

STATE OF MINNESOTA

IN SUPREME COURT

A21-1636

Original Jurisdiction

Per Curiam
Took no part, Chutich, Thissen, JJ.

In re Petition for Reinstatement of
Michelle MacDonald, a Minnesota Attorney,
Registration No. 0182370.

Filed: July 26, 2023
Office of Appellate Courts

Michelle L. MacDonald, West Saint Paul, Minnesota, pro se.

Susan M. Humiston, Director, Binh T. Tuong, Deputy Director, Office of Lawyers
Professional Responsibility, Saint Paul, Minnesota, for respondent.

S Y L L A B U S

Based on our independent review of the record, the panel's conclusion that
petitioner has not undergone the requisite moral change for reinstatement to the practice of
law was not clearly erroneous.

Petition denied.

OPINION

PER CURIAM.

On June 30, 2021, we issued an opinion indefinitely suspending petitioner Michelle MacDonald from the practice of law in Minnesota. In December 2021, MacDonald filed a petition for reinstatement to the practice of law. After a hearing, a panel of the Lawyers Professional Responsibility Board unanimously recommended against reinstatement, concluding that MacDonald failed to prove by clear and convincing evidence that she had undergone the requisite moral change. The Director of the Office of Lawyers Professional Responsibility (Director) agrees with the panel. MacDonald contests the panel's findings, conclusions, and recommendation, and asserts that she should be reinstated.

Based on our independent review of the record, we hold that the findings and conclusions of the panel are not clearly erroneous. Because MacDonald has failed to show by clear and convincing evidence that she has satisfied the requirements for reinstatement to the practice of law in Minnesota, we deny her petition for reinstatement.

FACTS

MacDonald was admitted to practice law in Minnesota in 1987. She has a history of discipline. MacDonald was admonished in 2012 for trust-account violations and failing to cooperate with the Director's investigation. In January 2018, we suspended MacDonald for 60 days for violating several ethics rules in two matters, the most significant of which involved her representation of a family law client, S.G. *In re MacDonald (MacDonald I)*, 906 N.W.2d 238, 240–43 (Minn. 2018). In *MacDonald I*, we determined MacDonald failed to competently represent a client; made false statements about the integrity of a judge

(the judge in the S.G. matter) with reckless disregard for the truth; improperly used subpoenas; knowingly disobeyed a court rule and failed to follow a scheduling order; and engaged in disruptive courtroom conduct in the S.G. matter, including behavior resulting in her arrest. 906 N.W.2d at 239–43. We also concluded that MacDonald’s legal experience was an aggravating factor as well as her “lack of remorse, lack of insight, and blaming of others.” *Id.* at 248–49. In March 2018, we reinstated MacDonald and placed her on probation for 2 years.

In June 2021, we suspended MacDonald for a second time. *In re MacDonald (MacDonald II)*, 962 N.W.2d 451, 470 (Minn. 2021). This suspension was based, in part, on an October 3, 2018, radio interview about MacDonald’s candidacy for the Minnesota Supreme Court, which MacDonald gave while she was on probation. *Id.* at 458. During the interview, MacDonald discussed S.G.’s case and made statements about the judge overseeing that dispute. *Id.* at 458–59. We determined that MacDonald violated Minn. R. Prof. Conduct 8.2(a) and 8.4(d) for “knowingly making false statements about the integrity of a judge” during her interview, and we also found that MacDonald, in another matter during her probation, failed to comply with the requirements of a fee-sharing representation, in violation of Minn. R. Prof. Conduct 1.5(e)(2). *MacDonald II*, 962 N.W.2d at 460–61, 466. We agreed with the referee that MacDonald’s disciplinary history, probation status, and legal experience were aggravating factors. *Id.* at 467–68. Because “the record unequivocally establishe[d] that MacDonald ha[d] not expressed remorse and ha[d] sought only to justify her conduct,” we concluded that MacDonald’s

lack of remorse was also an aggravating factor. *Id.* at 468. We indefinitely suspended MacDonald, with no right to petition for reinstatement for 4 months. *Id.* at 470.

During MacDonald's 2021 suspension, and after she filed her current petition for reinstatement, the Director admonished MacDonald for violating Minn. R. Prof. Conduct 3.1, 4.4(a), and 8.4(a). MacDonald's misconduct surrounding the admonishment stemmed from a family law matter in which MacDonald, during her probation, assisted one of the parents in creating and serving notices that had no substantial purpose other than to harass, intimidate, and burden the parties to whom the notices were served. MacDonald did not contest the admonition.

MacDonald filed her petition for reinstatement in December 2021. The panel conducted a 3-day hearing. At the hearing, MacDonald presented the testimony of seven witnesses and testified on her own behalf. Testimony from MacDonald and her witnesses included descriptions of an encounter between MacDonald and the judge in the S.G. matter, in November 2018, that resulted in their participation in a prayer circle. The Director called the judge to testify, who also described the prayer circle.

In October 2022, the panel issued its findings, conclusions, and recommendation. The panel concluded MacDonald "failed to demonstrate through her actions or testimony, or through the testimony of others, the requisite moral change" and thus recommended denial of MacDonald's petition. MacDonald ordered a hearing transcript and now asks us to reinstate her.

ANALYSIS

We have the sole responsibility for determining whether an attorney should be reinstated to the practice of law in Minnesota. *In re Kadrie*, 602 N.W.2d 868, 870 (Minn. 1999). In evaluating whether to reinstate an attorney, we “conduct an independent review of the entire record; although we consider a panel’s recommendation, we are not bound by it.” *In re Tigue*, 960 N.W.2d 694, 699 (Minn. 2021). If the attorney orders a transcript, as MacDonald did here, we will uphold the panel’s factual findings if the findings are supported by the record and are not clearly erroneous. *In re Stockman*, 896 N.W.2d 851, 856 (Minn. 2017). Factual findings are clearly erroneous if we are left with the “definite and firm conviction that a mistake has been made.” *Tigue*, 960 N.W.2d at 699 (citations omitted) (internal quotation marks omitted).

To be reinstated, the attorney must prove: “(1) compliance with the conditions of suspension, (2) compliance with the requirements of Rule 18, RLPR, and (3) demonstration of a moral change.”¹ *Stockman*, 896 N.W.2d at 856 (citations omitted). We also recently held that an attorney must prove intellectual competence to practice law

¹ In addition to reinstatement requirements, we weigh other factors in considering whether to reinstate a lawyer, including the attorney’s recognition that the conduct was wrong, the seriousness of the misconduct, any physical or mental pressures susceptible to correction, and the length of time since the misconduct and suspension. *Stockman*, 896 N.W.2d at 856. Because moral change is dispositive here, we need not address these other factors.

to be reinstated. *In re Mose*, __ N.W.2d __, 2023 WL 4479642, at *7 (Minn. July 12, 2023). Here, only the requirement to demonstrate moral change is at issue.

“Showing a moral change is the most important factor in the determination of whether to reinstate an attorney.” *Stockman*, 896 N.W.2d at 857. An attorney must prove “by clear and convincing evidence that [she] has ‘undergone such a moral change as now to render [her] a fit person to enjoy the public confidence and trust once forfeited.’ ” *In re Swanson*, 343 N.W.2d 662, 664 (Minn. 1984) (quoting *In re Smith*, 19 N.W.2d 324, 326 (Minn. 1945)). To establish a moral change, “a lawyer must show remorse and acceptance of responsibility for the misconduct, a change in the lawyer’s conduct and state of mind that corrects the underlying misconduct that led to the suspension, and a renewed commitment to the ethical practice of law.” *In re Mose*, 843 N.W.2d 570, 575 (Minn. 2014). “Evidence of moral change must come from an observed record of appropriate conduct and the petitioner’s state of mind and values.” *In re Lieber*, 834 N.W.2d 200, 204 (Minn. 2013).

Here, the panel made numerous determinations in evaluating MacDonald’s alleged remorse and acceptance of responsibility for her misconduct, her change in conduct and state of mind, and her renewed commitment to the ethical practice of law. Although MacDonald testified that she was remorseful and sorry for her misconduct, the panel ultimately found that MacDonald failed to demonstrate the requisite remorse. The panel determined that MacDonald minimized the seriousness of her misconduct, neglected to acknowledge her misconduct, and was unable to show—through her own words or through the testimony of others—any recognition of the harm she caused by her misconduct. The

panel found that MacDonald “was unable to describe her understanding of the root cause of the misconduct, other than to place blame on the circumstances she was in when the misconduct occurred.” Likewise, although MacDonald presented testimony from seven other people, the panel found that “none of petitioner’s witnesses were able to point to any specific examples of petitioner’s show of remorse outside of the prayer circle, other than her general statements to them that she felt remorse.” Ultimately, the panel concluded that MacDonald did not meet her burden of proving by clear and convincing evidence that she has undergone the requisite moral change to render her fit to resume the practice of law.²

MacDonald primarily emphasizes the specific details of, and inferences from, the testimony of her and her witnesses before the panel. The panel did not find MacDonald or her witnesses’ testimony on remorse credible, and “[w]e generally defer to the panel’s findings that the petitioner’s testimony regarding moral change was not credible.” *Tigue*, 960 N.W.2d at 701. Here, the record supports the panel’s findings that MacDonald and

² MacDonald argues the panel misstated the factors and applied the wrong burden of proof by requiring her to prove by clear and convincing evidence each of the three factors considered when evaluating moral change. We reject MacDonald’s interpretation of the panel’s decision; the panel appropriately considered the three factors relevant to a moral change analysis and ultimately concluded she failed to meet her burden of proof. And we need not decide if the clear and convincing burden of proof applies to each of the three factors or applies only to the overarching issue of whether an attorney has proven moral change. Even if the panel misapplied the burden of proof to a particular factor, our independent review assures us that MacDonald failed to prove “by clear and convincing evidence that [she] has ‘undergone such a moral change as now to render [her] a fit person to enjoy the public confidence and trust once forfeited.’” *Swanson*, 343 N.W.2d at 664 (quoting *Smith*, 19 N.W.2d at 326).

her witnesses lacked credibility on the issue of remorse.³ We therefore defer to the panel’s credibility determinations and its findings. *In re Mose*, 754 N.W.2d 357, 362 (Minn. 2008) (deferring to the panel’s credibility determination); *In re Griffith*, 883 N.W.2d 798, 802 (Minn. 2016) (same).

To demonstrate her remorse, MacDonald primarily relied on her interaction with the judge from the S.G. matter in November 2018—over 2 years before her 2021 suspension. The encounter occurred at a Rotary event when MacDonald and her friend approached the judge and asked him if he would pray with them. The panel found that “[n]one of the witnesses recalled what was specifically stated in the prayer circle, but a general request for forgiveness was made and accepted by both parties.”

The record supports the panel’s finding that evidence of the prayer circle did not demonstrate MacDonald’s remorse for her misconduct during the 2018 radio interview. MacDonald’s friend testified that MacDonald “didn’t state any details at that time of, like, what was the apology for,” but she apologized “basically for the past.” The judge acknowledged the interaction but testified that MacDonald did not mention the harm she caused the judge or the public, nor did she mention the 2018 radio interview. Moreover, because MacDonald testified that she did not recognize that her radio interview was

³ MacDonald argues the panel adopted its findings verbatim from the Director’s proposed findings of fact, conclusions of law, and recommendations and thus we should apply “strict scrutiny” to the findings of the panel. According to MacDonald, adopting the Director’s proposal verbatim “indicates that the panel did not review and analyze the facts independently.” But MacDonald concedes that the panel added two findings to its decision that were not included in the Director’s proposal. Thus, we need not address whether a more rigorous review is required as the panel did not adopt verbatim the Director’s *entire* proposal.

improper until our decision in 2021, any conduct that predated this awareness, such as the prayer circle, does not demonstrate remorse for the radio interview misconduct. Based on our independent review of the record, we conclude that the panel’s finding that MacDonald did not show remorse and acceptance of responsibility for her misconduct is not clearly erroneous.

Without the prayer circle, MacDonald has little evidence of specific examples showing her moral change. *See In re Sand*, 951 N.W.2d 918, 922 (Minn. 2020) (stating that “evidence of this moral change must come . . . from an observed record of appropriate conduct” (citation omitted) (internal quotation marks omitted)); *Griffith*, 883 N.W.2d at 802 (holding that the panel did not clearly err by giving “little or no weight” to the testimony of a petitioner’s witnesses when the witnesses did not provide “specific examples” of how the petitioner had demonstrated moral change). The panel also made numerous findings about whether MacDonald has changed her conduct and state of mind to correct the underlying misconduct that led to her suspension, and whether she has demonstrated a renewed commitment to the ethical practice of law. Again, the panel found the testimony of MacDonald and her witnesses to be unpersuasive, and there is no reason to depart from the panel’s findings, which are supported by the record.⁴ We are also particularly concerned about MacDonald’s renewed commitment to the ethical practice of

⁴ We do not consider the professional status of MacDonald’s law firm, or any alleged misconduct in its operations or annual report submissions, in our decision here. Although the panel noted concern regarding potential additional misconduct since her suspension, we do not need to decide whether the panel clearly erred in making those determinations because we do not rely on that evidence in reaching the conclusion that MacDonald has not demonstrated the requisite moral change.

law given that she was admonished after filing her petition for reinstatement for assisting an individual in serving frivolous notices upon third parties and she was previously suspended for similar misconduct. *See In re Singer*, 735 N.W.2d 698, 705 (Minn. 2007) (concluding that the lawyer’s conduct after filing his petition for reinstatement, which demonstrated a pattern of mismanagement of his personal finances when the lawyer was suspended for financial misconduct and failure to keep trust account books and records, “hinder[ed] his ability” to prove that he was “morally fit for the practice of law”).

In summary, based on our independent review of the record, we hold that MacDonald has not met her burden of proving by clear and convincing evidence that she has undergone a moral change. Accordingly, we deny her petition for reinstatement.

Petition denied.

CHUTICH, J., took no part in the consideration or decision of this case.

THISSEN, J., took no part in the consideration or decision of this case.