

STATE OF MINNESOTA

IN SUPREME COURT

A19-0413

Original Jurisdiction

Per Curiam
Took no part, Moore, J.

In re Petition for Reinstatement of Carol Trombley,
a Minnesota Attorney, Registration No. 0300597.

Filed: August 5, 2020
Office of Appellate Courts

Eric T. Cooperstein, Law Office of Eric T. Cooperstein, PLLC, Minneapolis, Minnesota,
for petitioner.

Susan M. Humiston, Director, Nicole S. Frank, Assistant Director, Office of Lawyers
Professional Responsibility, Saint Paul, Minnesota, for respondent.

S Y L L A B U S

1. Based on our independent review of the record, the panel's conclusion that petitioner failed to prove that she has undergone the requisite moral change is clearly erroneous.

2. Because petitioner has shown by clear and convincing evidence that she has satisfied the requirements for reinstatement to the practice of law in Minnesota, we reinstate petitioner, subject to a 2-year period of probation.

Petition granted.

OPINION

PER CURIAM.

Petitioner Carol Trombley has filed a petition for reinstatement to the practice of law. In 2018, we indefinitely suspended Trombley, with no right to petition for reinstatement for at least 6 months. After considering Trombley's petition, a panel of the Lawyers Professional Responsibility Board recommended against reinstatement, concluding that Trombley had not proven by clear and convincing evidence that she has undergone the requisite moral change. The Director of the Office of Lawyers Professional Responsibility agrees with the panel. Trombley challenges the panel's findings and disagrees with its recommendation. Based on our independent review of the record, we hold that the panel's findings and conclusion that Trombley has not undergone the necessary moral change are clearly erroneous. Because Trombley has shown by clear and convincing evidence that she has satisfied the requirements for reinstatement to the practice of law in Minnesota, we grant the petition and reinstate Trombley, subject to a 2-year period of probation.

FACTS

Trombley was admitted to practice law in Minnesota in 2000. She mainly worked as an in-house attorney, most recently at a Minnesota healthcare company. While suspended, Trombley has remained employed at that company in the non-legal role of project manager.

On August 8, 2018, we indefinitely suspended Trombley, with no right to petition for reinstatement for a minimum of 6 months, for dishonestly converting her stepfather's

money. *In re Trombley*, 916 N.W.2d 362, 368, 373 (Minn. 2018). Trombley's suspension arose from the following conduct.

In August 2013, Trombley's mother signed a power of attorney, granting Trombley the power to transfer funds from the joint bank accounts of Trombley's mother and stepfather to Trombley's bank accounts. *Id.* at 364. At that time, Trombley's mother continued to manage the finances; her stepfather took no part in the management of the finances because of illness. *Id.* After Trombley's mother became seriously ill in April 2014, Trombley became more involved in the lives of her mother and stepfather. *Id.* From April to June 2014, Trombley exercised her power of attorney by adding her name to the couple's joint checking and savings accounts, changing the address for those accounts to her address, and transferring money from the joint savings account to the joint checking account. *Id.* During the week leading up to her mother's death, Trombley transferred a total of \$95,000 from the joint bank accounts of her mother and stepfather into her personal bank accounts. *Id.*

After Trombley's mother died, the funds that Trombley had transferred into her personal bank accounts belonged to her stepfather. *Id.* at 368. Trombley retained these funds, knowing that they belonged to her stepfather. *Id.* She spent more than \$58,000 of these funds on herself. *Id.* Trombley acted in an intentionally dishonest manner by keeping her stepfather's funds. *Id.* at 368–69.

Not knowing where his money went, Trombley's stepfather became concerned about how he would afford his monthly rent and medical expenses. *Id.* at 365. An investigation commenced because of concerns that the stepfather was being maltreated. *Id.*

at 365–66. After that investigation began, Trombley returned all of the funds that she had converted, minus the uncontested expenses that she had paid on behalf of her mother and stepfather. *Id.* at 366. We suspended Trombley for this misconduct. *Id.* at 373.

In March 2019, Trombley filed a petition for reinstatement under Rule 18, Rules on Lawyers Professional Responsibility (RLPR). A panel considered her petition at a hearing on November 18, 2019. During that hearing, Trombley and her husband testified.

The panel concluded that Trombley had “not proven by clear and convincing evidence that she has undergone the requisite moral change to render her fit to resume the practice of law” and recommended against reinstatement. The Director agrees with the panel’s recommendation. Trombley challenges the panel’s findings, conclusion, and recommendation.

ANALYSIS

We have the sole responsibility for determining whether an attorney should be reinstated to the practice of law. *In re Kadrie*, 602 N.W.2d 868, 870 (Minn. 1999). An attorney “seeking reinstatement bears the burden of establishing that reinstatement should be granted.” *In re Stockman*, 896 N.W.2d 851, 856 (Minn. 2017).

To determine whether reinstatement is appropriate, “[w]e independently review the entire record.” *In re Singer*, 735 N.W.2d 698, 703 (Minn. 2007). We “consider, but are not bound by, the panel’s recommendations.” *Id.* Where, as here, a transcript has been ordered, we will “uphold the panel’s factual findings if they have evidentiary support in the record and are not clearly erroneous.” *Stockman*, 896 N.W.2d at 856. But we have

rejected a panel’s factual finding that had “some support in the record” when the “overwhelming evidence presented at the hearing shows the contrary.” *Id.* at 858–59.

I.

Reinstatement requirements include: “(1) compliance with the conditions of suspension, (2) compliance with the requirements of Rule 18, RLPR, and (3) demonstration of a moral change.” *Id.* at 856 (citations omitted). The parties agree that Trombley has complied with the conditions of her suspension and completed the requirements of Rule 18, RLPR, but they disagree on whether Trombley has demonstrated the requisite moral change.¹

Proof of moral change “is the most important factor” in determining whether an attorney should be reinstated. *Id.* at 857. An attorney seeking reinstatement “ ‘must establish by clear and convincing evidence that [the attorney] has undergone such a moral change as now to render [the attorney] a fit person to enjoy the public confidence and trust once forfeited.’ ” *In re Jellinger*, 728 N.W.2d 917, 922 (Minn. 2007) (quoting *In re Porter*, 472 N.W.2d 654, 655 (Minn. 1991)). To prove moral change, an attorney must show: (1) “remorse and acceptance of responsibility for the misconduct,” (2) “a change in the [attorney]’s conduct and state of mind that corrects the underlying misconduct that led to

¹ Trombley filed a motion asking us to strike page 18, lines 6–21, and page 24, lines 23–26, from the Director’s brief because those sections reference third-party statements from the Director’s report that were never submitted as evidence at the reinstatement hearing. But we have considered Director reports in the past, acknowledging that we should keep in mind and weigh accordingly that “the witnesses in that report who do not testify at a subsequent hearing are not placed under oath and are not subject to cross-examination,” *Singer*, 735 N.W.2d at 702 n.1. Accordingly, we deny Trombley’s motion.

the suspension,” and (3) “a renewed commitment to the ethical practice of law.” *In re Mose (Mose II)*, 843 N.W.2d 570, 575 (Minn. 2014). The evidence of this moral change “ ‘must come not only from an observed record of appropriate conduct, but from the petitioner’s own state of mind and . . . values.’ ” *Id.* (quoting *In re Swanson*, 405 N.W.2d 892, 893 (Minn. 1987)).

The panel found that Trombley “failed to demonstrate that she has undergone the requisite moral change” to be reinstated. We disagree.

A.

Trombley’s testimony shows that she feels remorse and accepts responsibility for her misconduct. Trombley testified, “I was selfish in taking [the money]. . . . I now realize I didn’t have the right to take it. I certainly didn’t have the right to keep it.” She acknowledged that her misconduct was “[k]eeping [the money] after my mother’s death . . . I should have given it back.” She explicitly stated that she was “terribly wrong.” And she expressed remorse, stating, “I’m sorry for keeping the money.”

In terms of accepting responsibility, Trombley admitted that she was “dishonest” because she “was handling [her stepfather’s] money and not telling him about it.” She also described her conduct as, “I took money . . . and kept money that wasn’t mine, and I was dishonest with my stepfather as I did it.” Pointedly, she stated, “I took money that wasn’t mine that I had no right to take and I had absolutely no right to keep.” She also explained that her stepfather “absolutely was a victim of . . . [her] dishonesty” because she “took his money” and “he suffered as a result.” And while at the time of her mother’s death she may have believed that she was helping her stepfather, Trombley acknowledged at the

reinstatement hearing that, in reality, someone actually needed to protect her stepfather's money from her.

The panel found that Trombley did not express remorse or accept responsibility for her misconduct. Instead, the panel found that Trombley "soften[ed] the factual circumstances leading to her suspension," "shift[ed] blameworthiness[,] and downplay[ed] the seriousness of her misconduct." As support for this finding, the panel concluded that Trombley made statements that she was acting in the best interests of her mother and stepfather and that she cast her stepfather in an unfavorable light. The Director urges us to affirm these findings, arguing that Trombley has not accepted responsibility because she characterized her misconduct as "disrespectful," "unkind," and "not being transparent."

But the panel's findings (and the Director's arguments) disregard Trombley's testimony at the reinstatement hearing about her current mental state and are focused instead on Trombley's mental state at the time of the misconduct. In evaluating moral change, "we examine a petitioner's conduct up to the time of the reinstatement hearing and his or her mental state and values at that time." *In re Dedefo*, 781 N.W.2d 1, 9 (Minn. 2010). Our independent review of the record reveals that, in its findings, the panel incorrectly considered Trombley's "mental state and values at the time of [her] suspension rather than at the time of [her] reinstatement proceedings." *Id.* at 11.

In one finding, the panel cited three excerpts from Trombley's testimony in which she explained that she transferred the money of her mother and stepfather into her bank accounts. She claimed that she was afraid her stepsister might take the money that was needed to care for the couple, and that she was protecting the assets of her mother and

stepfather and taking care of their finances. The panel found that those statements showed a lack of remorse and acceptance of responsibility because Trombley was attempting to portray herself as helpful. But the panel failed to recognize the context of those statements; each of those statements was made in response to questions prompting Trombley to explain how her misconduct came about. Put differently, those statements show Trombley's mental state at the time of the misconduct, not at the reinstatement hearing, which is the context that we analyze.

In another finding, the panel relied on four statements that Trombley made about her stepfather, things that he had done before her mother's death, and the way she felt about him around the time of her mother's death, along with Trombley's testimony about what she was doing during this same time period. The panel found that these comments showed a lack of genuine and credible remorse because Trombley attempted to make herself seem charitable and portray her stepfather in a negative way. Once again, these statements address Trombley's mental state at the time of her misconduct, not at the time of her reinstatement hearing.

The panel also found that Trombley lacked true remorse because her "testimony focused on her regret about what she should have done to avoid the misconduct altogether." The panel justified its finding by citing the Director's report, which in turn cited a letter that Trombley sent to the Director on June 3, 2019. The panel inappropriately based this finding on a letter written more than 5 months before the reinstatement hearing.

Finally, the panel was concerned that the testimony of the only other witness, Trombley's husband, "suggest[ed] that [her] recognition of and remorse for her misconduct

has not been realized.” To support its concern, the panel pointed to testimony from Trombley’s husband that Trombley had started referring to her actions as dishonest only “within these past five months.” But we will support reinstatement for an attorney who has “gradually c[o]me to realize the wrongfulness of his conduct and that by the time of the reinstatement hearing . . . ha[s] ceased blaming others and taken full responsibility for his actions.” *Dedefo*, 781 N.W.2d at 9. Contrary to the panel’s conclusion, this evidence actually shows a recognition of, and remorse for, Trombley’s misconduct because it establishes that in the relevant time frame—the time period near the reinstatement hearing—Trombley was properly and accurately characterizing her misconduct as being dishonest.

The panel’s focus on Trombley’s mental state during the wrong time period must be considered against the testimony of Trombley and her husband about her current mental state, and her remorse and acceptance of responsibility for her misconduct. We have defined remorse in attorney disciplinary matters as an expression of “genuine regret and moral anguish for [the attorney’s] conduct and the effect it had on others.” *In re Severson*, 860 N.W.2d 658, 670 (Minn. 2015). We look favorably on attorneys who recount their misconduct, and in so doing, reveal that they have reflected on their misconduct and understand “how and why the misconduct occurred.” *Stockman*, 896 N.W.2d at 858.

Trombley argues that she has shown remorse and acceptance of responsibility. She contends that her case is similar to *Stockman*, a case in which we concluded that the attorney had proven moral change, despite the panel’s contrary findings. *Id.* at 862. We agree that this case is similar to *Stockman*.

In *Stockman*, the panel found that the attorney had minimized his misconduct when he “discussed his prior misconduct.” *Id.* at 857. But we disagreed, explaining that the attorney’s “discussion of the circumstances of this incident reveals that he has reflected on his misconduct and understands how and why the misconduct occurred.” *Id.* at 858. The panel also found that the attorney was not forthcoming because he did not fully disclose his misconduct on direct examination, but we noted that he “admitted at other points during the hearing” the full extent of his misconduct. *Id.* In the end, we emphasized that the attorney’s “actions, taken as a whole, clearly demonstrate that [he] viewed this misconduct as a serious failing and made significant changes in his behavior after the incident.” *Id.*

Trombley’s testimony is similar to the attorney’s testimony in *Stockman* because her testimony shows that she has reflected on her misconduct. She explained, “I sought [the] help of a therapist . . . to help me work through what I’ve done and process it.” This process has helped her “look back at it and recognize that [she] wasn’t [honest].” She has come to realize that she did not describe her misconduct as “dishonest” when she told her co-workers about it when the suspension occurred: “I don’t think I talked to them about being dishonest” and “it’s been a lot of therapy since then to discuss and to view it appropriately.” Moreover, she explained that her dislike for her stepfather allowed her to justify her actions, which she now realizes was wrong, and that she has come to realize that she failed to consider her stepfather’s perspective and needs at the time of her misconduct. She also testified that her state of mind regarding her stepsister has changed. And she confirmed that she has much more insight into recognizing when she is in emotional situations and that she needs to be careful in those situations. She testified that her

misconduct “is a major . . . failure of my life . . . and it will always be with me I feel horrible for hurting somebody the way that I did. I can’t just shrug that off.” She testified that she wished that she could apologize to her stepfather “for the hurt that [she] caused and the added stress that was on him.” We agree with Trombley that this testimony shows a depth of reflection about the wrongfulness of her misconduct.

Trombley’s testimony is also similar to the attorney’s testimony in *Stockman* because, taken as a whole, it clearly demonstrates that Trombley accepted responsibility for her actions. As discussed above, the panel improperly relied on testimony that recounted Trombley’s state of mind at the time of the misconduct and disregarded overwhelming evidence about Trombley’s changed view of her misconduct at the time of the reinstatement hearing. Accordingly, the panel clearly erred in its findings that Trombley did not demonstrate remorse or acceptance of responsibility for her misconduct. *See Dedefo*, 781 N.W.2d at 11 (concluding that the panel’s finding was clearly erroneous because “[t]he Panel’s focus . . . strayed from the moral change analysis that we have fashioned for reinstatement proceedings,” in part by focusing on the attorney’s mental state at the time of the suspension, and “disregarded” the attorney’s testimony about his “changed view of his misconduct”). Our independent review of the record leads us to conclude that Trombley has clearly and convincingly shown that she is remorseful and has accepted responsibility for her misconduct.

B.

Next, Trombley must prove “a change in [her] conduct and state of mind that corrects the underlying misconduct that led to the suspension.” *Mose II*, 843 N.W.2d at

575. Such evidence “ ‘must come not only from an observed record of appropriate conduct, but from the petitioner’s own state of mind and his values.’ ” *Kadrie*, 602 N.W.2d at 870 (quoting *Swanson*, 405 N.W.2d at 893). The panel made no findings regarding this component of moral change.

Here, Trombley testified about a change in conduct. She testified that she continues to meet with a therapist twice a month to discuss personal issues because she realizes the importance of a third party’s perspective. Her husband testified that, since her suspension, Trombley has exhibited more empathy and compassion toward their children. Trombley also testified about her new state of mind, explaining that she would “have much more insight now into recognizing” this type of situation in the future, that she no longer demonizes her stepsister, and that she recognizes that she acted “terribly wrong.” On the whole, clear and convincing evidence exists that Trombley has changed her conduct and state of mind to correct the underlying misconduct.

C.

Additionally, Trombley must demonstrate “a renewed commitment to the ethical practice of law.” *Mose II*, 843 N.W.2d at 575. The panel made no findings on this component of moral change.

The misconduct in this case occurred outside the practice of law and involved Trombley dishonestly converting her stepfather’s money and spending it on herself. Trombley testified that if she is reinstated, she would like to return to her role as in-house counsel. Compellingly, Trombley’s employer has remained committed to her: The company transferred her to a new role during her suspension and her supervisor stated he

will consider returning Trombley to a legal position after her reinstatement. This support from Trombley's employer provides strong evidence that Trombley is trusted to ethically practice law. Moreover, Trombley wants to avoid similar situations in the future, testifying that she "would not agree to handle somebody's will" or "be somebody's power of attorney" in the future. And as explained above, she continues to meet with a therapist twice a month. We conclude that Trombley has demonstrated a renewed commitment to the ethical practice of law.

D.

In reaching its conclusion that Trombley had failed to prove moral change, the panel found much of Trombley's testimony "not credible and unpersuasive." We generally "will defer to a panel's finding" that an attorney's testimony about "the requisite moral change is not credible." *In re Mose (Mose I)*, 754 N.W.2d 357, 362 (Minn. 2008). The panel, however, made no specific findings about Trombley's credibility, such as identifying which portions of Trombley's testimony it found not credible or what made any of her testimony not credible. And more importantly, "the Panel supported its recommendation [against reinstatement] primarily with other, noncredibility-based findings" that we have determined above are clearly erroneous. *Dedefo*, 781 N.W.2d at 9. For the reasons we previously articulated, these clearly erroneous findings "contain troubling deficiencies that create doubt about the Panel's" conclusion. *See id.* at 9, 11 (concluding that the panel's finding that an attorney had not undergone moral change was "unsupported by the record and clearly erroneous," despite the panel's two findings that were "akin to credibility findings," and holding that, based on an independent review of the record, the attorney had

shown that he had undergone moral change). In light of these specific facts and circumstances, the panel's finding that Trombley did not prove moral change cannot be upheld simply because of its "credibility" determination.

For all of these reasons, we conclude that the panel's finding that Trombley has not proven moral change was clearly erroneous. Based on our independent review of the record, we hold that Trombley has proven by clear and convincing evidence that she has undergone moral change.

II.

Finally, we weigh five additional factors "to guide our determination of whether an attorney should be reinstated: the attorney's recognition that the conduct was wrong, the length of time since the misconduct and suspension, the seriousness of the misconduct, any physical or mental pressures 'susceptible to correction,' and the attorney's 'intellectual competency to practice law.'" *Stockman*, 896 N.W.2d at 862 (quoting *Kadrie*, 602 N.W.2d at 870).

Trombley argues that all of the factors weigh in favor of her reinstatement. The Director only disputes whether Trombley has recognized the wrongfulness of her conduct. As explained above, Trombley has recognized the wrongfulness of her conduct. Additionally, it has been almost 24 months since we imposed the 6-month suspension; Trombley is not affected by physical or mental illness; and she has the intellectual competency to practice law. And while the misconduct Trombley committed was undoubtedly serious, "[t]he seriousness of the attorney's misconduct only rarely precludes further consideration of the attorney's petition for reinstatement," *In re Anderley*,

696 N.W.2d 380, 385 n.6 (Minn. 2005). In sum, we agree with Trombley that these additional factors weigh in favor of her reinstatement.

Based on our independent review of the record, we hold that Trombley has met her burden of showing by clear and convincing evidence that she satisfied each of the requirements for reinstatement to the practice of law. We reinstate Trombley to the practice of law, subject to a permanent prohibition from acting as a fiduciary for any family member (other than her husband and children), require her to make payment of her annual registration fee within 30 days of the date of this opinion, and place her on probation for a period of 2 years, subject to the following conditions:

- (1) Petitioner shall abide by the Minnesota Rules of Professional Conduct; and
- (2) Petitioner shall cooperate fully with the Director's office in its efforts to ensure compliance with probation and shall promptly respond to the Director's correspondence by the due date provided. Petitioner shall provide to the Director a current mailing address and shall immediately notify the Director of any change of address. Petitioner shall cooperate with the Director's investigation of any allegations of unprofessional conduct that may come to the Director's attention. Upon the Director's request, petitioner shall authorize the release of information and documentation to verify her compliance with the terms of this probation.

Petition granted.

MOORE, J., not having been a member of this court at the time of submission, took no part in the consideration or decision of this case.