

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA09-39

JACK BARNES, KYLE BARNES,
MARY BARNES, BOBBY J. FRIZZELL,
HAROLD HARRIS, MARIE HARRIS,
MAX STORY, CHARLES F. TRIPP, and
JAMES W. YATES, JR.

APPELLANTS

V.

ARKANSAS DEPARTMENT OF
FINANCE AND ADMINISTRATION,
ALCOHOLIC BEVERAGE CONTROL
DIVISION and LAMAR'S BISTRO d/b/a
BAYOU BISTRO

APPELLEES

Opinion Delivered May 19, 2010

APPEAL FROM THE COLUMBIA
COUNTY CIRCUIT COURT
[CV-2007-214]

HONORABLE DAVID F. GUTHRIE,
JUDGE

REVERSED AND REMANDED

DAVID M. GLOVER, Judge

Arkansas Alcoholic Beverage Control Board approved the granting of a permit to Lamar's Bistro, Inc., to sell alcoholic beverages as a private club within the Bayou Bistro restaurant in the City of Magnolia. Magnolia is the county seat of Columbia County, a dry county. Various Columbia County residents, who opposed the permit before the Board, appealed to circuit court, which approved the Board's actions. In this appeal, those residents in opposition are the appellants, and both the Board and the private-club applicant are the appellees. Before us, the appealing residents contend: 1) the Board failed to issue sufficient findings of fact and conclusions of law, 2) Lamar's Bistro did not prove that it was qualified

to receive an on-premises private-club permit. Because we find merit in the first point of appeal, we reverse and remand this case for proceedings consistent with this opinion. It is, therefore, not necessary to address the second point of appeal.

In reaching our decision, we again refer the Board to *Green House, Inc. v. Arkansas Alcoholic Beverage Control Div.*, 29 Ark. App. 229, 230-33, 780 S.W.2d 347, 348-50 (1989), often cited by this court in explaining what is required of the Board in preparing its decisions:

We have reviewed the record in this case and are convinced that it must be reversed and remanded to the Arkansas Alcoholic Beverage Control Board for further proceedings consistent with this opinion. Our determination is based on the Board's failure to make explicit and concise findings of fact as required by Ark. Code Ann. § 25-15-210(b)(2) (1987), which requires that:

A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

. . . .

Because the Board has merely recited the testimony rather than translating that testimony into findings of fact, we are unable to determine the Board's view of the facts, or the theory of law on which the denial of the permit was based. We addressed a similar situation in *Wright v. American Transportation*, 18 Ark. App. 18, 709 S.W.2d 107 (1986), where we quoted the following language from *Whispering Pines Home for Senior Citizens v. Nicalek*, 48 Ind. [App.] 568, 333 N.E.2d 324 (1975):

Once again, therefore, we attempt to tell the Board what a satisfactory specific finding of fact is.

It is a simple, straightforward statement of what happened. A statement of what the Board finds has happened; not a statement that a witness, or witnesses, testified thus and so. It is stated in sufficient relevant detail to make it mentally graphic, i.e., it enables the reader to picture in his mind's eye what happened. And when the reader is a reviewing court the statement must contain all the specific facts relevant to the contested issue or issues so that the

court may determine whether the Board has resolved those issues in conformity with the law.

(Emphasis in the original.) The observations of the Board in the case at bar do not rise to the level of findings of fact. Reviewing courts may not supply findings by weighing the evidence themselves, because that function is the responsibility of the administrative agency, which sees the witnesses as they testify. *Arkansas Savings and Loan Ass'n Board v. Central Arkansas Savings & Loan Ass'n*, 256 Ark. 846, 510 S.W.2d 872 (1974).

The findings are insufficient because there was a failure to incorporate therein a proper and acceptable finding of the basic or underlying facts drawn from the evidence. The Board's decision only amounts to the statement 'We have heard the evidence. The evidence does not meet the requirements of the law.' This is not enough.

Central Arkansas Savings & Loan Ass'n, supra, quoting Oklahoma Insp. Bur. v. State Bd. for Prop. & Cas. Rates, 406 P.2d 453 (Okla. 1965). We remand to the Board for further proceedings consistent with this opinion.

The Board, in addressing the Lamar's Bistro permit application, recites in paragraphs numbered 1., 2., and 3. of its decision the witness testimony and other evidence that was presented to the Board, supporting and opposing the permit application. There are no findings of fact within those paragraphs, just recitations of evidence. Following those paragraphs in the Board's decision is the heading, "FINDINGS OF FACTS AND CONCLUSIONS OF LAW." There is one paragraph under that heading, and it consists of five sentences:

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

After a review of all testimony offered in this matter it is found that the Director's decision in this matter should be upheld and the permit continue to be granted to Mr. Gilreath. The Board is very much aware that Mr. Gilreath appears to be a good applicant and that the application has met all requirements of law as is required by ACA 3-9-222(f). It is also apparent to the Board that this application is

a situation that will serve the overall public interest as is also required by that section. The Board is not aware of any testimony from any public official that has been opposed to this application. Based on all of the above items the Board is convinced that the requirements of ACA 3-9-222(f) have been met and that the permit should stay in force and continue to be granted.

The first sentence merely states that the director's decision is upheld and the permit granted.

The second and third sentences are conclusory only. The second sentence has two parts: first, that Mr. Gilreath *appears* to be a good applicant, and second, that the application has met all the requirements of section 3-9-222(f). The third sentence states that the application will serve the public interest. These conclusions do not state the factual bases supporting them.

The fourth sentence provides that the Board is not aware of any public official opposed to the application. And, the final sentence states that "based on all of the above items," the board is convinced that the requirements of section 3-9-222(f) have been met and that the permit should stay in force and continue to be granted.

As we explained in *Green House, supra*, if the Board does not translate testimony and other evidence into findings of fact and then explain how those factual findings support the action taken by the Board, we have nothing to review. We repeat that it is the administrative agency's responsibility to weigh the evidence presented to it and make findings regarding what evidence they believe or disbelieve, and what evidence supports the legal conclusions that they reach following the taking of that evidence. By example, here, the two basic requirements for the issuance of a permit are set forth in Arkansas Code Annotated section 3-9-222(f) (Supp. 2009): 1) the determination that the applicant is qualified, and 2) the determination that the application is in the public interest. Though the Board clearly stated

in its decision that these requirements were satisfied, it did not explain how. Under the legislative directive of Arkansas Code Annotated section 25-15-210(b)(2) (Repl. 2002), the Board was required to state its findings of fact and explain how those factual findings supported its decision, *i.e.*, what facts supported its conclusion that the applicant, Lamar's Bistro, Inc., was qualified, and what facts supported its conclusion that the application was in the public interest. Consistent with that legislative directive, only when we are presented with these crucial decisional items are we able to review the Board's assessment of the evidence and its basis for either granting or denying a permit. We were not at the hearing; we cannot make credibility determinations and factual findings because that is the Board's function. Our function is to review those factual findings and legal conclusions of the Board.

Accordingly, we reverse the decisions of the Board and the circuit court, and we remand this case for the Board to make the required findings of fact on the existing record.

Reversed and remanded.

PITTMAN and GLADWIN, JJ., agree.