STATE OF MICHIGAN

COURT OF APPEALS

RONALD R. STEWART, R. Ph.,

Petitioner-Appellee,

v

STATE OF MICHIGAN, DEPARTMENT OF COMMERCE, BUREAU OF OCCUPATIONAL AND PROFESSIONAL REGULATION, BOARD OF PHARMACY,

Respondent-Appellant.

UNPUBLISHED
June 24, 1997

No. 190403
Wayne Circuit Court
LC No. 94-434134-AA

LARRY L. COBB, R. Ph.,

Petitioner-Appellee,

v

STATE OF MICHIGAN, DEPARTMENT OF COMMERCE, BUREAU OF OCCUPATIONAL AND PROFESSIONAL REGULATION, and BOARD OF PHARMACY,

Respondent-Appellant.

No. 190404
Wayne Circuit Court
LC No. 94-434136-AA

Before: Holbrook, Jr., P.J., and Fitzgerald and Smolenski, JJ.

PER CURIAM.

This is a consolidated appeal. In both cases, respondent State of Michigan, Department of Commerce, Bureau of Occupational and Professional Regulation, Board of Pharmacy (the Board) appeals by leave granted the circuit court's orders reversing the Board's final orders that fined

petitioners and revoked their controlled substance licenses and licenses to practice pharmacy. We vacate the circuit court's orders and reinstate the Board's final orders.

The Attorney General filed administrative complaints alleging that petitioners violated § 7311(1)(f),[1] § 17763(f)[2] and § 17768(2)(e)[3] of the Public Health Code[4] (PHC). A hearing was held before an administrative law judge (ALJ). The only evidence introduced against petitioners was a previous order of the Administrator of the Drug Enforcement Administration (DEA) that was published in the Federal Register. This order revoked the DEA Certificates of Registration issued to two pharmacies owned and operated by petitioners. Because counsel for the pharmacies had withdrawn their request for a hearing in the DEA proceedings, the DEA Administrator entered the order based on certain investigative files.

The ALJ in this case subsequently issued a proposed decision concluding that petitioners had violated only § 7311(1)(f) of the PHC. The Board accepted this conclusion by the ALJ and further concluded that petitioners had also violated §§ 17763(f) and 17768(2)(e) the PHC. The Board fined petitioners and revoked their controlled substance licenses and licenses to practice pharmacy.

Petitioners petitioned for judicial review of the Board's orders in the circuit court. The court reversed the Board's decisions and remanded the cases for further proceedings. The court reasoned that the DEA order published in the Federal Register was not competent evidence and should not have been admitted against petitioners because only petitioners' pharmacies, not petitioners, had been parties to the DEA proceedings. In so reasoning, the court relied on *Ozark v Kais*, 184 Mich App 302; 457 NW2d 145 (1990) and *Roberts v City of Troy*, 170 Mich App 567; 429 NW2d 206 (1988), which discuss the doctrines of res judicata and collateral estoppel. Respondent now appeals by leave granted.

Respondent contends that the "lack of identity of parties" issue was never raised by petitioners below. Respondent argues that, accordingly, the circuit court's reversal of the Board's decisions on the basis of an issue not raised by petitioners constituted error. We need not address this specific argument because we conclude, in any event, that the circuit court erred in apparently basing its decisions to reverse the Board's order on the legal doctrines of res judicata and collateral estoppel. The issues and parties in this case are not the same as the issues and parties involved in the DEA proceedings. *Husted v Auto-Owners Ins Co*, 213 Mich App 547, 556-557; 540 NW2d 743 (1995); *Eaton Co Bd of Road Comm'rs v Schultz*, 205 Mich App 371, 375-377; 521 NW2d 847 (1994). Moreover, the doctrines of res judicata and collateral estoppel are not rules of evidence, but rather doctrines designed to avoid the relitigation of claims and conserve judicial resources. *Eaton Co, supra* at 377.

An appeal from an administrative agency is reviewed to determine whether the agency's decision was authorized by law and supported by competent, material and substantial evidence. *Borchardt v Dep't of Commerce*, 218 Mich App 367, 369; 554 NW2d 348 (1996). In this case, the DEA order published in the Federal Register, as well as the findings contained therein, constituted hearsay. However, we nevertheless conclude that the DEA order and findings constituted evidence of a type that could be relied upon by reasonably prudent persons in the conduct of their affairs. MCL 24.275; MSA 3.560(175); *Michigan State Employees Ass'n v Civil Service Comm*, 126 Mich App

797, 803-805; 338 NW2d 220 (1983); *Rentz v General Motors Corp, Fisher Body Div, Fleetwood Plant*, 70 Mich App 249, 253; 245 NW2d 745 (1976). However, although it is well established that hearsay evidence may amount to substantial evidence to sustain an administrative determination, *Richardson v Perales*, 402 US 389; 28 L Ed 2d 842; 91 S Ct 1420 (1971), such evidence must be evaluated on a case-by-case basis to determine if it is inherently unreliable. In these cases, petitioners have never disputed the veracity of the findings or conclusions of the DEA. Thus, the Board was entitled to rely on the DEA conclusions and finding notwithstanding that they constituted hearsay. After reviewing the record, we conclude that the Board's decisions in these cases were authorized by law and supported by competent, material and substantial evidence.

Accordingly, we vacate the circuit court's orders and reinstate the Board's final orders.

/s/ Donald E. Holbrook, Jr.
/s/ Michael R. Smolenski

[1] MCL 333.7311(1)(f); MSA 14.15(7311)(1)(f).

[2] MCL 333.17763(f); MSA 14.15(17763)(f).

[3] MCL 333.17768(2)(e); MSA 14.15(17768)(2)(e).

[4] MCL 333.1101 *et seq.*; MSA 14.15(1101) *et seq*.