

SUPREME COURT OF ARKANSAS

No. 11-740

TWIN RIVERS HEALTH AND REHAB,
LLC

APPELLANT

V.

ARKANSAS HEALTH SERVICES
PERMIT COMMISSION; ARKANSAS
HEALTH SERVICES PERMIT AGENCY;
GRACEWOOD NURSING AND
REHABILITATION CENTER, LLC;
AND HOSPITALITY CARE CENTER,
LLC

APPELLEES

Opinion Delivered January 19, 2012

APPEAL FROM THE CLARK
COUNTY CIRCUIT COURT
[NO. CV-07-50]
HON. RUSSELL ROGERS, JUDGEREVERSED AND REMANDED IN
PART; APPEAL DISMISSED
WITHOUT PREJUDICE IN PART.**PAUL E. DANIELSON, Associate Justice**

Appellant Twin Rivers Health and Rehab, LLC, appeals from the circuit court's order granting summary judgment to appellees Arkansas Health Services Permit Commission ("the Commission") and Arkansas Health Services Permit Agency ("AHSPA") and affirming the decision of the Commission. The Commission's decision involved the transfer of a permit of approval (POA) from appellee Hospitality Care Center, LLC, to appellee Gracewood Nursing and Rehabilitation Center, LLC. On appeal, Twin Rivers raises two arguments: (1) that the circuit court erred in granting summary judgment on Twin Rivers's declaratory-judgment claim concerning the extension of a construction-contract deadline; and (2) that the circuit court erred in granting summary judgment and affirming the Commission's decision approving the transfer of Hospitality's permit of approval. We reverse and remand in part and

dismiss the appeal without prejudice in part.

The underlying facts are these. The Commission serves to “evaluate the availability and adequacy of health facilities and health services as they relate to long-term care facilities and home health care service agencies in this state.” Ark. Code Ann. § 20-8-103(a) (Repl. 2005). The Commission is charged with developing policies and adopting criteria, “including time limitations, to be utilized by the Health Services Permit Agency in the review of applications and the issuing of permits of approval for a long-term care facility or a home health care service agency.” Ark. Code Ann. § 20-8-103(d). The AHSPA is an independent agency under the supervision and control of the Governor and serves to review all applications for permits of approval, approving or denying them, and to assist the Commission in the performance of its duties. *See* Ark. Code Ann. § 20-8-104 (Repl. 2005).

On May 31, 2006, Hospitality was awarded a permit of approval by the Commission for a ninety-six-bed replacement nursing facility, and on August 1, 2006, Gracewood requested approval from the Commission to transfer the POA to it from Hospitality. The AHSPA reviewed the request and made findings of fact and a conclusion of law that Gracewood’s application satisfied the statutory and regulatory requirements for permission to transfer a POA; it then referred the matter to the Commission for a decision. On December 14, 2006, the Commission took up the transfer request, pursuant to Arkansas Code Annotated § 20-8-106(b)(2)(A) (Repl. 2005), which provides:

Permits, legal title, and right of ownership may be transferred with the approval of the commission if the entity presently holding the permit, legal title, or right of ownership has tangible assets of at least two thousand five hundred dollars (\$2,500) that will be transferred with the permit, legal title, or right of ownership.

Twin Rivers opposed the transfer, and the Commission heard testimony and arguments relating to the transfer from both Gracewood and Twin Rivers. Ultimately, the Commission denied the request for transfer of the POA, and it issued its findings of fact, conclusions of law, and order, in which it appears to have adopted the AHSPA's findings and conclusions in toto, but based its denial on the fact that Gracewood failed to show proof that \$2,500 in tangible assets would be transferred with the permit of approval.

On January 16, 2007, Gracewood completed and filed an appeal form for POA decisions, in which it challenged the Commission's finding that it had lacked proof. In its accompanying documents, Gracewood asserted that the application form it was required to complete for approval of the transfer had been completed and was deemed complete by the AHSPA; it further asserted that the application form contained "no specific statement of documentation or criteria for the demonstration of the existence of tangible assets of at least \$2,500 by the entity holding the Permit of Approval." It maintained that at the hearing before the Commission, the managing member of Hospitality had testified that Hospitality maintained assets greater than \$2,500 that would be transferred with the POA and specifically identified a generator valued at \$75,000 that would be transferred, in addition to other equipment. Gracewood contended that nothing in the AHSPA rules required a bill of sale, affidavit, or other certification of a completed transfer of tangible assets in excess of \$2,500, and it asserted that it had adequately satisfied the requisite showing.

On March 9, 2007, the Commission took up Gracewood's request that the Commission reverse its prior denial. Again, Twin Rivers was present and demonstrated its opposition; nonetheless, the Commission voted to overturn its prior decision and grant the

transfer of the POA. The Commission also granted a site-location change request by Gracewood, as well as Gracewood's request for an extension of its construction-contract deadline. Twin Rivers then filed in the circuit court a complaint and a first amended complaint seeking judicial review of the Commission's decision under the Arkansas Administrative Procedure Act (APA), codified at Ark. Code Ann. §§ 25-15-201 to -219 (Repl. 2002 & Supp. 2011), and declaratory relief. In its complaint, Twin Rivers asserted the same claims under both theories: (1) that the Commission erred in granting Hospitality an extension on its construction-contract deadline for its POA; (2) that the Commission erred in granting the transfer of the POA; and (3) that the Commission erred in granting Hospitality a site-location change relating to its POA. The complaint named as defendants: the Commission, the AHSPA, Gracewood, and Hospitality.

On April 1, 2010, the Commission and the AHSPA filed a motion for summary judgment as to Twin Rivers's complaint for declaratory judgment, asserting that they were entitled to judgment as a matter of law because they did not act arbitrarily or in violation of state law in allowing the extension of the construction-contract deadline, granting the transfer of the POA, or approving the site-location change. In addition, the Commission and the AHSPA, with respect to Twin Rivers's administrative appeal, filed a brief in support of the Commission's decision, asserting that the Commission's decisions were supported by substantial evidence. In addition, Gracewood filed a separate brief in support of the Commission's decision, in which it did not adopt or join in the agencies' motion for summary judgment, but in which it urged the circuit court to grant the motion. Following a hearing before the circuit court, the circuit court entered its order, in which it granted the summary-

judgment motion of the Commission and the AHSPA, and it affirmed the Commission's decision.

Twin Rivers now appeals; however, we are precluded from reaching the appeal's merits at this time. The APA requires that an administrative adjudication be accompanied by specific findings of fact and conclusions of law and provides, in pertinent part:

(b)(1) In every case of adjudication, a final decision or order shall be in writing or stated in the record.

(2) 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.

Ark. Code Ann. § 25-15-210(b) (Repl. 2002). A “finding of fact” 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 [W]hen the reader is a reviewing court, the statement must contain all 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.

Holloway v. Arkansas State Bd. of Architects, 352 Ark. 427, 438, 101 S.W.3d 805, 813 (2003) (quoting *Nesterenko v. Arkansas Bd. of Chiropractic Exam'rs*, 76 Ark. App. 561, 566, 69 S.W.3d 459, 461 (2002)). We have held that “[t]he purpose of requiring such factual findings is that they benefit the court in the following way: facilitating judicial review; avoiding judicial usurpation of administrative functions; assuring more careful and administrative consideration; aiding the parties in planning for rehearings and judicial review; and keeping an agency within its jurisdiction.” *Id.* at 439, 101 S.W.3d at 813. Without such required findings, the task of a reviewing court—to determine whether the administrative decision was correct—would be rendered more difficult, if not impossible to perform. See, e.g., *Munson v. Arkansas Dep't of*

Correction Sex Offender Screening & Risk Assessment, 369 Ark. 290, 294-A, 253 S.W.3d 901, 905 (2007) (supplemental opinion on denial of rehearing).

In the instant case, the Commission did not set forth any findings of fact or conclusions of law to support its decision to grant the transfer of the POA. When an administrative agency fails to make findings of fact and conclusions of law, the correct procedure is to remand. See *Arkansas State Highway Comm'n v. White Advertising Int'l*, 273 Ark. 364, 620 S.W.2d 280 (1981). We therefore reverse and remand the matter to the circuit court with directions to remand it to the Commission to enter findings of fact and conclusions of law in accord with section 25-15-210(b)(2).

Notwithstanding the lack of findings of fact and conclusions of law in support of the Commission's decision, this appeal also involves the grant of summary judgment to the Commission and the AHSPA on Twin Rivers's request for declaratory judgment. Yet, this court has been resolute that it does not hear appeals piecemeal. See, e.g., *Wilson v. Weiss*, 368 Ark. 300, 245 S.W.3d 144 (2006). For this reason, we decline to address the merits of that portion of the appeal, and we dismiss without prejudice that portion of the appeal relating to Twin Rivers's request for declaratory judgment.¹

Reversed and remanded in part; dismissed without prejudice in part.

¹We further take this opportunity to point out that it is unclear from the record whether the circuit court's order was final as to both Gracewood and Hospitality, where only the Commission and the AHSPA moved for and were granted summary judgment, and the order did not explicitly dismiss Gracewood and Hospitality from the action.