STATE OF MINNESOTA
IN COURT OF APPEALS
A11-666

Sheila Hall,
Relator,

vs.

Commissioner of the Minnesota Department of Human Services,
Respondent.

Filed December 27, 2011
Affirmed
Collins, Judge[*]

Minnesota Department of Human Services
File No. 61-1800-21099-2

Jeremy A. Klinger, Drahos Kieson & Christopher, P.A., Bemidji, Minnesota (for relator)

Lori Swanson, Attorney General, Corrie A. Oberg, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Johnson, Chief Judge; Bjorkman, Judge; and Collins, Judge.

U N P U B L I S H E D O P I N I O N

COLLINS, Judge

Relator challenges the decision of the Department of Human Services (DHS) to place her individual license to provide family child care on conditional status for two

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

years, arguing that the conditions imposed on her license are unreasonable because she has done nothing wrong and the allegations against her former co-licensee were recanted. We affirm.

FACTS

In August 2009, relator Sheila Hall and T.E. obtained a joint license from DHS to provide family child care. Hall operated a daycare at T.E.'s home, where she and her children and grandchild resided with T.E. and his 12-year-old daughter. In January 2010, T.E. was charged with first-degree criminal sexual conduct based on reports that he had sexually abused his daughter. In response, DHS ordered the temporary immediate suspension of Hall's and T.E.'s joint child-care license. Hall appealed the order. An administrative law judge (ALJ) recommended that the temporary immediate suspension be continued, and DHS affirmed this decision.

In March 2010, Beltrami County Health & Human Services notified T.E. that, based on a preponderance of evidence of first-degree criminal sexual conduct, he was disqualified from direct contact with, or access to, persons served by a DHS-licensed program. The county informed T.E. that this disqualification was permanent and could not be set aside. The county also advised T.E. that, if he believed the information used to disqualify him was incorrect, he had 30 days to request reconsideration. T.E. did not request reconsideration of the disqualification. Based on T.E.'s disqualification, DHS revoked Hall's and T.E.'s joint child-care license.

In October 2010, after moving to a new residence, Hall reapplied for an individual child-care license pursuant to Minn. Stat. § 245A.08, subd. 5a(a)(1) (2010). While that

application was pending, T.E.'s daughter recanted her allegations of sexual abuse, describing them as a "big lie," and the criminal charge against T.E. was dismissed. On February 14, 2011, DHS issued Hall an Order of Conditional License. Hall requested reconsideration, challenging the following conditions:

> 4. [T.E.] must not be present in your licensed child care home at [address], nor have any entry upon the property during child care hours, at any time when children in your care are present. [T.E.] also may not have direct contact with, or access to, children in care at any time at any location away from your family child care home.
> 5. You must immediately notify Beltrami County Human Services of any changes in [T.E.]'s residence or access to children in your care.
> 6. You must either provide a copy of the Order of Conditional License to parents of children in care or document that all parents have been given an opportunity to review the Order of Conditional License. You must obtain parent signatures for each currently enrolled child, verifying they have either received a copy of the conditional order or had an opportunity to review the conditional order. . . . For new families, you must submit documentation of compliance with this term to Beltrami County Human Services **within 5 days of any child's admission** to your child care program.

DHS affirmed its order as amended, modifying condition five to require notification only "to the extent that [Hall is] aware of any changes" in T.E.'s residence or access to children in her care. This certiorari appeal followed.

D E C I S I O N

Agency decisions are presumed correct, and we must defer to the agency's expertise. *In re Space Ctr. Transp.*, 444 N.W.2d 575, 579 (Minn. App. 1989), *review dismissed* (Oct. 19, 1989). On a certiorari appeal, "[a]n agency's quasi-judicial determinations will be upheld unless they are unconstitutional, outside the agency's

jurisdiction, procedurally defective, based on an erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious." *Cole v. Metro. Council HRA*, 686 N.W.2d 334, 336 (Minn. App. 2004) (quotation omitted).

DHS may issue an order of conditional license if it finds that the applicant or license holder has failed to comply with an applicable law or rule. Minn. Stat. § 245A.06, subd. 1(a) (2010). Hall argues that she has personally done no wrong, and thus an order of conditional license is impermissible. We disagree. Hall reapplied for an individual child-care license pursuant to Minn. Stat. § 245A.08, subd. 5a(a)(1), which provides:

> A license holder and each controlling individual of a license holder whose license has been revoked because of noncompliance with applicable law or rule must not be granted a license for five years following the revocation. Notwithstanding the five-year restriction, when a license is revoked because a person, other than the license holder, resides in the home where services are provided and that person has a disqualification that is not set aside and no variance has been granted, the former license holder may reapply for a license when:
>
> (1) the person with a disqualification, who is not a minor child, is no longer residing in the home and is prohibited from residing in or returning to the home. . . .

Because DHS may issue a conditional license to an applicant or license holder who has failed to comply with an applicable law or rule, and this section specifically applies to individuals whose license has been revoked due to such noncompliance, DHS has the authority to issue Hall a conditional child-care license. *See* Minn. Stat. §§ 245A.06, subd. 1(a), .08, subd. 5a(a).

Hall next argues that the conditions placed on her child-care license are arbitrary and capricious because, in addition to her own innocence, T.E.'s daughter has recanted her allegations against T.E. We disagree. An agency's conclusions are not arbitrary and capricious so long as the agency articulates a rational connection between the facts found and the choice made. *In re Review of 2005 Annual Automatic Adjustment of Charges*, 768 N.W.2d 112, 120 (Minn. 2009). Hall gives great weight to the recantation of T.E.'s daughter, equating it to exonerating DNA evidence. But we have noted that recantation "is a frequent characteristic of child abuse victims." *State v. Cain*, 427 N.W.2d 5, 8 (Minn. App. 1988). Moreover,

> [c]ase law in Minnesota has been skeptical at best toward recantations of child sexual victims. There certainly is no case law that says when a child sexual abuse victim recants, that her second story should be given preference over her first one. As a matter of fact, case law goes the other way and says one should be very cautious about accepting recantations on the part of victims, given the natural pressures that are brought to bear on them, intentionally or otherwise.

State v. Tuttle, 504 N.W.2d 252, 255 (Minn. App. 1993). Although the allegations against T.E. were recanted, and the criminal charge against him was dismissed, the allegations have not been proved false. Thus, DHS made a rational decision to place precautionary conditions on Hall's child-care license.

Finally, Hall argues that conditions four, five, and six are unreasonable. She asserts that conditions four and five are unreasonable because they require her to entirely exclude T.E. from her home and track his whereabouts at all times. But this mischaracterizes the conditions imposed by DHS. Condition four requires Hall to

exclude T.E. from her home only during daycare operations and condition five, as amended, is applicable only "to the extent that [Hall is] aware of any changes" in T.E.'s residence or access to children in her care. Hall challenges condition six, which requires her to obtain parent signatures for each child, verifying that they have received a copy of the conditional order or had an opportunity to review it, because she fears it will make it difficult for her to retain clients. Hall's concern reflects an implicit acknowledgment that the information contained in the conditional order is relevant to parents. Upon reconsideration of its order, DHS found the conditions on Hall's license

> reasonable and appropriate in light of [Hall's] licensing history with the disqualified individual; the nature of the individual's disqualification; [Hall's] representation under oath that the disqualified individual will not be present at any time in [her] child care home and premises; [Hall's] continued friendship with the disqualified individual whom [she] view[s] as [her] 'extended family;' and [Hall's] duty to protect children in [her] care.

We agree. Given the nature of T.E.'s disqualification and the population which Hall serves through her DHS-licensed program, the decision of DHS was not arbitrary, unreasonable, or otherwise erroneous as a matter of law.

Affirmed.