7.
10. *Id.* at 92 ("[a]ny preliminary, procedural, or intermediate agency act or ruling is immediately reviewable in any case in which review of the final agency order would not provide an adequate remedy" (quoting 42 R.I. GEN. LAWS § 42-35-15(a))).
11. *Id.*
12. *Id.* (emphasis added). The first hearing justice also ordered the Department to "withdraw the sealed administrative record and to retain custody of it." *Id.* at 92–93.

Supreme Court.[13] The Supreme Court granted certiorari but ordered that the case remain in Superior Court with a direction to find (1) whether the Department complied with the conditional dismissal order of May 9, 2014 and if not, (2) whether the conditional dismissal order was self-executing.[14] The second hearing justice ordered that the Department provide the original administrative record by July 26, 2016.[15] As a result of the Department's failure to produce that record, the hearing justice entered a conditional order of dismissal unless the record was produced by August 3, 2016.[16]

On August 3, 2016, the Department notified the hearing justice that the original administrative record had been lost and the Department instead submitted an amended hearing record.[17] The hearing justice did not accept this amended hearing record and "ruled that what had been submitted was not the certified administrative record of the appeal."[18] Consequentially, the hearing justice: (1) granted the Physicians' motion to enter default judgment against the Department, (2) denied the Department's motion to vacate the default judgment, and (3) dismissed the Board's original charges against the Physicians.[19] At this stage of the litigation, the Department also petitioned the Supreme Court for certiorari, which the Court granted.[20]

ANALYSIS AND HOLDING

In this case, the parties each sought review of separate Superior Court rulings.[21] The Supreme Court conducted a *de novo* review limited to questions of law regarding the first hearing justice's order granting the Department's motion to dismiss the Physicians' administrative appeal, and the second hearing justice's

13. *Id.* at 93.
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.* The Department's amended hearing record was a "certified administrative record entitled 'Amended Administrative Hearing Record.'" *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.* at 94.

entry of default judgment against the Department.[22] To begin, the Court found that the first hearing justice incorrectly analyzed the Physicians' failure to meet the requirements of section 42-35-15(a) as a jurisdictional issue rather than as a failure to state a claim, so the Court found it necessary to clarify the law governing administrative appeals.[23] The Court explained that the Superior Court of Rhode Island has general subject-matter jurisdiction and equitable jurisdiction in the context of administrative appeals, and therefore, the issue in this case was not whether the Superior Court had subject-matter jurisdiction, but rather, if judicial intervention under the facts of the case was proper.[24] The Court determined that the Superior Court did have subject-matter jurisdiction in this case.[25]

To answer whether judicial intervention was appropriate under the facts of this case, the Court reasoned that judicial intervention by the Superior Court would be appropriate in two circumstances: (1) to review a final order issued by an agency in a case where the party adverse to the agency has "exhausted all administrative remedies available" and (2) to review "[a]ny preliminary, procedural, or intermediate agency act or ruling . . . in any case in which review of the final agency order would not provide an adequate remedy."[26]

First, regarding the issue of whether the Order was a final order, the Court reasoned that a denial of a motion to dismiss is an interlocutory order because it does not "determine[ ] the rights or obligations of the parties" but "establishes only that the case will proceed to a hearing on the merits."[27] Therefore, the Court held

22. *Id.* at 93.

23. *Id.* at 94–95.

24. *Id.* at 95 (citing Chase v. Bouchard, 671 A.2d 794, 796 (R.I. 1996); La Petite Auberge, Inc. v. R.I. Comm'n for Human Rights, 419 A.2d 274, 279 (R.I. 1980)).

25. *Id.*

26. *Id.* at 95–96 (quoting 42 R.I. GEN. LAWS § 42-35-15(a) (alteration and second omission in original) (internal quotation marks omitted)). Additionally, the Court did not take up the issue of whether the Superior Court had equitable jurisdiction over the case because the Physicians did not "invoke" the Superior Court's equitable jurisdiction in this case. *Id.*

27. *Id.* at 96 (citing Fayle v. Traudt, 813 A.2d 58, 61 (R.I. 2003)). The Court also cited to the two-part test used by the United States Supreme Court to determine when an agency order is a "final order" in the context of the

that the Order was an interlocutory order, and not a final order.[28] Finding that circumstance one was not present in this case, the Court proceeded in its analysis to determine if circumstance two was present.

Second, regarding the issue of whether the Order met the exception to the bar on interlocutory appeal because a review of the agency's final order would be an inadequate remedy, the Court first addressed the Physicians' argument that continuing the administrative process with inadequate discovery would render review of the Order "futile."[29] The Court reasoned that the Physicians failed to show how proceeding with inadequate discovery would render as futile a future appellate review of the Department's final order.[30] The Court also noted that the

---

Administrative Procedures Act, which is "analogous" to Rhode Island's administrative procedures. *Id.* The test asks (1) whether the order is the "consummation" of the administrative agency's process for making a decision and (2) whether the order determined the parties' "rights and obligations." *Id.* (quoting Bennett v. Spear, 520 U.S. 154, 177–78 (1997) (internal quotation marks omitted)).

28. *Id.* at 96. Additionally, in response to the Physicians' argument that an "interlocutory order" can be a "final order," the Court pointed out that for an order to be "final" it "must not be of a merely tentative or *interlocutory nature*." *Id.* (quoting *Bennett* 520 U.S. at 178 (internal quotation marks omitted)). The Court further clarified that section 42-35-12 of the Rhode Island General Laws merely provides the requirements that must accompany a "final order" but does not provide a legal definition for the term in response to the Physicians' argument that the section did provide such a definition and that the Order included all of the elements required by the section. *Id.* at 96–97; *see also* 42 R.I. GEN. LAWS § 42-35-12 (requiring that final orders "be in writing," contain "findings of fact and conclusions of law," and requiring that adverse parties "be notified either personally or by mail and be given "separate notice" regarding "the appeal period and the procedure for filing an appeal").

29. *Id.* at 97. The Court noted that "review of an interlocutory order is appropriate only where further agency review 'would be futile or would destroy the effectiveness of the relief sought.'" *Id.* (quoting Almeida v. Plasters' & Cement Masons' Local 40 Pension Fund, 722 A.2d 257, 259 (R.I. 1998) (alteration in original)). The Court also noted that this is the standard governing when a court may review a final order before all administrative remedies have been exhausted, but the Physicians did not dispute the use of this standard before the first hearing justice. *Id.*

30. *Id.* at 97–98. The Court also pointed out that interlocutory orders may be reviewed as part of the review of a final order. *Id.* at 97 (citing Greensleeves, Inc. v. Smiley, 942 A.2d 284, 291 (R.I. 2007)). Therefore, if the Physicians were to lose on the merits, they would be able to appeal prior interlocutory orders they were aggrieved by, i.e., the Order denying the Physicians' motion to dismiss. *See id.*

Physicians may yet prevail in administrative proceedings against the Department over the merits of the underlying charges—despite their purported lack of adequate discovery.[31] Therefore, the Court concluded that in this case judicial intervention by the Superior Court was inappropriate, affirming the first hearing justice's decision granting the Department's motion to dismiss the Physicians' administrative appeal.[32]

Finally, the court proceeded in its analysis to consider the Department's argument that the second hearing justice went beyond his discretion by entering default judgment against the Department.[33] Agreeing with the Department, the Court stated that "lower courts . . . may not exceed the scope of the remand or open up the proceeding to legal issues beyond the remand."[34] The case was already remanded back to the Superior Court solely to answer whether the Department complied with the May 9, 2014, conditional order and whether that order was self-executing.[35] However, the Court reasoned that entry of default judgment against the Department was inappropriate to remedy the lost administrative record because the second hearing justice should have transmitted the case back to the Supreme Court without resolving the issue or should have resolved the issue based on the record he had.[36] In any event, the Court indicated that ordering remand to the agency or ordering limited discovery would be the appropriate remedy to cure an incomplete or deficient administrative record.[37] Furthermore, the Court found that the Physicians did not demonstrate the required showing that the record was incomplete, but merely speculated that it was incomplete because the index did not match the amended hearing record.[38] Therefore, the Court quashed the second hearing justice's

31. *Id.* at 97–98.
32. *Id.* at 98.
33. *Id.*
34. *Id.* (quoting State v. Arciliares, 194 A.3d 1159, 1162 (R.I. 2018) (internal quotation marks omitted)).
35. *Id.* at 100.
36. *Id.*
37. *Id.* at 98–99.
38. *Id.* at 100. The Court noted that the real issue was not whether the Department could provide the "original" record, but rather it was whether the amended hearing record that the Department provided was "complete." *Id.*

entry of default judgment against the Department and remanded the case to the Superior Court specifically instructing that court to remand the case to the Rhode Island Department of Health to carry on with its hearing on the merits of the administrative charges against the Physicians.[39]

COMMENTARY

The Rhode Island Supreme Court laconically commented about the age of this case and the delays it has faced while also acknowledging a lack of any substantive developments regarding the underlying charges.[40] In its rationale, the Court made a twin effort to reduce confusion and ensuing delays regarding administrative appeals at the Superior Court level, and also to balance the interests and rights of the litigants appealing orders of state administrative agencies against the deference given to those administrative agencies and the hearing records they produce. In so doing, the Court identified four major points of law regarding administrative procedure to elucidate in this case.[41]

To start, the Court acknowledged the need to clarify for the lower courts that the Rhode Island Superior Court indeed has jurisdiction over administrative appeals against state agencies and that determining whether such an administrative appeal states a claim upon which relief can be granted hinges on whether the court's judicial intervention is appropriate based on the facts of the case.[42] By eliminating any confusion in the lower courts, this ruling helps prevent the error from recurring and thus helps prevent unnecessary litigation or delays in the form of appealing the error.[43]

The Court also noted that the Physicians did not allege that any particular "relevant document[s] w[ere] missing" from the amended hearing record and that they if they had done so, "then the second hearing justice could have ordered limited discovery or a remand to the [D]epartment to locate or provide the missing documents." *Id.*

39. *Id.* at 100–01. Wryly commenting that the age of this "hoary" case was "approaching seven years" without hearing anything "substantive" regarding the underlying charges against the Physicians, the Court underscored the need to finish the administrative process "without further delay." *Id.* at 101.

40. *Id.* at 100.

41. *See id.* at 94–100.

42. *Id.* at 94–95.

43. *See id.*

Next, the Court explained that an order denying a motion to dismiss is an interlocutory order and thus not a final order that can be appealed.[44] Without suggesting anything untoward about the Physicians' intent regarding their appeals, the Court's ruling effectively prevents similar appeals and ensuing delays in future cases by rendering as frivolous the argument that a motion to dismiss is a final order.[45]

Then, the Court made clear that the exception allowing review of an interlocutory order requires showing futility in that proceeding further with the agency would make the sought-after remedy ineffective.[46] This so-called finality rule prevents premature review of intermediate orders while cases are still developing at the administrative level to prevent delays, to prevent flooding the courts with administrative litigation at a preliminary stage, and to prevent wasting judicial resources on determining preliminary issues that could have been "resolved or become moot . . . at the administrative level."[47]

Finally, with respect to incomplete or deficient administrative hearing records, the Court highlighted that entering default judgment against an agency is an inadequate remedy to correct an incomplete record and explained that the appropriate remedy in that case is to order remand to the agency or to order limited discovery.[48] Although the Court sympathized with the Superior Court's difficulty in correcting the lost administrative record, it admonished the second hearing justice for exceeding his discretion in this case.[49] The Court expounded that curing an incomplete administrative record by remanding to the agency allows both adverse parties to participate in further hearings to develop the

---

44. *Id.* at 96.

45. *See id.*

46. *Id.* at 96–98.

47. *See id.* at 98 (quoting N. Kingstown Sch. Comm. v. Wagner, 176 A.3d 1097, 1099 n.3 (R.I. 2018)).

48. *Id.* at 98–99. The Court noted that it could not locate "any caselaw, either in our own or federal jurisprudence, where an agency has been subject to a default judgment for having lost the original administrative record." *Id.* Regarding limited discovery, the Court noted that it is appropriate when there is a showing that a particular relevant document or piece of information was missing, which there was not, in this case. *Id.* at 99-100.

49. *Id.* at 98–99.

facts, balancing the competing rights and interests of administrative agencies against their adverse litigants.[50] In sum, the Court, looking to its own relevant case law and to analogous on-point federal case law, took a balanced approach considering society's interest in functioning administrative agencies, as well as the rights and interests of those agencies' adverse litigants.

CONCLUSION

The Rhode Island Supreme Court affirmed the first hearing justice, holding that the Order denying the Physicians' motion to dismiss was not a final order and holding that review of the Order as an interlocutory order was inappropriate because it could be reviewed after the Department issues its final order. Determining that entry of default judgment against the Department was in excess of the Superior Court's discretion, the Supreme Court quashed the second hearing justice's order and remanded the case to Superior Court, instructing that court to remand the case to the Rhode Island Department of Health for further administrative proceedings.

Richard Tavares

50. *See id.* at 99 (quoting Lemoine v. Dept. of Mental Health, Retardation and Hospitals, 320 A.2 611, 614 (R.I. 1974)).